## TITLE 8—ALIENS AND NATIONALITY

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### CHAPTER 1—GENERAL PROVISIONS

§§ 1 to 18. Repealed or Omitted

These sections, relating to citizenship, were affected by the Nationality Act of 1940, former section 501 et seq. of this title.

That act was passed on Oct. 14, 1940, to consolidate and restate the laws of the United States regarding citizenship, naturalization, and expatriation, and, in addition to certain specific repeals thereof, all acts or parts of acts in conflict with its provisions were repealed by former section 904 of this title. See the notes below for history of individual sections.

Section 1, relating to citizenship of persons born in the United States, was repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. It was from R.S. § 2172, which was revised from act Apr. 14, 1882, ch. 28, § 4, 2 Stat. 155; Feb. 10, 1855, ch. 71, § 1, 10 Stat. 604; act Mar. 2, 1907, ch. 2534, §§ 6, 7, 34 Stat. 1229, as amended May 24, 1904, ch. 314, § 1, 38 Stat. 797; see sections 1431 to 1433 of this title. Section 2, relating to citizenship of persons born abroad of residents of the United States, was from R.S. § 2165, which was revised from acts Apr. 14, 1882, ch. 28, § 4, 2 Stat. 155. Section 3, relating to citizenship upon parent’s naturalization, of children born abroad of alien parents, was from act Mar. 2, 1907, ch. 2534, § 5, 34 Stat. 1229, as amended May 24, 1894, ch. 341, § 2, 28 Stat. 797. Section 9, relating to citizenship of women citizens, was from acts Sept. 22, 1922, ch. 411, § 3(a), 42 Stat. 1022; July 3, 1930, ch. 388, § 1, 46 Stat. 809; Mar. 3, 1901, ch. 442, § 4(a), 35 Stat. 952; see section 1435 of this title. Section 9a, relating to repatriation of native-born women married to aliens prior to Sept. 22, 1922, was from act June 25, 1936, ch. 801, 49 Stat. 1917, as amended July 2, 1909, ch. 509, 35 Stat. 715; see section 1435(c) of this title.

Section 10, relating to effect of certain repeals on citizenship of women marrying citizens, was from act Sept. 22, 1922, ch. 411, § 2, 42 Stat. 1022.


Sections 13 and 14, relating to protection of citizens when abroad, were transferred to sections 1731 and 1732 of Title 22, Foreign Relations and Intercourse.

Section 15, R.S. § 1999, which relates to right of expatriation, is now set out as a note under section 1481 of this title.

Sections 16 to 18, relating to loss of citizenship, were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V,
§§ 31, 32. Transferred
CODIFICATION
Sections 31 and 32 transferred to sections 1971 and 1972, respectively, of Title 42, The Public Health and Welfare.

CHAPTER 3—CIVIL RIGHTS

§§ 41 to 43. Transferred
CODIFICATION
Sections 41 to 43 transferred to sections 1981 to 1983, respectively, of Title 42, The Public Health and Welfare.

Section 44, act Mar. 1, 1875, ch. 114, § 4, 18 Stat. 336, related to exclusion of jurors on account of race or color. See section 243 of Title 18, Crimes and Criminal Procedure.
Section 45, acts Mar. 1, 1875, ch. 114, § 3, 18 Stat. 336; May 28, 1896, ch. 252, § 19, 29 Stat. 184, related to prosecutions for banning jurors because of race or color. See section 243 of Title 18.

§§ 46 to 51. Transferred
CODIFICATION
Sections 46 to 51 transferred to sections 1984 to 1987, 1989, and 1990, respectively, of Title 42, The Public Health and Welfare.


§§ 53 to 56. Transferred
CODIFICATION

CHAPTER 4—FREEDMEN

§§ 61 to 65. Omitted
CODIFICATION
Section 61, R.S. 2032, related to continuation of laws then in force.
Section 62, R.S. 2033, related to enforcement of laws by former Secretary of War.
Section 64, act July 1, 1902, ch. 1351, 32 Stat. 556, related to retained bounty fund.
Section 65, R.S. § 2037, related to wives and children of colored soldiers.

CHAPTER 5—ALIEN OWNERSHIP OF LAND

§§ 71 to 78. Transferred
CODIFICATION
Sections 71 to 78 transferred to sections 1501 to 1508, respectively, of Title 48, Territories and Insular Possessions.

§§ 79 to 82. Omitted
CODIFICATION
Sections 79 to 82 related to alien ownership of real estate in the District of Columbia. Sections 79 to 81 were from act Mar. 3, 1887, ch. 340, §§ 1, 2, 4, respectively, 24 Stat. 476, 477, as specifically excepted from amendment by act Mar. 2, 1897, ch. 363, 29 Stat. 618 (for said act Mar. 3, 1897, as amended by the 1897 act, see sections 1501 to 1507 of Title 48, Territories and Insular Possessions); and section 82 was from act Mar. 9, 1888, ch. 30, 25 Stat. 45.

§§ 83 to 86. Transferred
CODIFICATION
Sections 83 to 86 transferred to sections 1509 to 1512, respectively, of Title 48, Territories and Insular Possessions.

CHAPTER 6—IMMIGRATION

SUBCHAPTER I—IMMIGRATION AND NATURALIZATION AGENCIES, OFFICERS, AND STATIONS

§§ 100, 101. Transferred
CODIFICATION
Sections 100 transferred to section 1551 of this title. Section 101 transferred to section 1552 of this title.


§§ 103, 103a. Omitted
CODIFICATION
Section 103a, act July 9, 1947, ch. 211, title II, 61 Stat. 292, which related to reimbursement by Attorney General of certain expenses incurred by other agencies in connection with administration and enforcement of laws relating to immigration, etc., was from the Department of Justice Appropriation Act, 1948, and was not repeated in the Department of Justice Appropriation Act, 1949, act June 3, 1948, ch. 400, title II, 62 Stat. 316. Similar provisions were contained in the following prior appropriation acts:


Sections, acts June 29, 1906, ch. 3592, § 1, 34 Stat. 596; Mar. 2, 1929, ch. 536, §§ 1 to 3, 45 Stat. 1512, 1513; Apr. 19, 1934, ch. 154, § 6, 48 Stat. 598; June 8, 1934, ch. 249, 48 Stat. 926; Aug. 7, 1939, ch. 517, 53 Stat. 1243, related to registry of aliens. Similar provisions were contained in former sections 728, 729, 742(b), and 746(b) of this title. See sections 1230 and 1259 of this title.


Section, acts Aug. 18, 1904, ch. 301, § 1, 38 Stat. 608; June 5, 1920, ch. 235, § 1, 41 Stat. 936, provided for appointment of commissioners of immigration at the several ports.


§ 109a to 109d. Transferred

CODIFICATION

Sections 109a to 109d transferred to sections 1353a, 1353b, and 1353d, respectively, of this title.


RENUMBERING OF REPEALING ACT

Section 611 of act July 1, 1944, which repealed this section, was renumbered 711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049. For section 711, see Act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049. As reenacted or amended, this section was repealed by Pub. L. 89-239, §3(b), Oct. 6, 1965, 79 Stat. 911 by Pub. L. 93-222, §7(b), Dec. 29, 1973, 87 Stat. 936.

During legal infancy, while a minor under the age of twenty-one years, and for which the sentences imposed were less than three months, and which were incurred during legal infancy, while a minor under the age of twenty-one years, and for which the sentences imposed were less than three months, and which were incurred before such repeal.

Subchapter II—Regulation and Restriction of Immigration in General

§131. Omitted

Codification


Section 133, act Mar. 4, 1909, ch. 299, §1, 35 Stat. 982, related to covering of moneys into Treasury. See section 1353 of this title.


Section 135, R.S. §2264, related to State tax or charge on immigrants.


Section 137–1, acts Oct. 16, 1918, ch. 186, §2, 40 Stat. 1012; June 26, 1940, ch. 439, title II, §23(b), 54 Stat. 673; Sept. 23, 1950, ch. 1024, title I, §22, 64 Stat. 1006, related to exceptions as to certain aliens seeking temporary entrance. See section 1182(d)(2) of this title.

Section 137–2, acts Oct. 16, 1918, ch. 186, §3, 40 Stat. 1012; Sept. 23, 1950, ch. 1024, title I, §22, 64 Stat. 1006, related to prohibition against issuance of visas to subversive aliens.


Sections 137–4 to 137–8, act Oct. 16, 1918, ch. 186, §§5–9, as added Sept. 23, 1950, 64 Stat. 1006, related to temporary exclusion of suspects, subversive aliens and penalties. See sections 1102, 1104, 1225, 1253, 1328 and 1327 of this title.

Section 137–9, act Mar. 28, 1951, ch. 23, §1, 65 Stat. 28, related to clarification of immigration status of certain aliens.


Section, act Sept. 22, 1922, ch. 411, §8, as added July 3, 1930, ch. 826, 46 Stat. 849, provided as follows:

“§137a. Married woman whose husband is native-born citizen and veteran of World War. Any woman eligible by race to citizenship who has married a citizen of the United States before July 3, 1930, whose husband shall have been a native-born citizen and a member of the military or naval forces of the United States during the World War, and separated therefrom under honorable conditions; if otherwise admissible, shall not be excluded from admission into the United States under section 136 of this title, unless she be excluded under the provisions of that section relating to—

(a) Persons afflicted with a loathsome or dangerous contagious disease, except tuberculosis in any form;

(b) Polygamy;

(c) Prostitutes, procurers, or other like immoral persons;

(d) Persons convicted of crime: Provided, That no such wife shall be excluded because of offenses committed during legal infancy, while a minor under the age of twenty-one years, and for which the sentences imposed were less than three months, and which were committed more than five years previous to July 3, 1930;

(e) Persons previously deported:

(f) Contract laborers.

After admission to the United States she shall be subject to all other provisions of [former] sections 9 and 10 and 367-370 of this title.”

Savings Clause

Section 5 of act May 24, 1934, provided that the repeal of this section should not affect any right or privilege or terminate any citizenship acquired under the section before such repeal.


Sections 137b to 137d, act Mar. 17, 1932, ch. 83, §§1–3, 47 Stat. 67, related to alien musicians. See section 1323(a) of this title.


Section 141, act Feb. 26, 1885, ch. 164, §2, 23 Stat. 332, related to validity of contracts for labor of aliens made before importation.
Section 142, act Feb. 5, 1917, ch. 29, § 6, 39 Stat. 879, related to advertisement of employment. See section 1330 of this title.

Section 143, act Feb. 5, 1917, ch. 29, § 7, 39 Stat. 879, related to solicitation of immigration by transportation companies. See section 1330 of this title.

Section 144, acts Feb. 5, 1917, ch. 29, §§ 8, 39 Stat. 880; Mar. 4, 1913, ch. 106, § 11, 37 Stat. 908, related to bringing in or harboring certain aliens. See section 1324(a) of this title.

Section 145, acts Feb. 5, 1917, ch. 29, §§ 9, 39 Stat. 880; May 26, 1924, ch. 190, § 26, 43 Stat. 166, related to bringing in aliens subject to disability or afflicted with disease. See section 1322 of this title.


Section 149, act Feb. 5, 1917, ch. 29, § 13, 39 Stat. 884, related to grouping of alien passengers for physical and mental examination. See section 1323 of this title.

Section 150, act Feb. 5, 1917, ch. 29, § 14, 39 Stat. 884, related to refusal or failure to furnish alien passenger list.

Section 151, acts Feb. 5, 1917, ch. 29, §§ 15, 39 Stat. 885; Dec. 19, 1944, ch. 608, § 1, 58 Stat. 816, related to inspection of alien passengers on arrival. See section 1223(a), (b) of this title.


Section 155, acts Feb. 5, 1917, ch. 29, § 19, 39 Stat. 889; June 28, 1940, ch. 439, title II, § 20, 54 Stat. 671; Dec. 8, 1942, ch. 697, 56 Stat. 1044; July 1, 1948, ch. 783, 62 Stat. 1206, related to deportation of undesirable aliens generally; see sections 1227 and 1361 of this title. Section 22 of act June 28, 1940 provided that no alien should be deportable by reason of amendments to former section 155 of this title by said act, on account of any act committed prior to the date of enactment of that act (June 28, 1940).

Section 155a, act Sept. 27, 1930, ch. 1052, ch. III, 64 Stat. 1048, related to deportation or exclusion proceedings unaffected by the Administrative Procedure Act.


Section 156a, Feb. 18, 1931, ch. 224, 46 Stat. 1711; June 28, 1940, ch. 439, title II, § 21, 54 Stat. 673, related to deportation of aliens engaged in narcotic traffic. Section 22 of act June 28, 1940, provided that no alien should be deportable by reason of amendments to former section 156a of this title by said act, on account of any act committed prior to the date of enactment of that act (June 28, 1940).


Sections 158 to 163, act Feb. 5, 1917, ch. 29, §§ 21-23, 39 Stat. 881-884, related to admission of aliens, detention, etc. See sections 1103(a), 1183, and 1327 of this title.

Section 201, act May 26, 1924, ch. 190, § 1, 43 Stat. 153, related to short title.


Section 204a, acts May 26, 1924, ch. 190, § 14, 43 Stat. 162; May 14, 1937, ch. 182, § 1, 50 Stat. 164, related to visas ofneider to Indians.

Section 204b, acts June 28, 1932, ch. 283, §§ 1, 2, 47 Stat. 336. Former section 204c of this title provided that section 204a should not apply after June 28, 1934.


Section 204c, act June 28, 1932, ch. 283, § 3, 47 Stat. 336, related to deportation as public charge.

Section 204d, act June 28, 1932, ch. 283, § 4, 47 Stat. 336, related to definitions.

Section 205, act May 26, 1924, ch. 190, § 5, 43 Stat. 155, defined quota immigrant. See section 1101 of this title.


§§ 204a, 204b. Omitted

Section 207, act May 26, 1924, ch. 190, § 7, 43 Stat. 156, related to admission of certain aliens in excess of quotas.

Sections related to natives of Virgin Islands residing in foreign countries on June 22, 1932, and were based on act June 28, 1932, ch. 283, §§ 1, 2, 47 Stat. 336. Former section 204e of this title provided that section 204a should not apply after June 28, 1934.


Section 220, acts May 26, 1924, ch. 190, § 23, 43 Stat. 165, related to burden of proof upon entry of alien or in deportation proceedings.

Section 222, act May 26, 1924, ch. 190, § 24, 43 Stat. 166, related to rules and regulations.

Section 223, act May 26, 1924, ch. 190, § 25, 43 Stat. 166, related to quota law as additional to other immigration laws.


Section 225, act May 26, 1924, ch. 190, § 29, 43 Stat. 169, related to appropriations.

Section 226, act May 26, 1924, ch. 190, § 32, 43 Stat. 169, related to partial invalidity.


Section 227, act Dec. 27, 1922, ch. 15, 42 Stat. 166, related to admission of certain aliens in excess of quotas.

§ 228. Omitted


§§ 232 to 237. Omitted


§ 238. Transferred

Section transferred to section 1507 of this title.
§ 239. Omitted

CODIFICATION
Section, acts Aug. 19, 1904, ch. 799, 64 Stat. 464; Mar. 19, 1915, ch. 9, 38 Stat. 6, relating to admission of alien spouses and minor children of members of armed forces, expired by its own terms on Mar. 19, 1922.

SUBCHAPTER IV—ALIEN VETERANS OF WORLD WAR I


Sections, act May 26, 1919, ch. 398, §§1–6, 44 Stat. 654, 655, related to alien veterans of World War I.

CHAPTER 7—EXCLUSION OF CHINESE

CODIFICATION
Former chapter 7 of this title included the provisions of the several Chinese Exclusion acts, beginning with the temporary act of May 6, 1882, ch. 126, 22 Stat. 58, which, as being then in force, were, by act Apr. 27, 1904, ch. 1636, §§ 33 Stat. 26, and act Apr. 29, 1902, ch. 641, 32 Stat. 176, “re-enacted, extended, and continued, without modification, limitation, or condition;” with the further provisions of the act and those of subsequent acts relating to the subject which remained in force.

§ 261. Omitted

CODIFICATION
Section, acts Feb. 14, 1903, ch. 552, §§ 7, 32 Stat. 828; Mar. 4, 1913, ch. 141, §§ 37, 37 Stat. 737; Ex. Ord. No. 6166, §14, June 10, 1933; 1940 Reorg. Plan No. V, eff. June 14, 1940, § 5 P.R. 2123, 54 Stat. 1238, conferred upon the Attorney General the authority, power, and jurisdiction by virtue of any law relating to the exclusion from and residence within the United States, its Territories and the District of Columbia, of Chinese and persons of Chinese descent, and vested in the collectors of customs and collectors of internal revenue, under control of the Commissioner of Immigration and Naturalization, as the Attorney General might designate therefor, the authority, power, and jurisdiction in relation to such exclusion previously vested in such officers. It was omitted as obsolete in view of the repeal, by act Dec. 17, 1943, ch. 344, §§ 1, 57 Stat. 626 of sections 262 to 297 and 299 of this title.


§ 298. Omitted

CODIFICATION
Section, acts Mar. 17, 1894, Art. III, 28 Stat. 1211; Apr. 28, 1904, ch. 1762, §1, 33 Stat. 478, provided for the Berton system of identification at the various ports of entry, to prevent unlawful entry of Chinese into the United States. It is obsolete in view of the repeal of sections 262 to 297 of this title by act Dec. 17, 1943, ch. 344, §1, 57 Stat. 600. For some years prior to such act, no moneys had been appropriated to prevent unlawful entry of Chinese, referred to in this section.


Section, act June 23, 1913, ch. 3, §1, 38 Stat. 65, provided for delivery by the marshal, of all Chinese persons ordered deported under judicial writs, into the custody of any officer designated for that purpose, for conveyance to the frontier or seashore for deportation.

CHAPTER 8—THE COOLY TRADE


Section 331, R.S. §2158, prohibited cooly trade.

Section 332, R.S. §2159; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167, related to forfeiture of vessels engaged in cooly trade.

Section 333, R.S. §2160, related to penalty for building vessels to engage in cooly trade.

Section 334, R.S. §2161, related to punishment for engaging in cooly trade.

Section 335, R.S. §2162, excepted voluntary emigration of coolies from prohibition.

Section 336, act Mar. 3, 1875, ch. 141, §1, 18 Stat. 477, related to inquiry and certification by consular officers.

Section 337, R.S. §2163, related to examination of vessels.


Section 339, act Mar. 3, 1875, ch. 141, §4, 18 Stat. 477, related to punishment for contracting to supply cooly labor.

CHAPTER 9—MISCELLANEOUS PROVISIONS

§§ 351 to 416. Repealed or transferred

These sections, relating to naturalization, were in large degree affected by the Nationality Act of 1940, former section 501 et seq. of this title. That act was passed on Oct. 14, 1940, to consolidate and restate the laws of the United States regarding citizenship, naturalization, and expatriation, and, in addition to certain specific repeals thereby, all acts or parts of acts in conflict with its provisions were repealed by former section 904 of this title. See notes below for history of individual sections.

Sections 351 to 354, relating to Bureau of Naturalization, were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, 54 Stat. 1172. Sections 351 to 353 were from act June 29, 1906, ch. 3592, §1, 34 Stat. 596, and section 354 was from act May 9, 1918, ch. 69, §1, 40 Stat. 544. See section 1443 of this title. See also section 1551 et seq. of this title for general provisions relating to Immigration and Naturalization Service.

Section 355, relating to reports of expenditures of Bureau of Naturalization, was repealed by act May 29, 1929, ch. 991, §1, 45 Stat. 994. It was from act Mar. 4, 1909, ch. 299, §1, 35 Stat. 982.

Sections 356 to 368 were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, 54 Stat. 1172. Section 356, relating to regulations for execution of naturalization laws and use of copies of papers in evidence, was from acts June 29, 1906, ch. 3592, §28, 34 Stat. 606, and Mar. 2, 1929, ch. 536, §8, 45 Stat. 1515; see section 1443 of this title. Section 356a, relating to quarters for photographic studio in New York City, was from act May 25, 1932, ch. 293, §9, 47 Stat. 166; see section 1443(g) of this
June 29, 1906, ch. 3592, § 4, 34 Stat. 596; see section 1421(d) of this title. Section 372a, relating to naturalization of former citizens, was from act Mar. 3, 1931, ch. 442, § 46, 46 Stat. 1511. Section 373 relating to declaration of intention to become citizen, was from acts June 29, 1906, ch. 3592, § 4, 34 Stat. 596; Mar. 4, 1929, ch. 683, § 1, 45 Stat. 1545; June 20, 1939, ch. 224, § 1, 53 Stat. 843; see section 1456(f) of this title.

Section 374, making it unlawful to make a declaration of intention on election day, was repealed by act May 25, 1926, ch. 368, § 1, 44 Stat. 652. It was from act June 29, 1906, ch. 3592, § 47, as added May 9, 1918, ch. 69, § 1, 40 Stat. 544.

Section 375, providing that declarations of intention should not be required of widow or minor children of aliens dying after having filed a declaration of intention, was repealed by act May 24, 1934, ch. 344, § 5, 48 Stat. 786, which provided that such repeal should “not affect any right or privilege or terminate any citizenship acquired under” the section before its repeal. Section was from act June 29, 1906, ch. 3592, § 4, 34 Stat. 597. Section 375a, act July 2, 1940, ch. 512, §§ 1, 2, 54 Stat. 715, relating to exemption from declaration of intention and filing of petition by children spending childhood in United States, was repealed by act June 27, 1952, ch. 477, title IV, § 403(a)(40), 66 Stat. 290.

Section 376, providing that alien seamen declarants should be deemed citizens for purposes of protection, was repealed by act June 15, 1935, ch. 255, § 1, 49 Stat. 376. It was from act June 29, 1906, ch. 3592, § 4(8), as added May 9, 1918, ch. 69, § 4, 40 Stat. 544.

Section 377, authorizing naturalization of certain aliens erroneously exercising rights and duties of citizenship prior to July 1, 1920, was repealed by act Oct. 14, 1940, ch. 367, title I, subch. V, § 504, 54 Stat. 1172. It was from act June 29, 1906, ch. 3592, § 4(10), as added May 9, 1918, ch. 69, § 1, 40 Stat. 545, and amended May 25, 1932, ch. 203, § 10, 47 Stat. 166.

Section 377a, related to naturalization of inhabitants of Virgin Islands. It was from acts Feb. 25, 1927, ch. 192, § 2, 41 Stat. 1234; May 17, 1932, ch. 190, 47 Stat. 158.

Sections 377b to 382c were repealed by act Oct. 14, 1940, ch. 367, title I, subch. V, § 504, 54 Stat. 1172. Section 377b, requiring lawful entry and certificate of arrival as prerequisite to declaration of intention, was from acts June 29, 1906, ch. 3592, § 4(4), as added May 9, 1918, ch. 69, §§ 3, 4, 40 Stat. 544; see section 1455(a)(2) of this title. Section 377c, relating to photographs of aliens seeking to become citizens, was from acts June 29, 1906, ch. 3592, § 4(11), as added May 9, 1918, ch. 69, §§ 3, 4, 40 Stat. 544; see section 1421(d) of this title.

Sections 377d to 382c, relating to absence or failure to file a declaration of intention on election day, were from acts June 29, 1906, ch. 3592, §§ 4, 34 Stat. 596; see section 1445(f) of this title. Section 378, providing that certificate of arrival and declaration of intention should be made a part of the petition for naturalization, was from act June 29, 1906, ch. 3592, § 48, as added Mar. 2, 1929, ch. 536, §§ 9, 45 Stat. 1516; see section 1444 of this title. Section 379, relating to petitions for naturalization, was from act June 29, 1906, ch. 3592, §§ 4, 34 Stat. 596, as amended Mar. 2, 1929, ch. 536, § 16(a), 45 Stat. 1516; Apr. 19, 1941, ch. 154, § 3, 49 Stat. 979; see section 1455(a)(2) of this title. Section 380b, defining county as used in former sections 379, 382, and 383 of this title, was from act June 29, 1906, ch. 3592, § 35, as added Mar. 2, 1929, ch. 536, § 9, 45 Stat. 1516, and amended May 17, 1932, ch. 190, 47 Stat. 158. Sections 381 and 382(c), relating to oaths of aliens admitted to citizenship and certain prerequisites to admission, respectively, were from acts June 29, 1906, ch. 3592, § 4, 34 Stat. 596; Mar. 2, 1929, ch. 536, § 16(b), 45 Stat. 1513; June 25, 1936, ch. 224, § 1, 49 Stat. 925; June 20, 1939, ch. 224, § 3, 53 Stat. 844; on the subject of section 381 see section 1424 of this title, on the subject of section 382 see sections 1427, 1430(b) and 1446(g) of this title. Sections 382a, relating to absence
from country as affecting continuity of residence for purpose of naturalization, was from act June 25, 1936, ch. 3282 of Title 18, Crimes and Criminal Procedure.

Section 398a, act May 3, 1949, ch. 183, § 2, 54 Stat. 178, related to patriotic address to new citizens. See section 1448a of this title.

Sections 399 to 402 were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. Sections 399, relating to fees and clerks, and Puerto Ricans serving in military service, was from act June 29, 1906, ch. 3592, §§ 12, 13, 34 Stat. 601, as amended May 9, 1918, ch. 69, § 1, 40 Stat. 544; amended May 23, 1923, ch. 203, § 3, 47 Stat. 163. See section 1441(a)(2) of this title.

Section 398, relating to proclamation of witnesses, and final hearings on petitions, respectively, were from act June 29, 1906, ch. 3592, §§ 1, 2, 40 Stat. 543; see sections 1439 and 1441(a)(1) of this title. Sections 396 to 398, relating to time of filing petition, subpena of witnesses, and final hearings on petitions, respectively, were from act June 29, 1906, ch. 3592, §§ 1, 2, 40 Stat. 543; see sections 1439 and 1441(a)(1) of this title.

Sections 392 to 398 were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. Sections 392 to 398, relating to naturalization of alien veterans of World War I, were repealed by act June 27, 1952, ch. 673, §§ 2(a), 48 Stat. 548; see section 1445 of this title.

Sections 399 to 402 were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. Sections 399, relating to fees and clerks, and Puerto Ricans serving in military service, was from act June 29, 1906, ch. 3592, §§ 12, 13, 34 Stat. 601, as amended May 9, 1918, ch. 69, § 1, 40 Stat. 544; amended May 23, 1923, ch. 203, § 3, 47 Stat. 163. See section 1441(a)(2) of this title.

Sections 392 to 398 were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. Sections 392 to 398, relating to naturalization of alien veterans of World War I, were repealed by act June 27, 1952, ch. 673, §§ 2(a), 48 Stat. 548; see section 1445 of this title.

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CHAPTER 10—ALIEN REGISTRATION


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 1201(b) and 1301 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 458, act June 28, 1940, ch. 439, title III, §§37, 54 Stat. 675, related to administration and enforcement of registration law. See section 1307 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)(b), (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.

NATURALITY 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 726 and 746(a) of this title], and former section 451 et seq. 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


SUBCHAPTER II—NATIONALITY AT BIRTH


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 1302, 1403, 1408, 1409(a), (c), and 1407, respectively, of this title.

§ 606. Transferred

CODIFICATION

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

SUBCHAPTER III—NATIONALITY THROUGH NATURALIZATION


Section 705, acts Oct. 14, 1940, ch. 876, title I, subch. III, §§305, 54 Stat. 1141; Sept. 23, 1950, ch. 1024, title I, §25, 64 Stat. 1018, related to exclusion from naturalization. See sections 1428(a)-(c), 1427(f), and 1451(c) of this title.


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


Section 709, act Oct. 14, 1940, ch. 876, title I, subch. III, §§309, 54 Stat. 1143, related to requirements as to proof of eligibility. See sections 1446(b)-(h) and 1447(e) of this title.

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


Section 714, act Oct. 14, 1940, ch. 876, title I, subch. III, §§314, 54 Stat. 1146, related to children born outside United States, both parents aliens, or one an alien and the other a citizen subsequently losing citizenship.

Section 727a, act May 3, 1940, ch. 133, § 2, 54 Stat. 178, related to patriotic address to new citizens. See section 1448a of this title.


Section 404, act Oct. 14, 1940, ch. 876, related to an article in the case of expatriation. See section 1485(3)–(9) of this title.

Section 405, act Oct. 14, 1940, ch. 876, related to an article in the case of expatriation. See section 1485(1), (2) of this title.

Section 406, acts Oct. 14, 1940, related to exceptions in the case of expatriation. See section 1485(3)–(9) of this title.

Section 407, act Oct. 14, 1940, related to expatriation of nationals by residence abroad. See section 1484(a) of this title.

Section 408, act Oct. 14, 1940, 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.

Subchapter IV—Loss of Nationality

§ 800. Transferred

Codification

Sections 401 to 410, related to an article in the case of expatriation. See section 1482 of this title.

Sections 403 to 410, related to an article in the case of expatriation. See section 1482 of this title.


Section 401, act Oct. 14, 1940, ch. 876, related to an article in the case of expatriation. See section 1482 of this title.

Section 402, act Oct. 14, 1940, ch. 876, related to an article in the case of expatriation. See section 1482 of this title.

Section 403, act Oct. 14, 1940, ch. 876, related to an article in the case of expatriation. See section 1482 of this title.

Section 404, act Oct. 14, 1940, ch. 876, related to an article in the case of expatriation. See section 1482 of this title.


Subchapter V—Miscellaneous


Sections 401 to 410, related to an article in the case of expatriation. See section 1482 of this title.

Sections 403 to 410, related to an article in the case of expatriation. See section 1482 of this title.


Subchapter VI—Naturalization of Persons Serving in the Armed Forces of the United States during World War II


Sections 1001 to 1006, related to an article in the case of expatriation. See section 1482 of this title.

Sections 1003, related to an article in the case of expatriation. See section 1482 of this title.

Sections 1005, related to an article in the case of expatriation. See section 1482 of this title.

Sections 1007, related to an article in the case of expatriation. See section 1482 of this title.

Sections 1009, related to an article in the case of expatriation. See section 1482 of this title.

Sections 1011, related to an article in the case of expatriation. See section 1482 of this title.

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§ 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, advocates, 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.
(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 the border between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations. Such regulations shall provide that (A) each such document include a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable and (B) an alien presenting a border crossing identification card is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.
(7) The term "clerk of court" means a clerk of a naturalization court.
(8) The terms "Commissioner" and "Deputy Commissioner" mean the Commissioner of Im-
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migation and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

(9) The term “consular officer” means any consular, diplomatic, or other officer or employee of the United States designated under regulations prescribed under authority contained in this chapter, for the purpose of issuing immigrant or nonimmigrant visas or, when used in subchapter III, for the purpose of adjudicating immigrant or nonimmigrant visas or, when used in subchapter III, for the purpose of adjudicating

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

(11) The term “dipomatic 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)(A) The terms “admission” and “admitted” mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

(B) An alien who is paroled under section 1182(d)(3) of this title or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.

(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien—

(i) has abandoned or relinquished that status,

(ii) has been absent from the United States for a continuous period in excess of 180 days,

(iii) has engaged in illegal activity after having departed the United States,

(iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,

(v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229a(a) of this title, or

(vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

(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 the members of their immediate families; and

(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

(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 or the Commonwealth of the Northern Mariana Islands and solely in pursuit of his calling as a crewman and to depart from Guam or the Commonwealth of the Northern Mariana Islands 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; (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; or (iii) solely to perform services in a specialty occupation in the United States if the alien is a national of the Commonwealth of Australia and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 1182(t)(1) of this title;
(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 consistent with section 1184(l) of this title at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited 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, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien’s qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico; (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 representative 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) Repealed. Pub. L. 106-95, §2(c), Nov. 12, 1999, 113 Stat. 1316] (b) subject to section 1182(l)(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 de-

\[1\] See References in Text note below.
ing 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 subject to subsections (d) and (p) of section 1184 of this title, an alien who—

(i) is the fiancée or fiancé of a citizen of the United States (other than a citizen described in section 1154(a)(1)(A)(viii)(I) of this title) and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission;

(ii) has concluded a valid marriage with a citizen of the United States (other than a citizen described in section 1154(a)(1)(A)(viii)(I) of this title) who is the beneficiary of a petition to accord a status under section 1151(b)(2)(A)(i) of this title that was filed under section 1154(a)(1)(A)(viii)(I) of this title by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or

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

L subject to section 1184(c)(2) of this title, 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 perform work, and 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 temporarily and solely for the purpose of pursuing a full course of study may be full or part-time, and who continues to be a student at the institution;

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, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's course of study may be full or part-time, and who accompanies to the United States institution or place of study from Canada or Mexico;

N(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i) (or under analogous authority under paragraph (27)(L)), 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) (or under analogous authority under paragraph (27)(L));

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, the alien's course of study (relating to entertainment groups);

IV an alien having a foreign residence which the alien has no intention of abandoning who—

(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 Secretary of Homeland Security 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)(O)(ii);

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

(i) who the Attorney General determines—

(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;

(T)(i) subject to section 1184(o) of this title, an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, determines—

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 7102 of title 22;

(ii) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;

(III)(aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime;

(bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or

(cc) has not attained 18 years of age; and

(IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal; and

(ii) if accompanying, or following to join, the alien described in clause (i)—

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien;

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; or

(III) any parent or unmarried sibling under 18 years of age of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe

So in original. The words “the alien” probably should not appear.
form of trafficking, determines faces a present danger of retaliation as a result of the alien’s escape from the severe form of trafficking or cooperation with law enforcement.

(U)(i) subject to section 1184(p) of this title, an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that—

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

(ii) if accompanying, or following to join, the alien described in clause (i)—

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes; or

(V) subject to section 1184(q) of this title, an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 1153(d) of this title) of a petition to accord a status under section 1153(a)(2)(A) of this title that was filed with the Attorney General under section 1154 of this title on or before December 21, 2000, if—

(i) such petition has been pending for 3 years or more; or

(ii) such petition has been approved, 3 years or more have elapsed since such filing date, and—

(I) an immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 1153(a)(2)(A) of this title; or

(II) the alien’s application for an immigrant visa, or the alien’s application for adjustment of status under section 1255 of this title, pursuant to the approval of such petition, remains pending.

(15) The term “immigrant visa” means an immigrant visa required by this chapter and properly 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, expulsion, or removal 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 U.S.C. App. 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.


(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 September 30, 2012, 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 September 30, 2012, 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 1, 1978, and was practicing medicine in a State on that date,

(iii) entered the United States as a non-immigrant 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, 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 or child 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
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original lawful enlistment outside the United States after October 15, 1978, and after on active duty in the Armed Forces of 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 who is present in the United States—

(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, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(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; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) 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;

(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;

(L) an immigrant who would be described in clause (i), (ii), (iii), or (iv) of subparagraph (I) if any reference in such a clause—

(i) to an international organization described in paragraph (15)(G)(i) were treated as a reference to the North Atlantic Treaty Organization (NATO);

(ii) to a nonimmigrant under paragraph (15)(G)(iv) were treated as a reference to a nonimmigrant classifiable under NATO-6 (as a member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, a member of a civilian component attached to or employed by an Allied Headquarters under the “Protocol on the Status of International Military Headquarters” set up pursuant to the North Atlantic Treaty, or as a dependent); and

(iii) to the Immigration Technical Corrections Act of 1988 or to the Immigration and Nationality Technical Corrections Act of 1994 were a reference to the American Competitiveness and Workforce Improvement Act of 1998;

(M) subject to the numerical limitations of section 1131(b)(4) of this title, an immigrant who seeks to enter the United States to work as a broadcaster in the United States for the International Broadcasting Bureau of the Broadcasting Board of Governors, or for a grantee of the Broadcasting Board of Governors, and the immigrant’s accompanying spouse and children.

(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 admission 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.

*So in original. Probably should be followed by “: or”.*
(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, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(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, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(39) The term "unmarried", when used in reference to any individual, whether or not previously married, at any time, means an individual who at such time is not married, or who has 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. 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. For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well-founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well-founded fear of persecution on account of political opinion.

(43) The term "aggravated felony" means—
(A) murder, rape, or sexual abuse of a minor;
(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 specified unlawful activity) if the amount of the funds exceeded $10,000;
(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 at least one year;
(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at least one year;
(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);

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(J) an offense described in section 1962 of title 18 (relating to racketeering activity), or an offense described in section 1084 (if it is a second or subsequent offense) or 1386 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

(K) an offense that—
   (i) relates to the owning, controlling, managing, or supervising of a prostitution business;
   (ii) is described in section 2421, 2422, or 2423 of title 18 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or
   (iii) is described in any of sections 1581–1586 or 1588–1591 of title 18 (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;

(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;
   (ii) section 421 of title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);
   (iii) section 421 of title 18 (relating to protecting the identity of undercover intelligence agents); or
   (iv) 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. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.

(4)(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

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*So in original. Probably should be followed by a semicolon.*
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, the development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity to an alien, a formal judgment of guilt of the number of employees that the individual supervises or has supervised or directs or has directed.

(47)(A) The term "order of deportation" means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.

(B) The order described under subparagraph (A) shall become final upon the earlier of—

(i) a determination by the Board of Immigration Appeals affirming such order; or

(ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of a term of imprisonment or sentence in whole or in part.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a relative who has been battered or subjected to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household; Provided, That no natural parent of any such adopted child shall have, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adopting parent or parents at the time of such adoption; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of eighteen years at the time a petition is filed in his behalf to accord the child described in clause (i) or subparagraph (F)(i) 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 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 adop-
tion; 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; or
(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 1151(b) of this title; or
(G)(i) a child, younger than 16 years of age at the time a petition is filed on the child’s behalf to accord a classification as an immediate relative under section 1151(b) of this title, who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States by a United States citizen and spouse jointly or by an unmarried United States citizen who is at least 25 years of age, Provided, That—
(I) the Secretary of Homeland Security is satisfied that proper care will be furnished the child if admitted to the United States;
(II) the child’s natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child’s emigration and adoption;
(III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child;
(IV) the Secretary of Homeland Security is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Secretary of Homeland Security may consider whether there is a petition pending to confer immi-
grant status on one or both of such natural parents); and
(V) in the case of a child who has not been adopted—
(aa) the competent authority of the foreign state has approved the child’s emigration to the United States for the purpose of adoption by the prospective adoptive parent or parents; and
(bb) the prospective adoptive parent or parents has or have complied with any pre-adoption requirements of the child’s proposed residence; and
(ii) except 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; or
(iii) subject to the same provisos as in clauses (i) and (ii), a child who—
(I) is a natural sibling of a child described in clause (i), subparagraph (E)(i), or subparagraph (F)(i);
(II) was adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in clause (i), subparagraph (E)(i), or subparagraph (F)(i); and
(III) is otherwise described in clause (i), except that the child is younger than 18 years of age at the time a petition is filed on his or her behalf for classification as an immediate relative under section 1151(b) of this title.
(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)(D) (other than the second proviso therein) and paragraph (1)(G)(i) in the case of a child born out of wedlock 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 “immigration judge” means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 1229a of this title. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.
(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—
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 and 1432 of this title, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1) of this section), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

The terms “parent”, “father”, and “mother” include in the case of a posthumous child a deceased parent, father, and mother.


(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;


(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 1182(a) of this title and subparagraphs (A) and (B) of section 1182(a)(2) of this title and subparagraph (C) thereof of such section* 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); or

(9) one who at any time has engaged in conduct described in section 1182(a)(3)(E) of this title (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 1182(a)(2)(G) of this title (relating to severe violations of religious freedom).

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. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

(g) For the purposes of this chapter any alien ordered deported or removed (whether before or after the enactment of this chapter) who has left the United States, shall be considered to have been deported or removed 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.

(i) With respect to each nonimmigrant alien described in subsection (a)(15)(T)(i) of this section—

(1) the Secretary of Homeland Security, the Attorney General, and other Government officials, where appropriate, shall provide the alien with a referral to a nongovernmental organization that would advise the alien regarding the alien’s options while in the United States and the resources available to the alien; and

(2) the Secretary of Homeland Security shall, during the period the alien is in lawful temporary resident status under that subsection, grant the alien authorization to engage in employment in the United States and

*See References in Text note below.

*So in original. The phrase ‘of such section’ probably should not appear.
provide the alien with an “employment author-
ized” endorsement or other appropriate
work permit.


AMENDMENT OF SUBSECTION (a)(15)(H)(i)

For termination of amendment by section 107(c) of Pub. L. 106–77, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subs. (a), (b) (except par. (1)(G)(ii)), (c), and (e)–(g), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out 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, which is classified principally to subchapter XVIII (§286 et seq.) of chapter 9 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 286 of Title 22 and Tables.


Section 3(a) of the Selective Service and Training Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), referred to in subsec. (a)(19), was classified to section 303 of

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Title 50, Appendix, War and National Defense, and was omitted from the Code as obsolete.


Section 202(d)(1) of the Nicaraguan Adjustment and Central American Relief Act, referred to in subsec. (a)(51)(F), is section 202(d)(1) of Pub. L. 105–100, which is set out as a note under section 1255 of this title.

Section 305 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, referred to in subsec. (a)(51)(G), is section 305 of div. C of Pub. L. 104–208, which is set out as a note under this section.

Subsection (c)(1), was repealed by Pub. L. 106–395, title II, which struck out ''and'' at end.

CODIFICATION

September 30, 1996, referred to in the concluding provisions of subsec. (a)(43), was the original "the date of enactment of this paragraph", which was translated as meaning the date of enactment of section 321(b) of Pub. L. 104–208, which inserted that language, to reflect the probable intent of Congress.

AMENDMENTS


Subsec. (b)(1)(G). Pub. L. 111–287 amended subpar. (G) generally. Prior to amendment, subpar. (G) provided that the term "child" includes a child who is migrating from certain foreign states to the United States to be adopted if the Attorney General is satisfied that certain criteria are met.


Pub. L. 111–9 substituted "March 6, 2009,".


Subsec. (a)(15)(K)(ii). Pub. L. 110–229, §702(2)(3), (3), struck out cl. (i) which read as follows: "if the Secretary of Homeland Security, in his or her discretion and with the consultation of the Attorney General, determines that a trafficking victim, due to psychological or physical trauma, is unable to cooperate with a request for assistance described in clause (i)(III)(aa), the request is unreasonable.


Subsec. (a)(27)(J)(i). Pub. L. 110–457, §235(d)(1)(A), substituted "State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;" for "State and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment;"


Subsec. (a)(27)(J)(iii). Pub. L. 110–457, §235(d)(1)(B)(iv), substituted in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction;" for "in the actual or constructive custody of the Attorney General unless the Attorney General specifically consents to such jurisdiction;"


2006—Subsec. (a)(15)(K)(i), (ii). Pub. L. 109–248, which directly inserted direction of "(other than a citizen described in section 1154(a)(1)(A)(vi)(I) of this title)" after "citizen of the United States" each place appearing in section 1154(a)(1)(A)(i), without specifying the Act to be amended, was executed to subsec. (a)(15)(K) of this section, which is section 101 of the Immigration and Nationality Act, to reflect the probable intent of Congress.


Pub. L. 109–162, §801(a)(1)(B)(i), directed substitution of "or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime; or" for ", or", was executed by making the substitution for "", or"" the second time appearing to reflect the probable intent of Congress.


SubSec. (i) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on
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.

Subsec. (a)(15)(P)(i). Pub. L. 104–208, § 622(a)(2), inserted “consistent with section 1184(f) of this title” after “such a course of study”.


Subsec. (a)(17). Pub. L. 104–208, § 308(d)(4)(A), substituted “persecution, or removal” for “or expulsion”.


Subsec. (a)(42). Pub. L. 104–208, § 660(a)(1), inserted at end “For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.”

Subsec. (a)(43). Pub. L. 104–208, § 321(b), inserted at end of concluding provisions “Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.”


Subsec. (a)(43)(G). Pub. L. 104–208, § 322(a)(2)(A), which directed amendment of subpar. (G) by striking out “imposed (regardless of any suspension of imprisonment)”, struck out “imposed (regardless of any suspension of such imprisonment)” after “term of imprisonment” to reflect the probable intent of Congress.


Pub. L. 104–208, § 321(a)(5), substituted “if committed” before “for commercial advantage”.


Subsec. (a)(43)(M). Pub. L. 104–208, § 321(a)(7), substituted “$10,000” for “$200,000” in cls. (i) and (ii).

Pub. L. 104–208, §321(a)(8), substituted “‘except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien’s spouse, child, or parent (and no other individual to violate the provisions of this chapter)” for “for which a sentence of 5 years imposed (regardless of any suspension of imprisonment) at least one year;”.

Pub. L. 104–208, §321(a)(3), redesignated “at least one year” for “‘is at least 5 years’.


Pub. L. 104–132, §440(e)(6), redesignated subpar. (O) as (P).

Pub. L. 104–132, §440(e)(4), amended subpar. (O) generally. Prior to amendment, subpar. (O) read as follows: “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 of such imprisonment) is at least 5 years;”.

Subsec. (a)(43)(P). Pub. L. 104–208, §322(a)(2)(A), which directed amendment of subpar. (P) by striking out “imposed (regardless of any suspension of imprisonment)” was executed by striking out “imposed (regardless of any suspension of such imprisonment)” after “term of imprisonment” to reflect the probable intent of Congress.

Pub. L. 104–208, §321(a)(9), substituted “12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien’s spouse, child, or parent (and no other individual to violate a provision of this chapter)” for “‘18 months’.

Pub. L. 104–208, §321(a)(3), which directed amendment of subpar. (P) by substituting “at least one year” for “‘is at least 5 years’ could not be executed because “is at least 5 years” did not appear subsequent to amendment by Pub. L. 104–208, §440(e)(6). See above.

Pub. L. 104–132, §440(e)(6), redesignated subpar. (O) as (P). Former subpar. (P) redesignated (Q).

Pub. L. 104–132, §440(e)(5), substituted “5 years or more” for “‘is at least 5 years’.


Subsec. (a)(43)(R). Pub. L. 104–208, §321(a)(10), substituted “for which the term of imprisonment is at least one year” for “for which a sentence of 5 years’ imprisonment or more may be imposed”.


Subsec. (a)(43)(S). Pub. L. 104–208, §321(a)(11), substituted “for which the term of imprisonment is at least one year” for “for which a sentence of 5 years’ imprisonment or more may be imposed”.

Pub. L. 104–132, §440(e)(8), added subpar. (S).


Subsec. (b)(4). Pub. L. 104–208, §371(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “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.”

Subsec. (c)(1). Pub. L. 104–208, §761(e)(2), substituted “‘and 1432’” for “‘, 1432, and 1433’”.


Subsec. (g). Pub. L. 104–208, §308(a)(3), substituted “‘deported or removed’” for “‘deported’” in two places.


Subsec. (b)(2). Pub. L. 104–51, §1(2) substituted “‘child born out of wedlock’” for “‘illegitimate child’”.

Subsec. (b)(1)(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)(F)(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 920 of title 21), including any drug trafficking crime as defined in section 922(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 to offenses qualified in the previous sentence in violation of foreign law for which the term of imprisonment was completed within the previous 15 years.”.


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

Pub. L. 102–232, §207(b), inserted “or as a fashion model” after “section 1184(i)(2)” 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)(P)(i). Pub. L. 102-232, § 206(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 not less than 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), (i), inserted “or organization” 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)(I). Pub. L. 102-232, § 206(d), substituted “to perform, teach, or coach” for “for the purpose of performing” and inserted “commercial or non-commercial” before “program”.


Subsec. (a)(24). Pub. L. 102-232, § 305(e)(8)(A), substituted “files a petition for status” for “appliances for a visa or adjustment of status”.


Subsec. (a)(36). Pub. L. 101-649, § 207(a)(2), struck out “(except as used in section 1421(a) of this title)” after “includes”.

Subsec. (a)(36). Pub. L. 101-649, § 207(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)(5), inserted at end “Such term includes: "...(as defined in section 1298(a) of this title)" after "on board a vessel".

Subsec. (a)(15)(E)(i). Pub. L. 101-649, § 208(a), substituted “a capacity” for “any capacity” and 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)(a). Pub. L. 101-649, § 206(c), 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)(ii)(b). Pub. L. 101-649, § 205(c)(1), substituted “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, 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” for “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” 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)(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)(36). Pub. L. 101-649, § 407(a)(2), struck out “...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)(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, § 408(a)(1)(B), substituted “paragraphs (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)”. 
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Subsec. (f)(8). Pub. L. 101–419, § 509(a), substituted “an aggravated felony (as defined in subsection (a)(29)(B) of this section)” for “the crime of murder”.


Subsec. (a)(15)(H). Pub. L. 101–196 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 the child or if the father has in writing irrevocably released the child for emigration and adoption.”


Subsec. (b)(2). Pub. L. 101–162 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 the child or if the father has in writing irrevocably released the child for emigration and adoption.”


Subsec. (a)(15)(M). Pub. L. 97–99, § 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 interrupted physical presence in a foreign state or states outside the United States.

Subsec. (a)(33). Pub. L. 107–183, § 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 outside the United States.


Subsec. (b)(1)(F). Pub. L. 97–99, § 18(b), substituted “sixteen for “fourteen”, and “; or” for the period at end.

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


Subsec. (a)(15)(J). Pub. L. 94–484, § 601(b)(1), inserted “, other than any aliens who are of national or international renown in the field of medicine” after “in a foreign state”.

1976—Subsec. (a)(15)(H). 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 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)(i). Pub. L. 94–484, § 601(b)(1), 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)(ii). Pub. L. 94–484, § 601(b)(2), inserted “, other than to receive graduate medical education or training”.

Subsec. (a)(15)(J).Pub. L. 94–484, § 601(b)(2), 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(a) of this title”.

1975—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. (A) to (E).
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 adoption. 1975—Subsec. (a)(38). Pub. L. 94–155 added subpar. (K) and (L).
1966—Subsec. (a)(38). Pub. L. 89–710 inserted sentence providing that term "United States” as used in section 1412 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.
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)(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".
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 2010 Amendment
"(1) in General.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall—

(A)(A) take effect on the date that is 180 days after the date of the enactment of this Act [Dec. 14, 2010]; and

(B) apply with respect to applications for a nonimmigrant visa under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)(i)) that are filed on or after the effective date described in subparagraph (A).

(2) TEMPORARY EXCEPTION.—

(A) IN GENERAL.—Notwithstanding section 101(a)(15)(F)(i) of the Immigration and Nationality Act, as amended by subsection (a), during the 3-year period beginning on the date of the enactment of this Act, an alien seeking to enter the United States to pursue a course of study at a language training program that has been certified by the Secretary of Homeland Security and has not been accredited or denied accreditation by an entity described in section 101(a)(52) of such Act [8 U.S.C. 1101(a)(52)] may be granted a nonimmigrant visa under such section 101(a)(15)(F)(i).

(B) ADDITIONAL REQUIREMENT.—An alien may not be granted a nonimmigrant visa under subsection (A) if the sponsoring institution of the language training program to which the alien seeks to enroll does not—

(i) submit an application for the accreditation of such program to a regional or national accrediting agency recognized by the Secretary of Education within 1 year after the date of the enactment of this Act; and

(ii) comply with the applicable accrediting requirements of such agency.

"(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act [amending this section and section 1182 of this title] shall take effect on the date of the enactment of this Act [Nov. 30, 2010].

(b) EXCEPTION.—An alien who is described in section 101(b)(1)(G)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)(G)(iii)), as added by section 3, and attained 18 years of age on or after April 1, 2008, shall be deemed to meet the age requirement specified in subclause (III) of such section if a petition for classification of the alien as an immediate relative under section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)) is filed not later than 2 years after the date of the enactment of this Act."

Effective Date of 2008 Amendment

(1) take effect on the date of enactment of the Act [Dec. 23, 2008]; and

(2) apply to applications for immigration benefits filed on or after such date." Pub. L. 110–69, §§2(d), Oct. 10, 2008, 122 Stat. 4193, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the date that the Secretary of Homeland Security submits the certification described in subsection (b)(2) [set out as a note below] stating that the final regulations required by subsection (b)(1) [set out as a note below] have been issued and are in effect [Notice of the regulations have been issued and are in effect Nov. 26, 2008, was published in the Federal Register, Nov. 26, 2008. See 73 F.R. 72398.]."

Amendment by Pub. L. 110–229 effective on the transition program effective date described in section 1806 of Title 48, Territories and Insular Possessions, see section 705(b) of Pub. L. 110–229, set out as an Effective Date note under section 1806 of Title 48.

Effective Date of 2006 Amendment
Pub. L. 109–162, title VIII, §822(c)(2), Jan. 5, 2006, 119 Stat. 3063, provided that: "The amendment made by paragraph (1) [amending this section] shall be effective as if included in section 603(a)(1) of the Immigration Act of 1990 (Public Law 101–649; 104 Stat. 5082)."

Effective and Termination Dates of 2003 Amendments

Amendment by Pub. L. 108–77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and ceases to be effective on the date the Agreement ceases to be in force, see section 107 of Pub. L. 108–77, set out in a note under section 3805 of Title 19, Customs Duties.
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EFFECTIVE DATE OF 2000 AMENDMENTS

Pub. L. 106–553, §1(a)(2) (title XI, §1102(e)), Dec. 21, 2000, 114 Stat. 2762, 2762A–144, provided that: “The amendments made by this section (amending this section and sections 114 and 125 of this title) shall take effect on the date of the enactment of this Act [Dec. 21, 2000] and shall apply to an alien who is the beneficiary of a classification petition filed under section 204 of the Immigration and Nationality Act [8 U.S.C. 1154] on or before the date of the enactment of this Act.”

Pub. L. 106–553, §1(a)(2) (title XI, §1103(d)), Dec. 21, 2000, 114 Stat. 2762, 2762A–144, provided that: “The amendments made by this section (amending this section and sections 114, 118a, and 125 of this title) shall take effect on the date of the enactment of this Act [Dec. 21, 2000] and shall apply to an alien who is the beneficiary of a classification petition filed under section 204 of the Immigration and Nationality Act [8 U.S.C. 1154] before, on, or after the date of the enactment of this Act.’’


Pub. L. 106–396, title II, §201(a)(2), Oct. 30, 2000, 114 Stat. 1633, provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall be effective as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–546) and shall apply to individuals having an application for a benefit under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], pending on or after September 30, 1996.’’

Amendment by Pub. L. 106–279 effective Apr. 1, 2008, see section 505(a)(2), (b) of Pub. L. 106–279, set out as an Effective Date; Transition Rule note under section 14001 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106–95 applicable to classification petitions filed for nonimmigrant status only beginning on the date that interim or final regulations are first promulgated and ending on the date 3 years after Dec. 20, 2006, see section 2(e) of Pub. L. 106–95, as amended, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS


EFFECTIVE DATE OF 1997 AMENDMENTS

Pub. L. 105–139, §1(f), Dec. 2, 1997, 111 Stat. 2645, provided that: “The amendments made by this section [amending provisions set out as notes under this section and sections 1151, 1153, and 1255 of this title] shall apply to documents issued on or after 18 months after the date of the enactment of this Act [Sept. 30, 1996].”

EFFECTIVE DATE OF 1996 AMENDMENTS


“(1) CLAUSE A.—Clause (A) of the section added by the amendment made by subsection (a) [amending this section] shall apply to documents issued on or after 18 months after the date of the enactment of this Act [Sept. 30, 1996].”

“(2) CLAUSE B.—Clause (B) of such section shall apply to cards presented on or after 6 years after the date of the enactment of this Act.


“(c) TRANSITION FOR CERTAIN ALIENS.—

“(1) GENERAL RULE THAT NEW RULES DO NOT APPLY.—

Subject to the succeeding provisions of this subsection, in the case of an alien who is in exclusion or deportation proceedings before the date of the enactment of this Act—

“(A) the amendments made by this subtitle shall not apply, and

“(B) the proceedings (including judicial review thereof) shall continue to be conducted without regard to such amendments.

“(2) ATTORNEY GENERAL OPTION TO ELECT TO APPLY NEW PROCEDURES.—In a case described in paragraph (1) in which an evidentiary hearing under section 236 or 242 and 242B of the Immigration and Nationality Act [8 U.S.C. 1226, 1229, former 1252] has not commenced as of the title III–A effective date, the Attorney General may elect to proceed under chapter 4 of title II of such Act [§§1225 et seq.] (as amended by this subtitle). The Attorney General shall provide notice of such election to the alien involved not later than 30 days before the date any evidentiary hearing is commenced. If the Attorney General makes such election, the notice of hearing provided to the alien under section 236 or 242(a) of such Act [8 U.S.C. 1225, 1229(a)] shall be valid as if provided under section 239 of such Act [§1229(b)] (as amended by this subtitle) to confer jurisdiction on the immigration judge.

“(3) ATTORNEY GENERAL OPTION TO TERMINATE AND REINITIATE PROCEEDINGS.—In the case described in paragraph (1), the Attorney General may elect to terminate proceedings in which there has not been a final administrative decision and to reinitiate proceedings under chapter 4 of title II of the Immigration and Nationality Act [former 8 U.S.C. 1229] (as in effect as of the date of the enactment of this Act) to the contrary—

“(A) in the case of judicial review of a final order of exclusion, subsection (b) of such section shall not

“(B) be effective as of the date of the enactment of this Act [Sept. 30, 1996].”

“(4) TRANSITIONAL CHANGES IN JUDICIAL REVIEW.—In the case in which a final order of exclusion or deportation is entered more than 30 days after the date of the enactment of this Act [Sept. 30, 1996], notwithstanding any provision of section 106 of the Immigration and Nationality Act [former 8 U.S.C. 1105a] (as in effect as of the date of the enactment of this Act) to the contrary—

“(A) in the case of judicial review of a final order of exclusion, subsection (b) of such section shall not

“(B) be effective as of the date of the enactment of this Act [Sept. 30, 1996].”
apply and the action for judicial review shall be
governed by the provisions of subsections (a) and (c) of
such [section] in the same manner as they apply to
judicial review of orders of deportation.

(8) A court may not order the taking of addi-
tional evidence under section 2347(c) of title 28,
United States Code.

(9) The petition for judicial review must be filed
not later than 30 days after the date of the final
order of exclusion or deportation.

(10) The petition for review shall be filed with
the court of appeals for the judicial circuit in which
the administrative proceedings before the special in-
quiry officer or immigration judge were completed;

(11) There shall be no appeal of any discretionary
decision under section 212(c), 212(h), 212(i), 244, or
245 of the Immigration and Nationality Act [8
U.S.C. former 1182(c), 1182(h), (i), former 1254, 1255]
(as in effect as of the date of the enactment of this
Act [Sept. 30, 1996]);

(12) Service of the petition for review shall not
stay the deportation of an alien pending the court’s
decision on the petition, unless the court orders
otherwise; and

(13) There shall be no appeal permitted in the
case of an alien who is inadmissible or deportable
by reason of having committed a criminal offense
covered in section 212(a)(2) or section 241(a)(1)
Immigration and Nationality Act [8 U.S.C. 1182(a)(2), former
1251(a)(2)(A)(iii), (B), (C), or (D) of the Immigration
and Nationality Act [8 U.S.C. 1182(a)(2)] or section
240A(d) of the Immigration and Nationality Act
[8 U.S.C. 1229b(a)(1)], as in effect as of the date
of the enactment of this Act, (ii) any offense
covered by section 241(a)(2)(A)(ii) of such Act (as
in effect on such date) for which both predicate of-
offenses are, without regard to their date of commis-
sion, otherwise covered by section 241(a)(2)(A)(i)
of such Act (as so in effect).

(5) Transitional Rules with Regard to Sus-
penSIon of Deportation.—

(A) In general.—Subject to subparagraphs (B) and
(C), paragraphs (1) and (2) of section 240A(d)
Immigration and Nationality Act [8 U.S.C.
1229b(d)(1), (2)] (relating to continuous residence
or physical presence) shall apply to orders to show
cause (including those referred to in section
222(b)(1) of the Immigration and Nationality Act
former 8 U.S.C. 1252b(a)(1)], as in effect before the
title III–A effective date), issued before on, or after
the date of the enactment of this Act [Sept. 30,
1996].

(B) Exception for certain orders.—In any case in
which the Attorney General elects to terminate
and reinitiate proceedings in accordance with para-
graph (3) of the subsection, paragraphs 1 and (2) of
section 240A(d) of the Immigration and Nationality
Act [8 U.S.C. 1229b(d)(1), (2)] shall apply to an
order to show cause issued before April 1, 1997

(C) Special Rule for Certain Aliens Granted
Temporary Protection from Deportation and for
Battered Spouses and Children.—

(I) In general.—For purposes of calculating
the period of continuous physical presence under
section 241(a) of the Immigration and Nationality
Act [former 8 U.S.C. 1254(a)] (as in effect before
the title III–A effective date) or section 240A of
such Act [8 U.S.C. 1229b] (as in effect after the
title III–A effective date), subpart (A) of this
paragraph and paragraphs 1 and (2) of section
240A(d) of the Immigration and Nationality Act
shall not apply in the case of an alien, regard-
less of whether the alien is in exclusion or depor-
tation proceedings before the title III–A effective
date, who has not been convicted at any time of
an aggravated felony (as defined in section 101(a)
of the Immigration and Nationality Act [8 U.S.C.
1101(a)] and—

(I) was not apprehended after December 19,
1990, and who registered for benefits pursuant
to the settlement agreement in American Baptist
796 (N.D. Cal. 1991) or before October 31, 1991, or
applied for temporary protected status on or before
October 31, 1990; or

(bb) a Guatemalan national who first
entered the United States on or before September
19, 1990, and who registered for benefits
pursuant to the settlement agreement in American
796 (N.D. Cal. 1991) or before October 31, 1991, or
applied for temporary protected status on or before
October 31, 1990; or

(bb) a Guatemalan national who first
entered the United States on or before October 1,
1990, and who registered for benefits pursuant
to such settlement agreement on or before
December 31, 1991;

(II) is a Guatemalan or Salvadoran national
who filed an application for asylum with the
Immigration and Naturalization Service on or
before April 1, 1990;

(III) is the spouse or child (as defined in sec-
tion 101(b)(1) of the Immigration and National-
ity Act [8 U.S.C. 1101(b)(1)]), or

(bb) in the case of a son or daughter who is
21 years of age or older at the time such deci-
sion is rendered, the son or daughter entered
the United States on or before October 1, 1990;

(V) is an alien who entered the United
States on or before December 31, 1990, who filed an
application for asylum on or before December,
1991, and who, at the time of filing such applica-
tion, was a national of the Soviet Union, Rus-
sia, any republic of the former Soviet Union,
Latvia, Estonia, Lithuania, Poland, Czechoslo-
vakia, Romania, Hungary, Bulgaria, Albania,
East Germany, Yugoslavia, or any state of the
former Yugoslavia; or

(VI) is an alien who was issued an order to
show cause or was in deportation proceedings
before April 1, 1997, and who applied for suspen-
sion of deportation under section 244(a)(3) of the
Immigration and Nationality Act [former 8
U.S.C. 1254(a)(b)] (as in effect as of the date of
the enactment of this Act, (VII)(aa) was the spouse or child of an
alien described in subsection (IA) or (IV) or

(AA) at the time at which a decision is
rendered to suspend the deportation or cancel
the removal of the alien;

(BB) at the time at which the alien filed an
application for suspension of deportation or
removal; or

CC) at the time at which the alien reg-
istered for benefits under the settlement
agreement in American Baptist Churches, et.
al. v. Thornburgh (ABC), applied for tem-
porary protected status, or applied for asyl-
um; and

(bb) the spouse, child, or child of the
spouse has been battered or subjected to extreme
cruelty by the alien described in subclause
(IA), (II), or (IV).

(ii) Limitation on Judicial Review.—A deter-
mination by the Attorney General as to whether
an alien satisfies the requirements of clause (I) is
final and shall not be subject to review by any
court. Nothing in the preceding sentence shall be
construed as limiting the application of section
242(a)(2)(B) of the Immigration and Nationality
Act [8 U.S.C. 1229b(a)(2)] (as in effect after
the title III–A effective date) to other eligibility
determinations pertaining to discretionary relief
under this Act [probably should be “division”, see Short Title of 1996 Amendment note below].

(iii) Consideration of Petitions.—In acting on a petition filed under subclause (Y) of clause (1) of the provisions set forth in section 204(a)(1)(H) [probably means section 204(a)(1)(H) of the Immigration and Nationality Act, which is classified to section 1154(a)(1)(H) of this title] shall apply:

(iv) Residency with Spouse or Parent Not Required.—For purposes of the application of clause (1)(VII), a spouse or child shall not be required to demonstrate that he or she is residing with the spouse or parent in the United States.

(6) Transition for Certain Family Unity Aliens.—The Attorney General may waive the application of section 212(a)(9) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(9)], as inserted by section 301(b)(1) of this division, in the case of an alien who is provided benefits under provisions of section 301 of the Immigration Act of 1990 [Pub. L. 101-649, set out as a note under section 1255a of this title (relating to family unity).

(7) Limitation on Suspension of Deportation.—After April 1, 1997, the Attorney General may not suspend the deportation and adjust the status under section 244 of the Immigration and Nationality Act [former 8 U.S.C. 1254] (as in effect before the title III–A effective date) of any alien in any fiscal year, except in accordance with section 240A(e) of such Act [8 U.S.C. 1229b(e)]. The previous sentence shall apply regardless of when an alien applied for such suspension and adjustment.

(d) Transitional References.—For purposes of carrying out the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], as amended by this subtitle—

(1) any reference in section 212(a)(1)(A) of such Act [8 U.S.C. 1182(a)(1)(A)] to the term ‘inadmissible’ is deemed to include a reference to the term ‘excludable’, and

(2) any reference in law to an order of removal shall be deemed a reference to an order of exclusion and deportation or an order of deportation.

(e) Transition.—No period of time before the date of the enactment of this Act [Sept. 30, 1996] shall be included for purposes of calculating any period of continuous physical presence under this subsection, except that the reference to subsection (b)(1) in such section shall be considered to be a reference to paragraph (1) of this section.

(g) Motions to Reopen Deportation or Removal Proceedings.—Notwithstanding any limitation imposed by law on motions to reopen removal or deportation proceedings (except limitations imposed on an alien’s conviction of an aggravated felony (as defined in section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)]), any alien who has become eligible for cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of the Nicaraguan Adjustment and Central American Relief Act [Pub. L. 105-100, amending this note] may file one motion to reopen removal or deportation proceedings to apply for cancellation of removal or suspension of deportation. The Attorney General shall designate a specific time period in which all such motions to reopen are required to be filed. The period shall begin not later than 60 days after the date of the enactment of the Nicaraguan Adjustment and Central American Relief Act [Nov. 19, 1997] and shall extend for a period not to exceed 240 days.

(h) Relief and Motions to Reopen.—

(1) Relief.—An alien described in subsection (c)(5)(C)(i) who is otherwise eligible for—

(A) suspension of deportation pursuant to section 244(a) of the Immigration and Nationality Act [8 U.S.C. 1254(a)], as in effect before the title III–A effective date; or

(B) cancellation of removal, pursuant to section 240A(b) of the Immigration and Nationality Act [8 U.S.C. 1229b(b)] and subsection (f) of this section, shall not be barred from applying for such relief by operation of section 241(a)(5) of the Immigration and Nationality Act [8 U.S.C. 1231(a)(5)], as in effect after the title III–A effective date.

(2) Additional Motion to Reopen Permitted.—Notwithstanding any limitation imposed by law on motions to reopen removal or deportation proceedings (except limitations imposed on an alien’s conviction of an aggravated felony (as defined by section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)]), any alien who is described in subsection (c)(5)(C)(i) and who has become eligible for cancellation of removal or suspension of deportation as a result of the enactment of paragraph (1) may file one motion to reopen removal or deportation proceedings in order to apply for cancellation of removal or suspension of deportation. The scope of any proceeding reopened on this basis shall be limited to a determination of the alien’s eligibility for cancellation of removal or suspension of deportation. The Attorney General shall designate, by a specific date, in which all such motions to reopen are required to be filed. The period shall begin not later than 60 days.
after the date of the enactment of this subsection [Dec. 21, 2000] and shall extend for a period not to exceed 240 days.

103 CONGRESSION.—Nothing in this subsection shall preclude an alien from filing a motion to reopen pursuant to section 240(b)(5)(C)(ii) of the Immigration and Nationality Act [8 U.S.C. 1252a(b)(5)(C)(ii)], or section 222(i)(3) of such Act [8 U.S.C. 1225b(c)(3)(B)] (as in effect before the title III–A effective date).


Section 322(c) of div. C of Pub. L. 104–208 provided that: “The amendments made by subsection (a) [amending this section and section 1182 of this title] shall apply to convictions and sentences entered before, on, or after the date of the enactment of this Act [Sept. 30, 1996]. Subparagraphs (B) and (C) of section 240(c)(3) of the Immigration and Nationality Act [8 U.S.C. 1225(a)(3)(B), (C)], as inserted by section 304(a)(3) of this division, shall apply to proving such convictions.”

Section 361(b) of div. C of Pub. L. 104–208 provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Sept. 30, 1996].”

Section 371(d)(1) of div. C of Pub. L. 104–208 provided that: “Subsections (a) and (b) [amending this section and sections 1105a, 1159, 1224, 1225, 1226, 1225b, 1223, and 1362 of this title] shall take effect on the date of the enactment of this Act [Sept. 30, 1996].”

Section 412(c) of div. C of Pub. L. 104–208 provided that: “The amendments made by subsection (a) [amending this section] shall apply to individuals who obtain the status of a nonimmigrant under section 101(a)(15)(F) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(F)] after the end of the 60-day period beginning on the date of the enactment of this Act [Sept. 30, 1996], including aliens whose status as such a nonimmigrant is extended after the end of such period.”

Section 671(a)(7) of div. C of Pub. L. 104–208 provided that: “The amendments made by this subsection [amending this section, sections 1184, 1251, 1255, 1238, and 1234 of this title, and provisions set out as notes under section 1252 of this title] shall be effective as if included in the enactment of the VCLERA [Pub. L. 103–322].”

Section 671(b)(14) of div. C of Pub. L. 104–208 provided that: “Except as otherwise provided in this subsection [amending this section and sections 1252a, 1255b, 1233, 1356, and 1401 of this title], the amendments made by this subsection shall take effect as if included in the enactment of the VCLERA [Pub. L. 103–416].”

Section 440(l) of Pub. L. 104–132 provided that: “The amendments made by subsection (e) [amending this section] shall apply to convictions entered on or after the date of enactment of this Act [Apr. 21, 1996], except that the amendments made by subsection (e)(3) [amending this section] shall take effect as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994 [Pub. L. 103–141].”

**Effective Date of 1994 Amendments**

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, 1162, 1168, 1251, 1252, 1252b, 1254a, 1255a, 1256, 1288, 1302, 1322, 1323, 1324a, 1324b, 1326, 1330, 1356, 1421, 1424, 1441, 1449, and 1502 of this title, and amending provisions set out as notes under this section and sections 1182, 1254a, 1255a, and 1356 of this title, and amending 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].”

Amendment by Pub. L. 103–236 applicable with respect to officials, offices, and bureaus of Department of State when executive orders, regulations, or departmental directives implementing the amendments by sections 161 and 162 of Pub. L. 103–236 become effective, and 90 days after Apr. 30, 1994, whichever comes earlier, see section 161(b) of Pub. L. 103–236, as amended, set out as a note under section 2651a of Title 22, Foreign Relations and Intercourse.

**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 sections 1104 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. 102–322 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 1996 [Pub. L. 103–149].

Section 302(m) of Pub. L. 102–232 provided that the amendments made by that section [amending this section and sections 1423, 1433, 1441, 1443, 1448, and 1452 of this title] are effective as if included in section 407(d) of the Immigration Act of 1996 [Pub. L. 103–149].

provided that: “Except as otherwise specifically provided, the amendments made by [and provisions of—]

(1) sections 302 through 308 [amending this section, sections 1192, 1196a, 1196b, 1197, 1199 to 1161, 1181, 1184, 1186a to 1188, 1201, 1221, 1226, 1227, 1229, 1251, 1252, 1252b, 1254 to 1255a, 1281, 1282, 1284, 1288, 1322, 1323, 1324a to 1326c, 1357, 1421, 1423, 1433, 1439 to 1441, 1443 to 1449, 1451, 1452, and 1515 of this title, and section 3735 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 1155a, 1155c, 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, 1156, 1162, 1168, 1252, 1252a, 1252c, 1254, 1256, 1421, 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(c) 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**


“(a) IN GENERAL.—Except as otherwise provided in this title, this section, and the amendments made by this title [enacting section 1186b of this title, amending this section, sections 1103, 1151 to 1154, 1157, 1199, 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, 1158, 1182, 1201, 1251, 1254, 1255, and 1325 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 N-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 covered by section 1251 of this title).

“(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).

“(b) 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. 1154(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 required to be submitted to section 204(a) of such Act.

“(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 of 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) 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) Paragraph (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

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 as amended by section 5 of Pub. L. 102–110.

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. 101–236]."

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 1286 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: "...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), (e) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment; Savings Provisions note under section 1421 of this title.

Section 301(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. 100–680]."

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 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 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 608(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 2689 of Title 64, Foreign Relations and Intercourse, enacting amendments 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 608(a) [amending sections 1160 and 1255a of this title] shall apply only 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 1162 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(a) of Pub. L. 100–525 provided that: "The amendments made by this section [amending section 1160, 1161, 1184, 1186, 1187, 1188, 1251, 1254, 1255, 1255a, 1259, 1254a, 1322, 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 1002 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 1203, 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 1133, 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 99–603)."

Section 218(b) of Pub. L. 100–459 provided that: "The amendments made by subsection (a) [amending section 4 of the Nursing Relief Act of 1989 [Pub. L. 101–238] applicable to petitions and applications filed under sections 114(c) and 1188 of this title on or after the first day of the seventh month beginning after Nov. 6, 1989, set out as a Note under section 1186 of this title, 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) 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]."

**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, 1182, 1253, and 1254 of this title, enacting provisions set out as notes under sections 1153, 1157, 1158, 1182, and 1251 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 year 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 1158(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 1153(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 such Act [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 [former section 1153(a)(7) of such Act] and under section 1227 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 [former 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 3231(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 by 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 eighthieth day immediately following the date of its enactment [June 27, 1952].’’

**Short Title of 2010 Amendment**

Pub. L. 111–287, §1, Nov. 30, 2010, 124 Stat. 3058, provided that: ‘‘This Act [amending this section and section 1182 of this title and enacting provisions set out as a note under this section] may be cited as [the] ‘‘International Adoption Simplification Act.’’’

**Short Title of 2008 Amendment**

Pub. L. 110–391, §1, Oct. 9, 2008, 122 Stat. 4087, provided that: ‘‘This Act [amending section 1439 of this title and section 271 of Title 6, Domestic Security, and enacting
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provisions set out as notes under section 271 of Title 6]
may be cited as the ‘Military Personnel Citizenship
Processing Act’.’’
above, is repealed 5 years after Oct. 9, 2008.]
Pub. L. 110–251, § 1, June 26, 2008, 122 Stat. 2319, provided that: ‘‘This Act [enacting sections 1440f and 1440g
of this title] may be cited as the ‘Kendell Frederick
Citizenship Assistance Act’.’’
SHORT TITLE OF 2007 AMENDMENT
338, provided that: ‘‘This section [amending section 1187
of this title and enacting provisions set out as notes
under section 1187 of this title] may be cited as the ‘Secure Travel and Counterterrorism Partnership Act of
2007’.’’
Pub. L. 109–477, § 1, Jan. 12, 2007, 120 Stat. 3572, provided that: ‘‘This Act [enacting and amending provisions set out as notes under section 1182 of this title]
may be cited as the ‘Physicians for Underserved Areas
Act’.’’
SHORT TITLE OF 2006 AMENDMENT
Pub. L. 109–463, § 1, Dec. 22, 2006, 120 Stat. 3477, provided that: ‘‘This Act [amending section 1184 of this
title] may be cited as either the ‘Creating Opportunities for Minor League Professionals, Entertainers, and
Teams through Legal Entry Act of 2006’ or the ‘COMPETE Act of 2006’.’’
Pub. L. 109–423, § 1, Dec. 20, 2006, 120 Stat. 2900, provided that: ‘‘This Act [enacting and amending provisions set out as notes under section 1182 of this title]
may be cited as the ‘Nursing Relief for Disadvantaged
Areas Reauthorization Act of 2005’.’’
note under section 1701 of this title and amending provisions set out as a note under section 1103 of this title]
may be cited as the ‘Secure Fence Act of 2006’.’’
3066, provided that: ‘‘This subtitle [subtitle D
(§§ 831–834) of title VIII of Pub. L. 109–162, enacting section 1375a of this title, amending section 1184 of this
title, repealing section 1375 of this title, and enacting
provisions set out as notes under sections 1184 and 1202
of this title] may be cited as the ‘International Marriage Broker Regulation Act of 2005’.’’
SHORT TITLE OF 2005 AMENDMENT
provided that: ‘‘This division [enacting section 1778 of
this title, amending this section, sections 1157 to 1159,
1182, 1184, 1227, 1229a, 1231, 1252, and 1356 of this title,
and section 1028 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as notes under this
section, sections 1157, 1158, 1182, 1184, 1227, 1252, 1712,
and 1721 of this title, and section 30301 of Title 49,
Transportation, amending provisions set out as notes
under sections 1103, 1153, and 1184 of this title, and repealing provisions set out as a note under section 30301
of Title 49] may be cited as the ‘REAL ID Act of 2005’.’’
Stat. 318, provided that: ‘‘This title [amending sections
1184 and 1356 of this title and enacting and amending
provisions set out as notes under section 1184 of this
title] may be cited as the ‘Save Our Small and Seasonal
Businesses Act of 2005’.’’
SHORT TITLE OF 2004 AMENDMENT
Stat. 3351, provided that: ‘‘This title [enacting sections
1380 and 1381 of this title, amending sections 1182, 1184,
and 1356 of this title, section 2916a of Title 29, Labor,
and section 1869c of Title 42, The Public Health and
Welfare, and enacting provisions set out as notes under
this section and sections 1182 and 1184 of this title] may
be cited as the ‘L–1 Visa and H–1B Visa Reform Act’.’’

§ 1101

Stat. 3351, provided that: ‘‘This subtitle [subtitle A
this title, and enacting provisions set out as notes
under section 1184 of this title] may be cited as the ‘L–1
Visa (Intracompany Transferee) Reform Act of 2004’.’’
Stat. 3353, provided that: ‘‘This subtitle [subtitle B
1184, and 1356 of this title, section 2916a of Title 29,
Labor, and section 1869c of Title 42, The Public Health
and Welfare, and enacting provisions set out as notes
under sections 1182 and 1184 of this title] may be cited
as the ‘H–1B Visa Reform Act of 2004’.’’
SHORT TITLE OF 2003 AMENDMENT
that: ‘‘This Act [enacting provisions set out as a note
under section 1153 of this title and amending provisions
set out as notes under sections 1153, 1324a, and 1360 of
this title] may be cited as the ‘Basic Pilot Program Extension and Expansion Act of 2003’.’’
SHORT TITLE OF 2002 AMENDMENTS
Pub. L. 107–274, § 1, Nov. 2, 2002, 116 Stat. 1923, provided that: ‘‘This Act [amending this section and section 1184 of this title] may be cited as the ‘Border Commuter Student Act of 2002’.’’
116 Stat. 1836, provided that: ‘‘This section [amending
section 1440–1 of this title] may be cited as the ‘Posthumous Citizenship Restoration Act of 2002’.’’
a note under section 1157 of this title] may be cited as
the ‘Persian Gulf War POW/MIA Accountability Act of
2002’.’’
that: ‘‘This Act [amending sections 1151, 1153, 1154, 1157,
and 1158 of this title and enacting provisions set out as
a note under section 1151 of this title] may be cited as
the ‘Child Status Protection Act’.’’
that: ‘‘This Act [amending sections 1182 and 1183a of
this title and enacting provisions set out as a note
under section 1182 of this title] may be cited as the
‘Family Sponsor Immigration Act of 2002’.’’
may be cited as the ‘Basic Pilot Extension Act of
2001’.’’
SHORT TITLE OF 2000 AMENDMENTS
21, 2000, 114 Stat. 2763, 2763A–324, provided that: ‘‘This
title [amending section 1255 of this title, enacting provisions set out as notes under section 1255 of this title,
and amending provisions set out as notes under this
section and section 1255 of this title] may be cited as
the ‘LIFE Act Amendments of 2000’.’’
Pub. L. 106–553, § 1(a)(2) [title XI, § 1101], Dec. 21, 2000,
114 Stat. 2762, 2762A–142, provided that: ‘‘This title
[amending this section and sections 1184, 1186a, and 1255
of this title, and enacting provisions set out as notes
under this section] may be cited as—
‘‘(1) the ‘Legal Immigration Family Equity Act’; or
‘‘(2) the ‘LIFE Act’.’’
Pub. L. 106–409, § 1, Nov. 1, 2000, 114 Stat. 1787, provided that: ‘‘This Act [amending this section and enacting provisions set out as a note under this section] may
be cited as the ‘Religious Workers Act of 2000’.’’
Pub. L. 106–406, § 1, Nov. 1, 2000, 114 Stat. 1755, provided that: ‘‘This Act [amending section 1229c of this
title] may be cited as the ‘International Patient Act of
2000’.’’
Pub. L. 106–396, § 1, Oct. 30, 2000, 114 Stat. 1637, provided that: ‘‘This Act [amending sections 1182, 1184,


1187, and 1372 of this title, enacting provisions set out as a note under section 1187 of this title and classified as a note under section 763 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and amending provisions set out as a note under section 1153 of this title may be cited as the 'Visa Waiver Permanent Program Act'.''

Pub. L. 106-366, § 1, Oct. 30, 2000, 114 Stat. 1613, provided that: "This Act [amending this section, sections 1152, 1154, 1182, 1227, 1229a, 1229b, 1255, 1367, 1430, and 1641 of this title, section 1152 of Title 29, Education, and sections 5796gg, 5796hh, and 1397 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 1229a, 1229b, and 1255 of this title, and amending provisions set out as notes under this section and section 1255 of this title] may be cited as the 'Battered Immigrant Women Protection Act of 2000'.''

Pub. L. 106-313, title I, § 101, Oct. 17, 2000, 114 Stat. 1251, provided that: "This title [amending sections 1152, 1154, 1182, 1184, and 1356 of this title, section 2916a of Title 29, Labor, and section 1869c of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 1229a, 1229b, and 1255 of this title, and amending provisions set out as notes under this section and section 1255 of this title] may be cited as the 'American Competitiveness in the Twenty-first Century Act of 2000'.''

Pub. L. 106-215, § 1, June 15, 2000, 114 Stat. 337, provided that: "This Act [amending section 1365a of this title and enacting provisions set out as a note under section 1365a of this title] may be cited as the 'Immigration and Naturalization Service Data Management Improvement Act of 2000'.''

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106-95, § 1, Nov. 12, 1999, 113 Stat. 1312, provided that: "This Act [amending this section and sections 1153 and 1162 of this title, enacting provisions set out as a note under section 1182 of this title, and amending provisions set out as a note under this section] may be cited as the 'Nursing Relief for Disadvantaged Areas Act of 1999'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-277, div. C, title IV, § 401(a), Oct. 21, 1998, 122 Stat. 5561-641, provided that: "This Act [enacting section 1869c of Title 42, The Public Health and Welfare, amending this section and sections 1182, 1184, and 1356 of this title, and enacting provisions set out as notes under sections 1182 and 1184 of this title and sections 2701 and 2916 of Title 29, Labor] may be cited as the 'American Competitiveness and Workforce Improvement Act of 1998'.''

SHORT TITLE OF 1997 AMENDMENTS

Section 112(a) of Pub. L. 105-119 provided that: "This section [enacting, amending, and repealing provisions set out as notes under section 1440 of this title] may be cited as the 'Philippine Army, Scouts, and Guerrilla Veterans of World War II Naturalization Act of 1997'.''

Pub. L. 105-100, title II, § 201, Nov. 19, 1997, 111 Stat. 2163, provided that: "This Act [amending section 1259b of this title, enacting provisions set out as notes under this section and sections 1151, 1153, 1229b, and 1255 of this title, and amending provisions set out as a note under this section] may be cited as the 'Nicaraguan Adjustment and Central American Relief Act'.''

SHORT TITLE OF 1996 AMENDMENT

Section 1(a) of div. C of Pub. L. 104-206 provided that: "This division [see Tables for classification] may be cited as the 'Illegal Immigration Reform and Immigrant Responsibility Act of 1996'.''

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 1993 AMENDMENTS

Section 1(a) of Pub. L. 102-332 provided that: "This Act [amending this section, sections 1102, 1105a, 1151 to 1154, 1157 to 1161, 1182, 1184a to 1186a to 1188, 1201, 1221, 1229, 1326, 1328, 1332, 1352, 1354, 1358, 1421, 1423, 1424, 1431, 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, 1358, and 1421 of this title, and amending provisions set out as notes under this section and sections 1151, 1153, 1157, 1160, 1182, 1184, 1251, 1252, 1254a, 1255, 1356, 1358, and 1421 of this title] may be cited as the 'Miscellaneous and Technical Immigration and Naturalization Amendments of 1993'.''

Section 101 of title I of Pub. L. 102-322 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. 102-322 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 1992'.''

Section 301(a) of title III of Pub. L. 102-232 provided that: "This title [amending this section, sections 1162, 1165a, 1151 to 1154, 1157 to 1161, 1182, 1184a to 1186a to 1188, 1201, 1221, 1229, 1326, 1328, 1332, 1352, 1354, 1358, and 1356 of this title, and enacting provisions set out as notes under this section and sections 1376 in Title 8, and 1378 of this title and section 2701 of Title 42, Labor, and 2702 of this title and section 13751 of Title 42, and amending provisions set out as a note under section 1182 of this title] may be cited as the 'Refugee Immigration Fairness Act of 1996'.''

SHORT TITLE OF 1996 AMENDMENTS

Section 1 of Pub. L. 105-110 provided that: "This Act [amending this section and sections 1153, 1255, and 1254 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 1995 AMENDMENTS

Section 1(a) of Pub. L. 104-69 provided that: "This Act [see Tables for classification] may be cited as the 'Immigration Act of 1995'.''

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 1162 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, 1186a, 1187, 1188, 1191, 1201a, 1202, 1222, 1223, 1224, 1227, 1251, 1252, 1254, 1255, 1255a, 1256, 1259, 1301, 1302, 1304, 1305, 1324, 1324a, 1324b, 1353, 1356, 1357, 1360, 1408, 1409, 1421, 1422, 1424, 1426, 1431, 1432, 1433, 1435, 1440, 1446, 1447, 1451, 1452, 1454, 1455, 1459, 1461, 1483, 1489, 1522, 1525, 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 29, Labor, and sections 303, 502, 602, 603, 672, 673, 1203, 1230, 1230–7, 1353, 1366, and 1438a of Title 42, The Public Health and Welfare, amending this title and enacting provisions set out as notes under this section and sections 1153 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 1989 Amendment**

Section 1 of Pub. L. 96–212 provided that: “That this Act [amending sections 1157 to 1159 and 1251 to 1252 of this title, amending this section, sections 1151 to 1153, 1181, 1182, 1253, and 1254 of this title, and enacting 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 1989.’”

**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, 1153, 1154, 1191, 1201a, 1202, 1222, 1223, 1224, 1227, 1251, 1252, 1254, 1255, 1255a, 1256, 1259, 1301, 1302, 1304, 1305, 1324, 1324a, 1324b, 1353, 1356, 1357, 1360, 1408, 1409, 1421, 1422, 1424, 1426, 1431, 1432, 1433, 1435, 1440, 1446, 1447, 1451, 1452, 1454, 1455, 1459, 1461, 1483, 1489, 1522, 1525, 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 29, Labor, and sections 303, 502, 602, 603, 672, 673, 1203, 1230, 1230–7, 1353, 1366, and 1438a of Title 42, The Public Health and Welfare, amending this title and enacting 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. 99–605, § 1, Nov. 10, 1986, 100 Stat. 3357, provided that: “This Act [enacting section 1186a of this title, amending sections 1154, 1182, 1184, 1251, 1255, and 1252 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: “This Act [amending sections 1222 to 1225 of this title and enacting provisions set out as notes under section 1222 of this title] may be cited as the ‘Immigration and Nationality Act Amendments of 1986.’”

**Short Title of 1985 Amendment**

Section 1 of Pub. L. 94–571 provided that: “This Act [amending sections 1105a, 1151, 1152, 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 1985.’”

**Short Title of 1984 Amendment**

Section 1 of act June 27, 1982, provided that such act, enacting this chapter, section 1429 of Title 18, Crimes and Criminal Procedure, enacting sections 1333a, 1333d, 1525 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 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 another provision set out as a note under sections 1458 and 1449 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 INA [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 603(b) of act June 27, 1982, 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**


(1) issue final regulations to eliminate or reduce fraud related to the granting of special immigrant juvenile status for special immigrants described in subclause (II) or (III) of section 101(a)(15)(C)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(C)(ii)); and
“(2) submit a certification to Congress and publish notice in the Federal Register that such regulations have been issued and are in effect.’’

Pub. L. 109–162, title VIII, §829, Jan. 5, 2006, 119 Stat. 3066, provided that: ‘‘Not later than 180 days after the date of enactment of this Act [Jan. 5, 2006], the Attorney General, the Secretary of Homeland Security, and the Secretary of State shall promulgate regulations to implement the provisions contained in the Battered Immigrant Women Protection Act of 2000 (title V of Public Law 106–286) [see section 1501 of Pub. L. 106–286, set out as a Short Title of 2000 Amendments note under this section], this Act [see Tables for classification], and the amendments made by this Act.’’

Section 303(a)(8) of Pub. L. 102–202 provided that: ‘‘The Secretary of Labor shall issue final or interim final regulations to implement the changes made by this section to section 103(a)(15)(H)(i)(b) and section 235(b)(6) of the Immigration and Nationality Act (§8 U.S.C. 1101(a)(15)(H)(i)(b) [1182(m)]) no later than January 2, 1992.’’


‘‘(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)(i) and a delineation of ‘in any other circumstances’ in section 404(b)(2)(A)(ii) 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 1553 of Appendix to Title 50], which is pending in 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 herefore 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 herefore lawfully acquired nor restore nationality herefore 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 1261(a) of title 22]), the Act of June 20, 1949 (Public Law 110, section 8, Eighty-first Congress, first session; 63 Stat. 206 [section 403 of title 22]), the Act of June 5, 1950 (Public Law 535, section 21, 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 1466 of title 7]).’’

Separability

Pub. L. 106–313, title I, §118, Oct. 17, 2000, 114 Stat. 1262, provided that: ‘‘If any provision of this title [see Short Title of 2000 Amendments note above] (or any amendment made by this title) or the application thereof to any person or circumstance is held unconstitutional, the remainder of this title and the amendments made by this title and the application of such provision to any other person or circumstance shall not be affected thereby. This section be enacted [sic] 2 days after effective date.’’

Section 1(e) of div. C of Pub. L. 104–208 provided that: ‘‘If any provision of this division [see Tables for classification] or the application of such provision to any person or circumstances is held to be unconstitutional, the remainder of this division and the application of the provisions of this division to any person or circumstance shall not be affected thereby.’’

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 this Act [this chapter] and the application of such provision to other persons or circumstances shall not be affected thereby.’’

Transfer of Functions

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

Abolition of Immigration and Naturalization Service and Transfer of Functions

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

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 6(b) of Pub. L. 88–586, 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. 6688, 73 Stat. c74, as required by sections 1 and 7 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


“(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 required by the Attorney General in maintaining 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) 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 $2,000,000 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 704(b) of Pub. L. 101–469 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)(b), 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.”]

[ Determination of President of the United States, No. 97–16, Feb. 12, 1997, 62 F.R. 13981, provided that: “(a) Notwithstanding any other provision of this Act or any other provision of law, during the period beginning on the date of the enactment of this Act [Aug. 13, 2010] and ending on September 30, 2015, the filing fee and fraud prevention and detection fee required to be submitted with an application for admission as a nonimmigrant under section 101(a)(15)(L) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(L)) shall be increased by $2,250 for applicants that employ 50 or more employees in the United States if more than 50 percent of the applicant’s employees are nonimmigrants admitted pursuant to section 101(a)(15)(L) of such Act or section 101(a)(15)(L) of such Act.

“(b) Notwithstanding any other provision of this Act or any other provision of law, during the period beginning on the date of the enactment of this Act and ending on September 30, 2015, the filing fee and fraud prevention and detection fee required to be submitted with an application for admission as a nonimmigrant under section 101(a)(15)(L) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(L)) shall be increased by $2,000 for applicants that employ 50 or more employees in the United States if more than 50 percent of the applicant’s employees are nonimmigrants or nonimmigrants described in section 101(a)(15)(L) of such Act.

“(c) During the period beginning on the date of the enactment of this Act and ending on September 30, 2015, all amounts collected pursuant to the fee increases authorized under this section shall be deposited in the General Fund of the Treasury.”]

AFGHAN ALLIES PROTECTION


“SEC. 601. SHORT TITLE.

“This Act [probably should be “this title”] may be cited as the ‘Afghan Allies Protection Act of 2009’.

“SEC. 602. PROTECTION FOR AFGHAN ALLIES.

“(a) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ‘appropriate committees of Congress’ means—

“(1) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on the Judiciary of the Senate; and

“(2) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on the Judiciary of the House of Representatives.

“(b) SPECIAL IMMIGRANT STATUS FOR CERTAIN AFGHANS.—

“(1) IN GENERAL.—Subject to paragraph (3), the Secretary of Homeland Security, or, notwithstanding any other provision of law, the Secretary of State in consultation with the Secretary of Homeland Security, may provide an alien described in subparagraph (A), (B), or (C) of paragraph (2) with the status of a special immigrant under section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)), if the alien—

“(A) or an agent acting on behalf of the alien, submits a petition for classification under section 245(a)(4) of such Act (8 U.S.C. 1153(a)(4));

“(B) is otherwise eligible to receive an immigrant visa; or

“(C) is otherwise admissible to the United States for permanent residence (excluding the grounds for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4))); and

“(D) clears a background check and appropriate screening, as determined by the Secretary of Homeland Security.
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TITLE 8—ALIENS AND NATIONALITY

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"(2) ALIENS DESCRIBED.—

"(A) PRINCIPAL ALIENS.—An alien is described in this subparagraph if the alien—

"(i) is a citizen or national of Afghanistan;

"(ii) was or is employed by or on behalf of the United States Government in Afghanistan on or after October 7, 2001, for not less than one year;

"(iii) provided faithful and valuable service to the United States Government, which is documented in a positive recommendation or evaluation, subject to subparagraph (D), from the employee’s senior supervisor or the person currently occupying that position, or a more senior person, if the employee’s senior supervisor has left the employer or has left Afghanistan; and

"(iv) has experienced or is experiencing an ongoing serious threat as a consequence of the alien’s employment by the United States Government.

"(B) SPOUSE OR CHILD.—An alien is described in subparagraph of the alien—

"(i) is the spouse or child of a principal alien described in subparagraph (A); and

"(ii) is accompanying or following to join the principal alien in the United States.

"(C) SURVIVING SPOUSE OR CHILD.—An alien is described in this subparagraph if the alien—

"(i) was the spouse or child of a principal alien described in subparagraph (A) who had a petition for classification approved pursuant to this section or section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–183; 8 U.S.C. 1101 note) which included the alien as an accompanying spouse or child; and

"(ii) died or was killed as a consequence of the alien’s service to the United States Government, or was employed by or on behalf of the United States Government or hiring organization or entity who conducts a risk assessment of the alien and an independent review of records maintained by the United States Government or hiring organization or entity to confirm employment and faithful and valuable service to the United States Government prior to approval of a petition under this section.

"(3) NUMERICAL LIMITATIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (C), the total number of principal aliens who may be provided special immigrant status under this section may not exceed 1,500 per year for each of the fiscal years 2009, 2010, 2011, 2012, and 2013.

"(B) EXCLUSION FROM NUMERICAL LIMITATIONS.—

"(i) Aliens provided special immigrant status under this subsection shall not be counted against any numerical limitation under sections 201(d), 202(a), or 203(b)(4) of the Immigration and Nationality Act (8 U.S.C. 1151(d), 1152(a), and 1153(b)(4)).

"(ii) An alien provided special immigrant status under this subsection shall be denied the opportunity to apply for admission under this subsection solely because such alien qualifies as an immediate relative or is eligible for any other immigrant classification.

"(D) APPROVAL BY CHIEF OF MISSION REQUIRED.—A recommendation or evaluation required under subparagraph (A)(ii) shall be accompanied by approval from the appropriate Chief of Mission, or the designee of the appropriate Chief of Mission, who shall conduct a risk assessment of the alien and an independent review of records maintained by the United States Government or hiring organization or entity to confirm employment and faithful and valuable service to the United States Government prior to approval of a petition under this section.

"(10) REPORT ON IMPLEMENTATION AND AUTHORITY TO CARRY OUT ADMINISTRATIVE MEASURES.—

"(A) REQUIREMENT FOR REPORT.—Not later than one year after the date of the enactment of this Act (Mar. 11, 2009), the Secretary of Homeland Security and the Secretary of State, in consultation with the Secretary of Defense, shall submit to the appropriate committees of Congress a report on the implementation of this subsection.

"(B) CONTENT OF REPORT.—The report required by subparagraph (A) shall describe actions taken, and additional administrative measures that may be needed, to ensure the integrity of the program established under this subsection and the national security interests of the United States related to such program.

"(C) AUTHORITY TO CARRY OUT ADMINISTRATIVE MEASURES.—The Secretary of Homeland Security status under this subsection for fiscal year 2014 shall be equal to the difference between—

"(I) the numerical limitation determined under clause (i) for fiscal year 2013; and

"(II) the number of principal aliens provided such status under this section during fiscal year 2013.

"(4) PROHIBITION ON FEES.—The Secretary of Homeland Security or the Secretary of State may not charge an alien described in subparagraph (A), (B), or (C) of paragraph (2) any fee in connection with an application for, or issuance of, a special immigrant visa under this section.

"(5) ASSISTANCE WITH PASSPORT ISSUANCE.—The Secretary of State shall make a reasonable effort to ensure that an alien described in subparagraph (A), (B), or (C) of paragraph (2) who is issued a special immigrant visa pursuant to this subsection is provided with the appropriate series Afghan passport necessary to enter the United States.

"(6) PROTECTION OF ALIENS.—The Secretary of State, in consultation with the heads of other appropriate Federal agencies, shall make a reasonable effort to provide an alien described in subparagraph (A), (B), or (C) of paragraph (2) who is seeking special immigrant status under this subsection protection or to immediately remove such alien from Afghanistan, if possible, if the Secretary determines, after consultation, that such alien is in imminent danger.

"(7) OTHER ELIGIBILITY FOR IMMIGRANT STATUS.—No alien shall be denied the opportunity to apply for admission under this subsection solely because such alien qualifies as an immediate relative or is eligible for any other immigrant classification.

"(8) RESETTLEMENT SUPPORT.—A citizen or national of Afghanistan who is granted special immigrant status described in section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) shall be eligible for resettlement assistance, entitlement programs, and other benefits available to refugees admitted under section 207 of such Act (8 U.S.C. 1157) to the same extent, and for the same periods of time, as such refugees.

"(9) ADJUSTMENT OF STATUS.—Notwithstanding paragraph (2), (7), or (8) of subsection (c) of section 245 of the Immigration and Nationality Act (8 U.S.C. 1255), the Secretary of Homeland Security may adjust the status of an alien described in subparagraph (A), (B), or (C) of paragraph (2) who is issued a special immigrant visa pursuant to this subsection is provided in a positive recommendation or evaluation, subject to subparagraph (D), from the employee’s senior supervisor or the person currently occupying that position, or a more senior person, if the employee’s senior supervisor has left the employer or has left Afghanistan.

"(11) CARRY FORWARD.—

"(i) FISCAL YEARS 2009 THROUGH 2013.—If the numerical limitation specified in subparagraph (A) is not reached during a given fiscal year, with respect to fiscal year 2009, 2010, 2011, 2012, or 2013, the numerical limitation specified in such subparagraph for the following fiscal year shall be increased by a number equal to the difference between—

"(I) the numerical limitation specified in subparagraph (A) for the given fiscal year; and

"(ii) the number of principal aliens provided special immigrant status under this section during the given fiscal year.

"(ii) FISCAL YEAR 2014.—If the numerical limitation determined under clause (i) is not reached in fiscal year 2013, the total number of principal aliens who may be provided special immigrant
and the Secretary of State shall implement any additional administrative measures described in subparagraph (B) as they may deem necessary and appropriate to ensure the integrity of the program established under this subsection and the national security interests of the United States related to such program.

"(3) ANNUAL REPORT ON USE OF SPECIAL IMMIGRANT STATUS.—

"(A) REQUIREMENT.—Not later than 120 days after the date of the enactment of this Act, and annually thereafter, the Secretary of Homeland Security shall submit to the appropriate committees of Congress a report on the number of citizens or nationals of Afghanistan or Iraq who have applied for status as special immigrants under this subsection or section 1244 of the Refugee Crisis in Iraq Act of 2007 (Public Law 110–181; 122 Stat. 396) [8 U.S.C. 1157 note].

"(B) CONTENT.—Each report required by subparagraph (A) submitted in a fiscal year shall include the following information for the previous fiscal year:

"(i) The number of citizens or nationals of Afghanistan or Iraq who submitted an application for status as a special immigrant pursuant to this section or section 1244 of the Refugee Crisis in Iraq Act of 2007 (Public Law 110–181; 122 Stat. 396), disaggregated—

"(I) by the number of principal aliens applying for such status;

"(II) by the number of spouses and children of principal aliens applying for such status.

"(ii) The number of applications referred to in clause (i) that—

"(I) were approved; or

"(II) were denied, including a description of the basis for each denial.

"(c) INFORMATION REGARDING CITIZENS OR NATIONALS OF AFGHANISTAN EMPLOYED BY THE UNITED STATES OR FEDERAL CONTRACTORS IN AFGHANISTAN.—

"(1) REQUIREMENT TO COMPARE INFORMATION.—

"(A) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act [Mar. 11, 2009], the Administrator of the United States Agency for International Development, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of State, and the Secretary of the Treasury shall—

"(i) review internal records and databases of their respective agencies for information that can be used to verify employment of citizens or nationals of Afghanistan by the United States Government; and

"(ii) request from each prime contractor or grantee that has performed work in Afghanistan since October 7, 2001, under a contract, grant, or cooperative agreement with their respective agencies that is valued in excess of $25,000, information that may be used to verify the employment of such citizens or nationals by such contractor or grantee.

"(B) INFORMATION REQUIRED.—To the extent data is available, the information referred to in subparagraph (A) shall include the name and dates of employment or, biometric data for, and other data that can be used to verify the employment of each citizen or national of Afghanistan who has performed work in Afghanistan since October 7, 2001, under a contract, grant, or cooperative agreement with an executive agency.

"(2) REPORT ON ESTABLISHMENT OF DATABASE.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Administrator of the United States Agency for International Development, the Secretary of Homeland Security, the Secretary of State, and the Secretary of the Treasury, shall submit to the appropriate committees of Congress a report examining the options for establishing a unified and classified database of information related to contracts, grants, or cooperative agreements entered into by executive agencies for the performance of work in Afghanistan since October 7, 2001, including the information described and collected under paragraph (1), to be used by relevant Federal departments and agencies to adjudicate refugee, asylum, special immigrant visa, and other immigration claims and applications.

"(3) REPORT ON NONCOMPLIANCE.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to the appropriate committees of Congress a report that describes the actions taken by the President to ensure that—

"(A) the inability or unwillingness of any contractor or grantee to provide the information requested under paragraph (1)(A)(i); and

"(B) the reasons that such contractor or grantee provided for failing to provide such information.


"(1) IN GENERAL.—The Secretary of Homeland Security or the Secretary of State may convert an approved petition for special immigrant status under section 1059 of the National Defense Authorization Act for Fiscal Year 2006 [Pub. L. 109–163] (8 U.S.C. 1101 note) with respect to which a visa under such section 1059 is not immediately available to an approved petition for special immigrant status under section 1244 of the National Defense Authorization Act for Fiscal Year 2008 [Public Law 110–161] (8 U.S.C. 1157 note) notwithstanding any requirement of subsection (a) or (b) of such section 1244 but subject to the numerical limitations applicable under subsection (c) of such section 1244, as amended by this Act.

"(2) DURATION.—The authority under subsection (a) shall be available only with respect to petitions filed before October 1, 2008.

"(2007) (Public Law 110–181) [8 U.S.C. 1157 note] notwithstanding any requirement of subsection (a) or (b) of such section 1244 for classification under section 204 of such Act (8 U.S.C. 1154) for classification under section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4)); and

"(2) 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 inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)) shall not apply.

"(2) ALIENS DESCRIBED.—

"(1) PRINCIPAL ALIENS.—An alien is described in this subsection if the alien—

"(A) is a national of Iraq or Afghanistan;

"(B) worked directly with United States Armed Forces, or under Chief of Mission authority, as a translator or interpreter for a period of at least 12 months;

"(C) obtained a favorable written recommendation from the Chief of Mission or a general or flag
officer in the chain of command of the United States Armed Forces unit that was supported by the alien; and

before filing the petition described in subsection (a)(1), cleared a background check and screening, as determined by the Chief of Mission or a general or flag officer in the chain of command of the United States Armed Forces unit that was supported by the alien.

“(2) SPOUSES AND CHILDREN.—An alien is described in this subsection if the alien is the spouse or child of a principal alien described in paragraph (1), and is following or accompanying to join the principal alien.

“(c) NUMERICAL LIMITATIONS.—

“(1) IN GENERAL.—The total number of principal aliens who may be provided special immigrant status under this section—

“(A) during each of the fiscal years 2007 and 2008, shall not exceed 500; and

“(B) during any other fiscal year shall not exceed 50.

“(2) ALIENS EXEMPT FROM EMPLOYMENT-BASED NUMERICAL LIMITATIONS.—For purposes of the application of sections 201 through 203 of the Immigration and Nationality Act (8 U.S.C. 1151–1153) in any fiscal year, aliens eligible to be provided special immigrant status under this section shall be treated as special immigrants described in section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27)) who are not described in subparagraph (A), (B), (C), or (K) of such section and shall not be counted against the numerical limitations under sections 201(d), 202(a), and 203(b)(4) of the Immigration and Nationality Act (8 U.S.C. 1151(d), 1152(a), and 1153(b)(4)).

“(3) CARRY FORWARD.—If the numerical limitation described in paragraph (1) is not reached during a given fiscal year, the numerical limitation for the following fiscal year shall be increased by a number equal to the difference between the number of visas authorized for the given fiscal year and the number of aliens provided special immigrant status during the given fiscal year.

“(d) ADJUSTMENT OF STATUS.—Notwithstanding paragraphs (2), (7) and (8) of section 245(c) of the Immigration and Nationality Act (8 U.S.C. 1255(c)), the Secretary of Homeland Security may adjust the status of an alien to that of a lawful permanent resident under section 245(a) of such Act if the alien—

“(1) was paroled or admitted as a nonimmigrant into the United States; and

“(2) is otherwise eligible for special immigrant status under this section and under the Immigration and Nationality Act (8 U.S.C. 1101) et seq.

“(e) NATURALIZATION.—

“(1) IN GENERAL.—An absence from the United States described in paragraph (2) shall not be considered to break any period for which continuous residence in the United States is required for naturalization under title III of the Immigration and Nationality Act (8 U.S.C. 1401) et seq.

“(2) ABSENCE DESCRIBED.—An absence described in this paragraph is an absence from the United States due to a person’s employment by the Chief of Mission or United States Armed Forces, under contract with the Chief of Mission or United States Armed Forces, or by a firm or corporation under contract with the Chief of Mission or United States Armed Forces, if—

“(A) such employment involved working with the Chief of Mission or United States Armed Forces as a translator or interpreter; and

“(B) the person spent at least a portion of the time outside of the United States working directly with the Chief of Mission or United States Armed Forces as a translator or interpreter in Iraq or Afghanistan.

“(f) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—The definitions in subsections (a) and (b) of section 101 of the Immigration and Nationality Act (8 U.S.C. 1101) shall apply in the administration of this section.”

courage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.

Creating a new nonimmigrant visa classification will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status. It also gives law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions. Providing temporary legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States.

"(C) Finally, this section gives the Attorney General discretion to convert the status of such non-immigrants to that of permanent residents when doing so is justified on humanitarian grounds, for family unity, or is otherwise in the public interest.

PHILIPPINE TRADERS AS NONIMMIGRANTS

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

IRISH PEACE PROCESS CULTURAL AND TRAINING PROGRAM


COORDINATION OF AMENDMENTS BY PUB. L. 104–208

Section 1(b) of div. C of Pub. L. 104–208 provided that: "Except as otherwise specifically provided—

(1) whenever in this division [see Tables for classification] an amendment or repeal is expressed as the amendment or repeal of a section or other provision, the reference shall be considered to be made to that section or provision in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); and

(2) amendments to a section or other provision are to such section or other provision before any amendment made to such section or other provision elsewhere in this division."

APPLICABILITY OF TITLE V OF DIVISION C OF PUB. L. 104–208 TO FOREIGN ASSISTANCE

Section 592 of title V of div. C of Pub. L. 104–208 provided that: "This title [see Effective Date of 1996 Amendment note above] does not apply to any Federal, State, or local governmental program, assistance, or benefits provided to an alien under any program of foreign assistance as determined by the Secretary of State in consultation with the Attorney General."

NOTIFICATION TO PUBLIC AND PROGRAM RECIPIENTS OF CHANGES REGARDING ELIGIBILITY FOR PROGRAMS

Section 593 of title V of div. C of Pub. L. 104–208 provided that:

"(a) IN GENERAL.—Each agency of the Federal Government or a State or political subdivision that administers a program affected by the provisions of this title [see Effective Date of 1996 Amendment note above], shall, directly or through the States, provide general notification to the public and to program recipients of the changes regarding eligibility for any such program pursuant to this title.

"(b) FAILURE TO GIVE NOTICE.—Nothing in this section shall be construed to require or authorize continu-

ation of eligibility if the notice under this section is not provided.”

REPORT ON ALIENS GRANTED REFUGEE STATUS OR ASYLUM DUE TO PERSECUTION FOR RESISTANCE TO CORRUGATE POPULATION CONTROL METHODS

Section 601(a)(2) of div. C of Pub. L. 104–208 provided that: "Not later than 90 days after the end of each fiscal year, the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate describing the number and countries of origin of aliens granted refugee status or asylum under determinations pursuant to the amendment made by paragraph (1) [amending this section]. Each such report shall also contain projections regarding the numbers and countries of origin of aliens that are likely to be granted refugee status or asylum for the subsequent 2 fiscal years.”

SENSE OF CONGRESS REGARDING AMERICAN-MADE PRODUCTS; REQUIREMENTS FOR NOTICE

Section 608 of div. C of Pub. L. 104–208 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) $56,000,000 for fiscal year 1998.

"(b) NOTICE TO RECIPIENTS OF GRANTS.—In providing grants under this division, the Attorney General, to the greatest extent practicable, shall provide to each recipient of a grant a notice describing the statement made in subsection (a) by the Congress."

IMPROVING BORDER CONTROLS

Section 130006 of Pub. L. 103–306 provided that: "(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(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) $56,000,000 for fiscal year 1998.

"(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, as amended by Pub. L. 104–208, div. C, title III, §308(c)(3)(E), title VI, §671(b)(12), Sept. 30, 1996, 110 Stat. 3009–617, 3009–722, 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,
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"(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 inadmissible under the immigration laws of the United States."

CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS


REPORT ON ADMISSION OF CERTAIN NONIMMIGRANTS

Section 202(b) of Pub. L. 102–232 directed Comptroller General, by not later than Oct. 1, 1994, to submit to Committees on the Judiciary of Senate and of House of Representatives a report containing information relating to the admission of artists, entertainers, athletes, and related support personnel as nonimmigrants under 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 in effect in other countries on the availability and priority of family-sponsored immigrants and the impact which the admission of such individuals has upon the availability and priority of family-sponsored immigration.

DEMAND UNTIL APRIL 1, 1992, IN IMPLEMENTATION OF PROVISIONS RELATING TO NONMIGRANT 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)(ii) 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)(1)(b) of such section (as in effect on September 30, 1991)."

COMMISSION ON IMMIGRATION REFORM


"(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.

"(c) Considerations.—

"(1) Individual 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 employer-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.

"(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)(1) 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).

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

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


“(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 903 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 8 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 202(c)(1) of the Immigration and Nationality Act [8 U.S.C. 1152(c)(1)]) which (A) has 1 or more dependent areas (as determined for purposes of section 302 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) is 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 AND MANAGEMENT CONSULTING FIRMS

nationally recognized name under an agreement with a worldwide coordinating organization that is collectively owned and controlled by the member accounting and management consulting firms or by the elected members (partners, shareholders, members, employees) thereof, an entity that is organized outside the United States to provide accounting or management consulting services shall be considered to be an affiliate of the United States accounting or management consulting partnership if it markets its accounting or management consulting services under the same internationally recognized name directly or indirectly under an agreement with the same worldwide coordinating organization of which the United States partnership is also a member. Those partnerships organized within the United States and entities organized outside the United States which are considered affiliates under this subsection shall continue to be considered affiliates to the extent such firms enter into a plan of association with a successor worldwide coordinating organization, which need not be collectively owned and controlled.

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


(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


(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, §867, Nov. 29, 1989, 103 Stat. 1538, provided that: The Attorney General shall provide for the extension through December 31, 1990, of nonimmigrant status under section 101(a)(15)(H)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(1)) 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


(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 201(a)(2) of Pub. L. 100-525 provided that: "Only for purposes of section 101(a)(27)(H) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(27)(H)], 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 for 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 subsection (a)(15)(E) of this section upon a basis of reciprocity secured by the United States-Canada Free-Trade Agreement, see sec. 307(a) of Pub. L. 100-449, set out in a note under section 1112 of Title 19, Customs Duties.

AMIRASIAN IMMIGRATION

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 [Dec. 22, 1987], 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)"


"(1)(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) an immigrant visa was issued to such alien from Vietnam on or after March 22, 1988.

"(2) The provisions of paragraphs (4), (5), and (7)(A) of section 232(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 or 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) 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 same 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. 1252 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. 1117 et seq.] 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, 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, 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. 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.

"(f) 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.

"(g) 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 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 EIR.—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 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 service 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 Republic 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 for establishment, membership, etc., of a Commission for the Study of International Migration and Cooperative Economic Development to examine, in consultation with governments of Mexico and other sending countries in Western Hemisphere, the conditions which contribute to unauthorized migration to the United States and mutually beneficial reciprocal trade and investment programs to alleviate such unauthorized migration and to report to President and Congress, not later than 3 years after appointment of members of Commission, on results of Commission’s examination with recommendations on providing mutually beneficial reciprocal trade and investment programs to alleviate such unauthorized migration.

**Treatments 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**


**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 directed Secretary of Health and Human Services, after consultation with Attorney General, Secretary of State, and Director of the International Communication Agency, to evaluate effectiveness and value to foreign nations and United States of exchange programs for graduate medical education or training of aliens who were graduates of foreign medical schools, and to report to Congress, not later than Jan. 15, 1983, on such evaluation, and include such recommendations for changes in legislation and regulations as 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 empowered, and directed, 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.

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 (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.

(c) adjustment of status or change of nonimmigrant status (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.

(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.

A. Deterring Illegal Immigration At Our Borders

I have directed the Attorney General to move expeditiously toward full implementation of our comprehensive border control strategy, including efforts at the southwest border. To support sustained long-term strengthening of our deterrence capacity, the Administration shall seek funding to add new Border Patrol agents to reach the goal of at least 7,000 agents protecting our borders by the year 2000.

Flexible Border Response Capacity

To further this strategy, the Department of Justice shall implement the capacity to respond to emerging situations anywhere along our national borders to deter buildups of illegal border crossers, smuggling operations, or other developing problems.

Strategic Use of High Technology

Through the strategic use of sensors, night scopes, helicopters, light planes, all-terrain vehicles, fingerprinting and automated recordkeeping, we have freed many Border Patrol agents from long hours of bureaucratic tasks and increased the effectiveness of these highly-trained personnel. Because these tools are essential for the Immigration and Naturalization Service (INS) to do its job, I direct the Attorney General to accelerate to the greatest extent possible their utilization and enhancement to support implementation of our deterrence strategy.

Strong Enforcement Against Repeat Illegal Crossers

The Department of Justice shall assess the effectiveness of efforts underway to deter repeat illegal crossers, such as fingerprinting and dedicating prosecution resources to enforce the new prosecution authority provided by the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322, see Tables for classification).

The Department of Justice shall determine whether accelerated expansion of these techniques to additional border sectors is warranted.
§ 1101

B. Deterring Alien Smuggling

This Administration has had success deterring large ship-based smuggling directly to United States shores. In response, smugglers are testing new routes and tactics. Our goal: similar success in choking off these attempts by adjusting our anti-smuggling initiatives to anticipate shifting smuggling patterns.

To meet new and continuing challenges posed along transport routes and in foreign locations by smuggling organizations, we will augment diplomatic and enforcement resources at overseas locations to work with host governments, and increase related intelligence gathering efforts.

The Departments of State and Justice, in cooperation with other relevant agencies, will report to the National Security Council to pull together in 30 days on the status of interagency coordination to achieve these objectives.

Congressional action will be important to provide U.S. law enforcement agencies with needed authority to deal with international smuggling operations. I will propose that the Congress pass legislation providing wiretap authority for investigation of alien smuggling cases and providing authorization to seize the assets of groups engaged in trafficking in human cargo.

In addition, I will propose legislation to give the Attorney General authority to implement procedures for expedited exclusion to deal with large flows of undocumented migrants, smuggling operations, and other extraordinary migration situations.

C. Visa Overstay Deterrence

Nearly half of this country's illegal immigrants come into the country legally and then stay after they are required by law to depart, often using fraudulent documentation. No Administration has ever made a serious effort to identify and deport these individuals. This Administration is committed to curtailing this form of illegal immigration.

Therefore, relevant departments and agencies are directed to review their policies and practices to identify noncitizens with visa overstays and to enhance investigations and prosecution of those who fraudulently produce or misuse passports, visas, and other travel related documents. Recommendations for administrative initiatives and legislative reform shall be presented to the White House Interagency Working Group on Immigration by June 30, 1995.

REDUCING THE MAGNET OF WORK OPPORTUNITIES, WORKSITE ENFORCEMENT, AND DETERRENCE

Border deterrence cannot succeed if the lure of jobs in the United States remains. Therefore, a second major component of the Administration's deterrence strategy is to toughen worksite enforcement and employer sanctions. Employers who hire illegal immigrants not only obtain unfair competitive advantages over law-abiding employers, their unlawful use of illegal immigrants suppresses wages and working conditions for our country's legal workers. Our strategy, which targets enforcement efforts at employers and industries that historically have relied upon employment of illegal immigrants, will not only strengthen deterrence of illegal immigration, but better protect American workers and businesses that do not hire illegal immigrants.

Central to this effort is an effective, nondiscriminatory means of verifying the employment authorization of all new employees. The Administration fully supports the recommendation of the Commission on Legal Immigration Reform to create pilot projects to test various techniques for improving workplace verification, including a computer database test to validate a new worker's social security number for work authorization purposes. The Immigration and Naturalization Service (INS) and Social Security Administration are directed to establish, implement, monitor, and review the pilots and provide me with an interim report on the progress of this program by March 1, 1996.

In addition, the INS is directed to finalize the Administration's reduction of the number of authorized documents to support work verification for noncitizens. Concurrently, the Administration will seek further reduction legislatively in the number of documents that are acceptable for proving identity and work authorization. The Administration will improve the security of existing documents to be used for work authorization and seek increased penalties for immigration fraud, including fraudulent production and use of documents.

The Department of Labor shall intensify its investigations in industries with patterns of labor law violations that promote illegal immigration.

I also direct the Department of Labor, INS, and other relevant Federal agencies to expand their collaboration in cracking down on those who subvert fair competition by hiring illegal aliens. This may include increased Federal authority to confiscate assets that are the fruits of that unfair competition.

The White House Interagency Working Group on Immigration shall further examine the link between immigration and employment, including illegal immigration, and recommend to me other appropriate measures.

DETENTION AND REMOVAL OF DEPORTABLE ILLEGAL ALIENS

The Administration's deterrence strategy includes strengthening the country's detention and deportation capability. No longer will criminals and other high risk deportable aliens be released back into communities because of a shortage of detention space and ineffective deportation procedures.

A. Comprehensive Deportation Process Reform

The Department of Justice, in consultation with other relevant agencies, shall develop a streamlined, fair, and effective procedure to expedite removal of deportable aliens. As necessary, additional legislative authority will be sought in this area. In addition, the Department of Justice shall increase its capacity to staff deportation and exclusion hearings to support these objectives.

B. National Detention and Removal Plan

To address the shortage of local detention space for illegal aliens, the Administration shall devise a National Detention, Transportation, and Removal Policy that will permit use of detention space across the United States and improve the ability to remove individuals with orders of deportation. The Department of Justice, in consultation with other agencies as appropriate and working under the auspices of the White House Interagency Working Group on Immigration, shall finalize this plan by April 30, 1995.

The Administration will seek support and funding from the Congress for this plan and for our efforts to double the removal of illegal aliens with final orders of deportation.

C. Identification and Removal of Criminal Aliens

The Institutional Hearing Program is successfully expediting deportation of incarcerated criminal aliens after they serve their sentences.

To further expedite removal of criminal aliens from this country and reduce costs to Federal and State governments, the Department of Justice is directed to develop an expanded program of verification of the immigration status of criminal aliens within our country's prisons. In developing this program, the viability of expanding the work of the Law Enforcement Support Center should be assessed and all necessary steps taken to increase coordination and cooperative efforts with State, and local law enforcement officers in identification of criminal aliens.

TARGETED DETERRENCE AREAS

Many of the Administration's illegal immigration enforcement initiatives are mutually reinforcing. For example, strong interior enforcement supports border enforcement efforts by reducing the attractiveness of United States ports of entry and reducing the number of undocumented immigrants seeking to enter or remain in the country. The Administration will continue to strengthen and expand its enforcement activities directed at States and communities where illegal immigration is a problem and where the majority of illegal immigrants are located.
control. While there have been efforts over the years at piecemeal cooperation, this Administration will examine, develop, and test a more comprehensive coordinated package of deterrent strategies in selected metropolitan areas by multiple Federal, State, and local agencies.

The White House Interagency Working Group on Immigration shall coordinate the development of this interagency and intergovernmental operation.

**VERIFICATION OF ELIGIBILITY FOR BENEFITS**

The law denies most government benefits to illegal aliens. The government has a duty to assure that tax-payer-supported public assistance programs are not abused. As with work authorization, enforcement of eligibility requirements relies upon a credible system of verification. The INS, working with the White House Interagency Working Group on Immigration as appropriate, shall review means of improving the existing benefits verification program. In addition, we will seek new mechanisms—including increased penalties for false information used to qualify for benefits—to protect the integrity of public programs.

**ANTI-DISCRIMINATION**

Our efforts to combat illegal immigration must not violate the privacy and civil rights of legal immigrants and U.S. citizens. Therefore, I direct the Attorney General, the Secretary of Health and Human Services, the Chair of the Equal Employment Opportunity Commission, and other relevant Administration officials to vigorously protect our citizens and legal immigrants from immigration-related instances of discrimination and harassment. All illegal immigration enforcement measures shall be taken with due regard for the basic human rights of individuals and in accordance with our obligations under applicable international agreements.

**ASSISTANCE TO STATES**

States today face significant costs for services provided to illegal immigrants as a result of failed policies of the past. Deterring illegal immigration is the best long-term solution to protect States from growing costs for illegal immigration. This is the first Administration to address this primary responsibility squarely. We are targeting most of our Federal dollars to those initiatives that address the root causes that lead to increased burdens on States.

The Federal Government provides States with billions of dollars to provide for health care, education, and other services and benefits for immigrants. This Administration is proposing increases for immigration and immigration-related spending of 25 percent in 1996 compared to 1993 levels. In addition, this Administration is the first to obtain funding from the Congress to reimburse States for a share of the costs of incarcerated illegal aliens.

This Administration will continue to work with States to obtain more Federal help for certain State costs and will oppose inappropriate cost-shifting to the States.

**INTERNATIONAL COOPERATION**

This Administration will continue to emphasize international cooperative efforts to address illegal immigration. Pursuant to a Presidential Review Directive (PRD), the Department of State is now coordinating a study on United States policy toward international refugee and migration affairs. I hereby direct that, as part of that PRD process, this report to the National Security Council include the relationship of economic development and migration in the Western Hemisphere and, in particular, provide recommendations for further foreign economic policy measures to address causes of illegal immigration.

The Department of State shall coordinate an interagency effort to consider expanded arrangements with foreign governments for return of criminal and deportable aliens.

The Department of State also shall seek to negotiate readmission agreements for persons who could have sought asylum in the last country from which they arrived. Such agreements will take due regard of U.S. obligations under the Protocol Relating to the Status of Refugees.

The Department of State further shall implement cooperative efforts with other nations receiving smuggled aliens or those used as transshipment points by smugglers. In particular, we will look to countries in our hemisphere to join us by denying their territory as bases for smuggling operations.

The Department of State shall initiate negotiations with foreign countries to secure authority for the United States Coast Guard to board source country vessels suspected of transporting smuggled aliens.

This directive shall be published in the Federal Register.

**DEFINITIONS**

Section 1(c) of div. C of Pub. L. 104–208 provided that: “Except as otherwise specifically provided in this division [see Tables for classification], for purposes of this title [enacting sections 1101–1187 of this title, which is divided into subchapters I–VII, and amending this title], ‘child’ shall have the meaning given such term in section 1101(a)(11) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(11)].”

Section 394 of title V of div. C of Pub. L. 104–208 provided that: “Except as otherwise provided in this title [see Effective Date of 1996 Amendment note above], for purposes of this title—


“(2) the term ‘child’ shall have the meaning given such term in section 1101(c) of the Immigration and Nationality Act.”

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 1122, 1123, 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]."

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

§ 1102. Diplomatic and semidiplomatic immunities

Except as otherwise provided in this chapter, for so long as they continue in the non-
immigrant classes enumerated in this section, the provisions of this chapter relating to ineligibility to receive visas and the removal of aliens shall not be construed to apply to non-immigrants—

(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.


REFERENCES IN TEXT

This chapter, referred to in introductory provisions, was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 183, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS


1991—Pars. (1) to (3). Pub. L. 100–525 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 “(2)” 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 “documentation”.

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1991 AMENDMENT


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. 101–236, title IV, §497, 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 89–357) (Aug. 4, 1947, ch. 462, set out as a note under 22 U.S.C. 237), 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.”

§1103. Powers and duties of the Secretary, the Under Secretary, and the Attorney General

(a) Secretary of Homeland Security

(1) The Secretary of Homeland Security 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, Attorney General, 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.

(2) He shall have control, direction, and supervision of all employees and of all the files and records of the Service.

(3) 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.

(4) 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.

(5) 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.

(6) 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.
(7) 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 and employ officers of the Service for duty in foreign countries.

(8) After consultation with the Secretary of State, the Attorney General may authorize officers of a foreign country to be stationed at preclearance facilities in the United States for the purpose of ensuring that persons traveling from or through the United States to that foreign country comply with that country’s immigration and related laws.

(9) Those officers may exercise such authority and perform such duties as United States immigration officers are authorized to exercise and perform in that foreign country under reciprocal agreement, and they shall enjoy such reasonable privileges and immunities necessary for the performance of their duties as the government of their country extends to United States immigration officers.

(10) In the event the Attorney General determines that an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate Federal response, the Attorney General may authorize an agreement or equivalent legal arrangement with any State or local law enforcement officer, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, to perform or exercise any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon officers or employees of the Service.

(11) The Attorney General, in support of persons in administrative detention in non-Federal institutions, is authorized—

(A) to make payments from funds appropriated for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration for necessary clothing, medical care, necessary guard hire, and the housing, care, and security of persons detained by the Service pursuant to Federal law under an agreement with a State or political subdivision of a State; and

(B) to enter into a cooperative agreement with any State, territory, or political subdivision thereof, for the necessary construction, physical renovation, acquisition of equipment, supplies or materials required to establish acceptable conditions of confinement and detention services in any State or unit of local government which agrees to provide guaranteed bed space for persons detained by the Service.

(b) Land acquisition authority

(1) The Attorney General may contract for or buy any interest in land, including temporary use rights, adjacent to or in the vicinity of an international land border when the Attorney General deems the land essential to control and guard the boundaries and borders of the United States against any violation of this chapter.

(2) The Attorney General may contract for or buy any interest in land identified pursuant to paragraph (1) as soon as the lawful owner of that interest fixes a price for it and the Attorney General considers that price to be reasonable.

(3) When the Attorney General and the lawful owner of an interest identified pursuant to paragraph (1) are unable to agree upon a reasonable price, the Attorney General may commence condemnation proceedings pursuant to section 3113 of title 40.

(4) The Attorney General may accept for the United States a gift of any interest in land identified pursuant to paragraph (1).

(c) 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 or which may be prescribed by the Attorney General. The Commissioner may enter into cooperative agreements with State and local law enforcement agencies for the purpose of assisting in the enforcement of the immigration laws.

(d) 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 nonresident aliens, on aliens who have been admitted or have been removed from the United States, on the number of applications filed and granted, 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.

(e) Annual report

(1) The Commissioner shall submit to Congress annually a report which contains a summary of the information collected under subsection (d) 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 administratively, of applications for naturalization, for each district office of the Service and by national origin group.

(f) Minimum number of agents in States

The Attorney General shall allocate to each State not fewer than 10 full-time active duty agents of the Immigration and Naturalization Service to carry out the functions of the Service, in order to ensure the effective enforcement of this chapter.
(g) Attorney General

(1) In general

The Attorney General shall have such authorities and functions under this chapter and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date of the Immigration Reform, Accountability and Security Enhancement Act of 2002.

(2) Powers

The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.


The Immigration Reform, Accountability and Security Enhancement Act of 2002, referred to in text, was the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Codification


Amendments

2009—Subsec. (b). Pub. L. 111–122 struck out subsec. (b), which directed the Attorney General to establish within the Criminal Division of the Department of Justice an Office of Special Investigations and to consult with the Secretary of Homeland Security concerning the prosecution or extradition of certain aliens.


Pub. L. 108–7, §105(a)(2), which directed the amendment of Pub. L. 107–296, was executed to section 1102(2) of Pub. L. 107–296, to reflect the probable intent of Congress.

2002 Amendment notes—Subsec. (a) Pub. L. 107–296, §1102(2)(A), as added by Pub. L. 107–7, §105(a)(1), which directed the substitution of "Secretary of Homeland Security" for "Attorney General" in heading, was executed by inserting "Secretary of Homeland Security" as heading, to reflect the probable intent of Congress.


Subsec. (a)(8) to (11). Pub. L. 107–296, §1102(2)(D), formerly §1102(2)(B), as redesignated by Pub. L. 106–7, §105(a)(2), redesignated par. (8), relating to Attorney General authorization of State and local law enforcement officers in event of mass influx of aliens arriving, and par. (9), relating to Attorney General authority to support administrative detention of persons in non-Federal institutions, as pars. (10) and (11), respectively. See 2003 Amendment note above.

Subsec. (b). Pub. L. 107–296, §1102(3), added subsec. (g). 1996—Subsec. (a). Pub. L. 104–208, §73(b)(2), inserted "(1)" before first sentence and designated each sentence after the first sentence, which included second through ninth sentences, as a separate par., with appropriate consecutive numbering and initial indentation.

Pub. L. 104–208, §125, inserted at end "After consultation with the Secretary of State, the Attorney General may authorize officers of a foreign country to be stationed at preclearance facilities in the United States for the purpose of ensuring that persons traveling from or through the United States to that foreign country comply with that country's immigration and related laws. Those officers may exercise such authority and perform such duties as United States immigration officers are authorized to exercise and perform in that foreign country under reciprocal agreement, and they shall enjoy such reasonable privileges and immunities necessary for the performance of their duties as the government of their country extends to United States immigration officers."

Subsec. (a)(9). Pub. L. 104–208, §73(c), added at end par. (9) relating to Attorney General authorization of State and local law enforcement officers in event of mass influx of aliens arriving.

Subsec. (a)(9). Pub. L. 104–208, §73(h), added at end par. (9) relating to Attorney General authority to support administrative detention of persons in non-Federal institutions.

Subsec. (b). Pub. L. 104–208, §102(d)(1)(B), added subsec. (b), Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104–208, §73(b), inserted at end "The Commissioner may enter into cooperative agreements with State and local law enforcement agencies for the purpose of assisting in the enforcement of the immigration laws."

Pub. L. 104–208, §102(d)(1)(A), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104–208, §102(d)(1)(A), redesignated subsec. (c) as (d), Former subsec. (d) redesignated (e).

Subsec. (d)(2). Pub. L. 104–208, §308(e)(4), which directed amendment of subsec. (c)(2) by substituting "cancellation of removal" for "suspension of deportation", was executed by making the substitution in subsec. (d)(2) to reflect the probable intent of Congress and the redesignation of subsec. (c) as (d) by Pub. L. 104–208, §102(d)(1)(A). See above.

Pub. L. 104–208, §308(d)(4)(C), which directed amendment of subsec. (c)(2) by substituting "not been admitted or have been removed" for "been excluded or deported", was executed by making the substitution in subsec. (d)(2) to reflect the probable intent of Congress and the redesignation of subsec. (c) as (d) by Pub. L. 104–208, §102(d)(1)(A). See above.

Subsec. (e). Pub. L. 104–208, §102(d)(2), substituted "subsection (d)" for "subsection (c)" in par. (1).

Pub. L. 104–208, §102(d)(1)(A), redesignated subsec. (d) as (e).
 improvement of barriers at border


“(a) In general.—The Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States.

“(b) Construction of fencing and road improvements along the border.—

“(1) Additional fencing along southwest border.—

“(A) Reinforced fencing.—In carrying out subsection (a), the Secretary of Homeland Security shall construct reinforced fencing along not less than 700 miles of the southwest border where fencing would be most practical and effective and provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border.

“(B) Priority areas.—In carrying out this section [amending this section], the Secretary of Homeland Security shall—

“(i) identify the 370 miles, or other mileage determined by the Secretary, whose authority to determine other mileage shall expire on December 31, 2008, along the southwest border where fencing was most practical and effective in deterring smugglers and aliens attempting to gain illegal entry into the United States; and

“(ii) not later than December 31, 2008, complete construction of reinforced fencing along the miles identified under clause (i).

“(C) Consultation.—In carrying out this section, the Secretary of Homeland Security shall consult with the Secretary of the Interior, the Secretary of Agriculture, States, local governments, Indian tribes, and property owners in the United States to minimize the impact on the environment, culture, commerce, and quality of life for the communities and residents located near the sites at which such fencing is to be constructed.

“(D) Savings provision.—Nothing in this subparagraph may be construed to—

“(I) create or negate any right of action for a State, local government, or other person or entity affected by this subsection; or

“(II) affect the eminent domain laws of the United States or of any State.

“(D) Limitation on requirements.—Notwithstanding subparagraph (A), nothing in this paragraph shall require the Secretary of Homeland Security to install fencing, physical barriers, roads, lighting, cameras, and sensors in a particular location along an international border of the United States, if the Secretary determines that the use or placement of such resources is not the most appropriate means to achieve and maintain operational control over the international border at such location.

“(2) Prompt acquisition of necessary easements.—The Attorney General, acting under the authority conferred in section 103(b) of the Immigration and Nationality Act (8 U.S.C. 1103(b)) (as inserted by subsection (d)), shall promptly acquire such easements as may be necessary to carry out this subsection and shall commence construction of fences immediately following such acquisition (or conclusion of portions thereof).

“(3) Safety features.—The Attorney General, while constructing the additional fencing under this subsection, shall incorporate such safety features

improvement of barriers at border

amendment of homeland security (Mar. 1, 2003), see section 1801 of title 6, Domestic Security.


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

effective date of 2002 amendment


effective date of 1996 amendment

section 134(b) of div. C of Pub. L. 104–208 provided that: “The amendment made by subsection (a) [amending this section] shall take effect 90 days after the date of enactment of this Act [Sept. 30, 1996].”

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

effective date of 1990 amendment


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.

fingerprint cards

Pub. L. 105–119, title I, Nov. 26, 1997, 111 Stat. 2448, provided in part: “That beginning seven calendar days after the enactment of this Act [Nov. 26, 1997] and for each fiscal year thereafter, none of the funds appropriated or otherwise made available to the Immigration and Naturalization Service may be used by the Immigration and Naturalization Service to accept, for the purpose of conducting criminal background checks on applications for any benefit under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], any FD–258 fingerprint card which has been prepared or received from any individual or entity other than an office of the Immigration and Naturalization Service with the following exceptions: (1) State and local law enforcement agencies; and (2) United States consular offices at United States embassies and consulates abroad under the jurisdiction of the Department of State or United States military offices under the jurisdiction of the Department of Defense authorized to perform fingerprinting services to prepare FD–258 applicants residing abroad applying for immigration benefits”.

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into the design of the fence system as are necessary to ensure the well-being of border patrol agents deployed within or in near proximity to the system.

'(4) AUTHORIZATION OF APPROPRIATIONS. — There are authorized to be appropriated such sums as may be necessary to carry out this subsection. Amounts appropriated under this paragraph are authorized to remain available until expended.

'(c) WAIVER.—

'(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall have the authority to waive all legal requirements such Secretary, in such Secretary's sole discretion, determines necessary to ensure expeditious construction of the barriers and roads under this section [amending this section]. Any such decision by the Secretary shall be effective upon being published in the Federal Register.

'(2) FEDERAL COURT REVIEW.—The district courts of the United States shall have exclusive jurisdiction to hear all causes or claims arising from any action undertaken, or any decision made, by the Secretary of Homeland Security pursuant to paragraph (1). A cause of action or claim may only be brought alleging a violation of the Constitution of the United States. The court shall not have jurisdiction to hear any claim not specified in this subparagraph.

'(B) TIME FOR FILING OF COMPLAINT.—Any cause or claim brought pursuant to subparagraph (A) shall be filed not later than 60 days after the date of the action or decision made by the Secretary of Homeland Security. A claim shall be barred unless it is filed within the time specified.

'(C) ABILITY TO SEEK APPELLATE REVIEW.—An interlocutory or final judgment, decree, or order of the district court may be reviewed only upon petition for a writ of certiorari to the Supreme Court of the United States.

**IMPROVED BORDER EQUIPMENT AND TECHNOLOGY**

Section 103 of div. C of Pub. L. 104–208 provided that: "The Attorney General is authorized to acquire and use, for the purpose of detection, interdiction, and reduction of illegal immigration into the United States, any Federal equipment (including fixed wing aircraft, helicopters, four-wheel drive vehicles, sedans, night vision goggles, night vision scopes, and sensor units) determined available for transfer by any other agency of the Federal Government upon request of the Attorney General."

**HIRING AND TRAINING STANDARDS**

Section 106(a), (b) of div. C of Pub. L. 104–208 provided that:

'(a) REVIEW OF HIRING STANDARDS.—Not later than 60 days after the date of the enactment of this Act [Sept. 30, 1996], the Attorney General shall complete a review of all prescreening and hiring standards used by the Commissioner of Immigration and Naturalization, and, where necessary, revise such standards to ensure that they are consistent with relevant standards of professionalism.

'(b) CERTIFICATION.—At the conclusion of each of fiscal years 1997, 1998, 1999, 2000, and 2001, the Attorney General shall certify in writing to the Committees on the Judiciary of the House of Representatives and of the Senate that all personnel hired by the Commissioner of Immigration and Naturalization for such fiscal year were hired pursuant to the appropriate standards, as revised under subsection (a)."

**REPORT ON BORDER STRATEGY**

Section 107 of div. C of Pub. L. 104–208 provided that: "'(a) EVALUATION OF STRATEGY.—The Comptroller General of the United States shall track, monitor, and evaluate the Attorney General's strategy to deter illegal entry in the United States to determine the efficacy of such strategy.

'(b) COOPERATION.—The Attorney General, the Secretary of State, and the Secretary of Defense shall cooperate with the Comptroller General of the United States in carrying out subsection (a)."

'(c) REPORT.—Not later than one year after the date of the enactment of this Act [Sept. 30, 1996], and every year thereafter for the succeeding 5 years, the Comptroller General of the United States shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the results of the activities undertaken under subsection (a) during the previous year. Each such report shall include an analysis of the degree to which the Attorney General's strategy has been effective in reducing illegal entry. Each such report shall include a collection and systematic analysis of data, including workload indicators, related to activities to deter illegal entry and recommendations to improve and increase border security at the border and ports of entry."

**COMPENSATION FOR IMMIGRATION JUDGES**

Section 371(c) of div. C of Pub. L. 104–208 provided that:

'(1) IN GENERAL.—There shall be four levels of pay for immigration judges, under the Immigration Judge Schedule (designated as IJ–1, 2, 3, and 4, respectively), and each such judge shall be paid at one of those levels, in accordance with the provisions of this subsection.

'(2) RATES OF PAY.—

'(A) The rates of basic pay for the levels established under paragraph (1) shall be as follows:

<table>
<thead>
<tr>
<th>Level</th>
<th>Percentage of Next to Highest Rate of Basic Pay</th>
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</thead>
<tbody>
<tr>
<td>IJ–1</td>
<td>70%</td>
</tr>
<tr>
<td>IJ–2</td>
<td>80%</td>
</tr>
<tr>
<td>IJ–3</td>
<td>90%</td>
</tr>
<tr>
<td>IJ–4</td>
<td>95%</td>
</tr>
</tbody>
</table>

'(B) Locality pay, where applicable, shall be calculated into the basic pay for immigration judges.

'(3) APPOINTMENT.—

'(A) Upon appointment, an immigration judge shall be paid at IJ–1, and shall be advanced to IJ–2 upon completion of 104 weeks of service, to IJ–3 upon completion of 104 weeks of service in the next lower rate, and to IJ–4 upon completion of 52 weeks of service in the next lower rate.

'(B) Notwithstanding subparagraph (A), the Attorney General may provide for appointment of an immigration judge at an advanced rate under such circumstances as the Attorney General may determine appropriate.

'(4) TRANSITION.—Immigration judges serving as of the effective date shall be paid at the rate that corresponds to the amount of time, as provided in paragraph (3)(A), that they have served as an immigration judge, and in no case shall be paid less than the effective date than the rate of pay prior to the effective date."

[Schedule (designated as IJ–1, 2, 3, and 4, respectively), and each such judge shall be paid at one of those levels, in accordance with the provisions of this subsection.

Section 371(d)(2) of div. C of Pub. L. 104–208 provided that: "Subsection (c) [set out above] shall take effect 90 days after the date of the enactment of this Act [Sept. 30, 1996]."]

**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 im-

Immigration and Naturalization Service Personnel Enhancement

Pub. L. 100-690, title VII, §7350, Nov. 18, 1988, 102 Stat. 4723, 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 and 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. 12556, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5186 of Title 42, The Public Health and Welfare.

Ex. Ord. No. 13040. Task Force on New Americans

Ex. Ord. No. 13040, June 7, 2006, 71 F.R. 33593, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to strengthen the efforts of the Department of Homeland Security and Federal, State, and local agencies to help legal immigrants embrace the common core of American civic culture, learn our common language, and fully become Americans, it is hereby ordered as follows:

Section 1. Establishment. The Secretary of Homeland Security (Secretary) shall immediately establish within the Department of Homeland Security (Department) a Task Force on New Americans (Task Force).

Sec. 2. Membership and Operation. (a) The Task Force shall be limited to the following members or employees designated by them at no lower than the Assistant Secretary level or its equivalent:

(i) the Secretary of Homeland Security, who shall serve as Chair;

(ii) the Secretary of State;

(iii) the Secretary of the Treasury;

(iv) the Secretary of Defense;

(v) the Attorney General;

(vi) the Secretary of Agriculture;

(vii) the Secretary of Commerce;

(viii) the Secretary of Labor;

(ix) the Secretary of Health and Human Services;

(x) the Secretary of Housing and Urban Development;

(xi) the Secretary of Education;

(xii) such other officers or employees of the Department of Homeland Security as the Secretary may from time to time designate; and

(xiii) such other officers of the United States as the Secretary may designate from time to time, with the concurrence of the respective heads of departments and agencies concerned.

(b) The Secretary shall convene and preside at meetings of the Task Force, direct its work, and as appropriate, establish and direct subgroups of the Task Force that shall consist exclusively of Task Force members. The Secretary shall designate an official of the Department to serve as the Executive Secretary of the Task Force, and the Executive Secretary shall head the staff assigned to the Task Force.

Sec. 3. Functions. Consistent with applicable law, the Task Force shall:

(a) provide direction to executive departments and agencies (agencies) concerning the integration into American society of America’s legal immigrants, particularly through instruction in English, civics, and history;

(b) promote public-private partnerships that will encourage businesses to offer English and civics education to workers;

(c) identify ways to expand English and civics instruction for legal immigrants, including through faith-based, community, and other groups, and ways to promote volunteer community service; and

(d) make recommendations to the President, through the Secretary, from time to time regarding:

(i) actions to enhance cooperation among agencies on the integration of legal immigrants into American society;

(ii) actions to enhance cooperation among Federal, State, and local authorities responsible for the integration of legal immigrants;

(iii) changes in rules, regulations, or policy to improve the effective integration of legal immigrants into American society; and

(iv) proposed legislation relating to the integration of legal immigrants into American society.

Sec. 4. Administration. (a) To the extent permitted by law, the Department shall provide the funding and administrative support the Task Force needs to implement this order, as determined by the Secretary,
(b) Nothing in this order shall be construed to impair or otherwise affect:
   (i) authority granted by law to an agency or the head thereof; or
   (ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is intended to improve the internal management of the Federal Government. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity against the United States, its departments, agencies, entities, instrumentalities, officers, employees, agents, or any other person.

GEORGE W. BUSH.

§ 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.

GEORGE W. BUSH.
ant 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.


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 1994 Amendment

Amendment by Pub. L. 103–236 applicable with respect to officials, offices, and bureaus of Department of State when executive orders, regulations, or departmental directives implementing the amendments by sections 161 and 162 of Pub. L. 103–236 become effective, or 90 days after Apr. 30, 1994, whichever comes earlier, except to extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

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.

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.

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."

§1105. Liaison with internal security officers; data exchange

(a) In general

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 and border 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.

(b) Access to National Crime Information Center files

(1) The Attorney General and the Director of the Federal Bureau of Investigation shall provide the Department of State and the Service access to the criminal history record information contained in the National Crime Information Center’s Interstate Identification Index (NCIC-III), Wanted Persons File, and to any other files maintained by the National Crime Information Center that may be mutually agreed upon by the Attorney General and the agency receiving the access, for the purpose of determining whether or not a visa applicant or applicant for admission has a criminal history record indexed in any such file.

(2) Such access shall be provided by means of extracts of the records for placement in the automated visa lookout or other appropriate database, and shall be provided without any fee or charge.

(3) The Federal Bureau of Investigation shall provide periodic updates of the extracts at intervals mutually agreed upon with the agency receiving the access. Upon receipt of such updated extracts, the receiving agency shall make corresponding updates to its database and destroy previously provided extracts.

(4) Access to an extract does not entitle the Department of State to obtain the full content of the corresponding automated criminal history record. To obtain the full content of a criminal history record, the Department of State shall submit the applicant’s fingerprints and any appropriate fingerprint processing fee authorized by law to the Criminal Justice Information Services Division of the Federal Bureau of Investigation.

(c) Reconsideration upon development of more cost effective means of sharing information

The provision of the extracts described in subsection (b) of this section may be reconsidered by the Attorney General and the receiving agency upon the development and deployment of a more cost-effective and efficient means of sharing the information.

(d) Regulations

For purposes of administering this section, the Department of State shall, prior to receiving access to NCIC data but not later than 4 months after October 26, 2001, promulgate final regulations—

(1) to implement procedures for the taking of fingerprints; and

(2) to establish the conditions for the use of the information received from the Federal Bureau of Investigation, in order—
(A) to limit the redissemination of such information;
(B) to ensure that such information is used solely to determine whether or not to issue a visa to an alien or to admit an alien to the United States;
(C) to ensure the security, confidentiality, and destruction of such information; and
(D) to protect any privacy rights of individuals who are subjects of such information.


REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original, `this Act', meaning act June 27, 1952, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title.

AMENDMENTS

2001—Pub. L. 107–56 inserted `; data exchange' after `security officers' in section catchline, designated existing provisions as subsec. (a), inserted `and border' before `security of the United States', and added subsec. (b) to (d).

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.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–236 applicable with respect to officials, offices, and bureaus of Department of State when executive orders, regulations, or departmental directives implementing the amendments by sections 161 and 162 of Pub. L. 103–236 become effective, or 90 days after Apr. 30, 1994, whichever comes earlier, see section 161(b) of Pub. L. 103–236, as amended, set out as a note under section 2551a of Title 22, Foreign Relations and Intercourse.

STATUTORY CONSTRUCTION

Pub. L. 107–56, title IV, § 403(d), Oct. 26, 2001, 115 Stat. 344, provided that: `Not later than 2 years after the date of enactment of this Act [Oct. 26, 2001], the Attorney General and the Secretary of State jointly shall report to Congress on the implementation of the amendments made by this section [amending this section].'
to Committee, hearings and subpoena, 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 603(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**


§ 1107. Additional report

At the beginning and midpoint of each fiscal year, the Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and the Senate, a written report providing a description of internal affairs operations at U.S. Citizenship and Immigration Services, including the general state of such operations and a detailed description of investigations that are being conducted (or that were conducted during the previous six months) and the resources devoted to such investigations. The first such report shall be submitted not later than April 1, 2006.

(Pub. L. 109–177, title I, §109(c), Mar. 9, 2006, 120 Stat. 205.)

**Codification**

Section was enacted as part of the USA PATRIOT Improvement and Reauthorization Act of 2005, and not as part of the Immigration and Nationality Act which comprises this chapter.

**SUBCHAPTER II—IMMIGRATION**

**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; 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 or 1255a of this title.

(D) Aliens whose removal is canceled under section 1229b(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 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. For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 1154(a)(1)(A) of this title remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.

(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 sum of the number computed under paragraph (2) and the number computed under paragraph (4), 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(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 that 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.

(f) Rules for determining whether certain aliens are immediate relatives

(1) Age on petition filing date

Except as provided in paragraphs (2) and (3), for purposes of subsection (b)(2)(A)(i) of this section, a determination of whether an alien satisfies the age requirement in the matter preceding subparagraph (A) of section 1101(b)(1) of this title shall be made using the age of the alien on the date on which the petition is filed with the Attorney General under section 1154 of this title to classify the alien as an immediate relative under subsection (b)(2)(A)(i) of this section.

(2) Age on parent's naturalization date

In the case of a petition under section 1154 of this title initially filed for an alien child's classification as a family-sponsored immigrant under section 1153(a)(2)(A) of this title, based on the child's parent being lawfully admitted for permanent residence, if the petition is later converted, due to the naturalization of the parent, to a petition to classify the alien as an immediate relative under subsection (b)(2)(A)(i) of this section, the determination described in paragraph (1) shall be made using the age of the alien on the date of the parent's naturalization.

(3) Age on marriage termination date

In the case of a petition under section 1154 of this title initially filed for an alien's classification as a family-sponsored immigrant under section 1153(a)(3) of this title, based on the alien's being a married son or daughter of a citizen, if the petition is later converted, due to the legal termination of the alien's marriage, to a petition to classify the alien as an immediate relative under subsection (b)(2)(A)(i) of this section or as an unmarried son or daughter of a citizen under section 1153(a)(1) of this title, the determination described in paragraph (1) shall be made using the age of the alien on the date of the termination of the marriage.

(4) Application to self-petitions

Paragraphs (1) through (3) shall apply to self-petitioners and derivatives of self-petitioners.

(6) Rules for determining whether an alien is an immediate relative

**AMENDMENTS**

2009—Subsec. (b)(2)(A)(i). Pub. L. 111–83 struck out “for at least 2 years at the time of the citizen’s death” before “and was not legally separated” in second sentence.


2000—Subsec. (b)(2)(A)(i). Pub. L. 106–386 inserted at end “For purposes of this clause, an alien who has filed a petition under clause (ii) or (iv) of section 1154(a)(1)(A) of this title remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.”


Subsec. (b)(1)(D). Pub. L. 104–208, §308(g)(8)(A)(i), substituted “section 1229b(a)” for “section 1254(a)”.

Pub. L. 104–208, §308(e)(5), substituted “removal is canceled” for “deportation is suspended”, 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 101(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 asylum 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 population of national population of continental United States in 1920 attributable by national origin of 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 170,000 maximum on total annual immigration and 45,000 maximum on total quarterly immigration, and 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 2009 AMENDMENT**

Pub. L. 111–83, title V, §568(c)(2), Oct. 28, 2009, 123 Stat. 2186, provided that:

“(A) In General.—The amendment made by paragraph (1) [amending this section] shall apply to all applications and petitions relating to immediate relative status under section 201(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)) pending on or after the date of the enactment of this Act (Oct. 28, 2009).

“(B) Transition cases.—
“(i) In general.—Notwithstanding any other provision of law, an alien described in clause (ii) who seeks immediate relative status pursuant to the amendment made by paragraph (1) shall file a petition under section 204(a)(1)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)(ii)) not later than the date that is 2 years after the date of the enactment of this Act.

“(ii) Aliens described.—An alien is described in this clause if—

“(I) the alien’s United States citizen spouse died before the date of the enactment of this Act;

“(II) the alien and the citizen spouse were married for less than 2 years at the time of the citizen spouse’s death; and

“(III) the alien has not remarried.”

Effective Date of 2002 Amendment
Pub. L. 107–208, § 8, Aug. 6, 2002, 116 Stat. 930, provided that: "The amendments made by this Act [amending this section and sections 1153, 1154, 1157, and 1158 of this title] shall take effect on the date of the enactment of this section and sections 1153, 1154, 1157, and 1158 of this title."
a result of injury or disease incurred in or aggravated by combat, the alien shall be considered, for purposes of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)), to remain an immediate relative after the date of the citizen’s death (regardless of changes in age or marital status thereafter), but only if the alien files a petition under subparagraph (B) within 2 years after such date.

“(B) PETITIONS.—An alien described in subparagraph (A) may file a petition with the Secretary of Homeland Security for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). For purposes of such Act, such a petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

“(C) EXCEPTION.—Notwithstanding section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), for purposes of this paragraph, a citizen described in subparagraph (A) does not have to be 21 years of age for a parent to benefit under this paragraph.

“(b) APPLICATIONS FOR IMMEDIATE RELATIVES OF A VISIBLE PERSON.—Surviving Spouses, Children, and Parents.—

“(1) IN GENERAL.—Notwithstanding subsections (a) and (c) of section 245 of the Immigration and Nationality Act (8 U.S.C. 1255), any alien who was the spouse, child, or parent of an alien described in paragraph (2) and applied for adjustment of status prior to the death described in paragraph (2)(B), may have such application adjudicated as if such death had not occurred.

“(2) ALIEN DESCRIBED.—An alien is described in this paragraph if the alien—

“(A) served honorably in an active duty status in the military, air, or naval forces of the United States;

“(B) died as a result of injury or disease incurred in or aggravated by combat; and

“(C) was granted posthumous citizenship under section 329A of the Immigration and Nationality Act (8 U.S.C. 1440–1).

“(c) SPOUSES AND CHILDREN OF LAWFUL PERMANENT RESIDENT ALIENS.—

“(1) TREATMENT AS IMMEDIATE RELATIVES.—

“(A) IN GENERAL.—A spouse or child of an alien described in paragraph (2) who is included in a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)) that was filed by such alien, shall be considered (if the spouse or child has not been admitted or approved for lawful permanent residence by such date) a valid petitioner for immediate relative status under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). Such spouse or child shall be eligible for deferred action, advance parole, and work authorization.

“(B) PETITIONS.—An alien spouse or child described in subparagraph (A) may file a petition with the Secretary of Homeland Security for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). For purposes of such Act (8 U.S.C. 1151(e)) shall be reduced by 5,000 from the number of visas otherwise available under that section for such fiscal year.

“(2) In no case shall the reduction under paragraph (1) for a fiscal year exceed the amount by which—

“(A) one-half of the total number of individuals described in subclauses (I), (II), (III), and (IV) of section 309(c)(5)(C)(i) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Pub. L. 104–208, set out as a note under section 1001 of this title] who have adjusted their status to that of aliens lawfully admitted for permanent residence under the Nicaraguan Adjustment and Central American Relief Act [title II of Pub. L. 105–100, see Short Title note of 1997 amendments note set out under section 1101 of this title] as of the end of the previous fiscal year; exceeds

“(B) the total of the reductions in available visas under this subsection for all previous fiscal years.

“TRANSITION RELATING TO DEATH OF CITIZEN SPOUSE

SECTION 4 of Pub. L. 95–412, as amended by Pub. L. 96–388, § 21(e), Oct. 3, 1980, 94 Stat. 1368, amended section 1153(b) of this title to redesignate the obsolete "special immigrant" provisions as "lawful permanent resident alien" provisions.


SECTION 6 of Pub. L. 95–412, as amended by Pub. L. 96–388, § 21(g), Oct. 3, 1980, 94 Stat. 1368, added section 1153(e) of this title to redesignate the obsolete "special immigrant" provisions as "lawful permanent resident alien" provisions.


SECTION 8 of Pub. L. 95–412, as amended by Pub. L. 96–388, § 21(i), Oct. 3, 1980, 94 Stat. 1368, added section 1153(g) of this title to redesignate the obsolete "special immigrant" provisions as "lawful permanent resident alien" provisions.


SECTION 20 of Pub. L. 95–412, as amended by Pub. L. 96–388, § 21(u), Oct. 3, 1980, 94 Stat. 1368, added section 1153(s) of this title to redesignate the obsolete "special immigrant" provisions as "lawful permanent resident alien" provisions.


(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)(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 (i)).

(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)(A) 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)(A) 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)(B) 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 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)(A) 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.

(5) Rules for employment-based immigrants

(A) Employment-based immigrants not subject to per country limitation if additional visas available
If the total number of visas available under paragraph (1), (2), (3), (4), or (5) of section 1153(b) of this title for a calendar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas made available under that paragraph shall be issued without regard to the numerical limitation under paragraph (2) of this subsection during the remainder of the calendar quarter.

(B) Limiting fall across for certain countries subject to subsection (e) of this section
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(b) of this title exceeds the maximum number of visas that may be made available to immigrants of the state or area under section 1153(b) of this title consistent with subsection (e) of this section (determined without regard to this paragraph), in applying subsection (e) of this section all visas shall be deemed to have been required for the classes of aliens specified in section 1153(b) of this title.

(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 or under 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 sub-
section (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.

(e) 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 visas 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

(5) except as provided in subsection (a)(5) of this section, 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 1154(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.


References in Text

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

Amendments

2000—Subsec. (a)(2). Pub. L. 106–313, §104(b)(1), substituted "paragraphs (3), (4), and (5)" for "paragraphs (3) and (4)".


Subsec. (e)(3). Pub. L. 106–313, §104(b)(2), substituted "except as provided in subsection (a)(5) of this section, the proportion of the visa numbers" for "the proportion of the visa numbers".

1996—Subsec. (a)(1). Pub. L. 104–208 designated existing provisions as subpar. (A) and added subpar. (B).


1990—Subsec. (a). Pub. L. 101–449, §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. 101–449, §102(2), inserted heading and substituted reference to numerical level established under subsec. (a)(2) of this section for 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 subsection (a) of this section, to the hemisphere in which such alien or other component or dependent area shall not exceed 5,000 in any one fiscal year” after “to the foreign state”.


Subsec. (c). Pub. L. 100–525, § 9(f)(1), substituted “subsection (a)” for “subsection (2)” in original, which for purposes of codification had been translated as “subsection (a) of this section”.

Subsec. (f). 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 or to the hemisphere in which such alien or other component or dependent area shall not exceed 5,000 in any one fiscal year” after “to the foreign state”.

Subsec. (c). Pub. L. 99–653, § 8(c), amended subsec. (c) by substituting “subject, or, if” for “subject, or if” and “the foreign state” for “country, in” for “country then in”.


1981—Subsec. (a). Pub. L. 97–116, § 20(b), inserted provisions 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. (a). Pub. L. 96–212, § 203(b)(1), substituted “through (7)” for “through (6)”, 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 “(25)” for “(20)”, struck out par. (7) relating to availability of conditional entries, and redesignated par. (8) as (7) and struck out “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, or an immediate relative of a United States citizen, as defined in section 1151(b) of this title”.

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 specified 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 the limitations set forth in section 1151(a) of this title and 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 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”.


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 nationals of any 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 trustee-ship 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 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 territory 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 an overseas 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 arrange-
ments, 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, see section 310(a) of Pub. L. 102–232, set out as a note under section 1101 of this title.

**Effective Date of 1990 Amendment**

**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, see section 99–653, 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 29(a) of Pub. L. 99–653, set out as a note under section 1101 of this title.

Section 311(b) of Pub. L. 99–653 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**

**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).”

### §1153. Allocation of immigrant visas

**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 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

(i) National interest waiver

Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

(ii) Physicians working in shortage areas or veterans facilities

(I) In general

The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if—

(aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and

(bb) a Federal agency or a department of public health in any State has previously determined that the alien physician’s work in such an area or at such facility was in the public interest.

(II) Prohibition

No permanent resident visa may be issued to an alien physician described in subclause (I) by the Secretary of State
under section 1154(b) of this title, and the Attorney General may not adjust the status of such an alienphysician from that of a non-immigrant alien to that of a permanent resident alien under section 1255 of this title, until such time as the alien has worked full time as a physician for an aggregate of 5 years (not including the time served in the status of an alien described in section 1101(a)(15)(J) of this title), in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs.

(III) Statutory construction

Nothing in this subparagraph may be construed to prevent the filing of a petition with the Attorney General for classification under section 1154(a) of this title, or the filing of an application for adjustment of status under section 1255 of this title, by an alien physician described in subclause (I) prior to the date by which such alien physician has completed the service described in subclause (II).

(IV) Effective date

The requirements of this subsection do not affect waivers on behalf of alien physicians approved under subsection (b)(2)(B) of this section before the enactment date of this subsection. In the case of a physician for whom an application for a waiver was filed under subsection (b)(2)(B) of this section prior to November 1, 1998, the Attorney General shall grant a national interest waiver pursuant to subsection (b)(2)(B) of this section except that the alien is required to have worked full time as a physician for an aggregate of 3 years (not including time served in the status of an alien described in section 1101(a)(15)(J) of this title) before a visa can be issued to the alien under section 1154(b) of this title or the status of the alien is adjusted to permanent resident under section 1255 of this title.

(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)(ii).

(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, and not more than 100 may be made available in any fiscal year to special immigrants, excluding spouses and children, who are described in section 1101(a)(27)(M) 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 (including a limited partnership),

(i) 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

(ii) 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 invest in 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 1/2 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).

(D) Full-time employment defined

In this paragraph, the term "full-time employment" means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.

(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 1/2 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 1/2 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.
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(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 ½ 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 restate 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.

(h) Rules for determining whether certain aliens are children

(1) In general

For purposes of subsections (a)(2)(A) and (d) of this section, a determination of whether an alien satisfies the age requirement in the matter preceding subparagraph (A) of section 1101(b)(1) of this title shall be made using—

(A) the age of the alien on the date on which an immigrant visa number becomes available for such alien (or, in the case of subsection (d) of this section, the date on which an immigrant visa number became available for the alien’s parent), but only if the alien has sought to acquire the status of an alien lawfully admitted for permanent residence within one year of such availability; reduced by

(B) the number of days in the period during which the applicable petition described in paragraph (2) was pending.

(2) Petitions described

The petition described in this paragraph—

(A) with respect to a relationship described in subsection (a)(2)(A) of this section, a petition filed under section 1154 of this title for classification of an alien child under subsection (a)(2)(A) of this section; or

(B) with respect to an alien child who is a derivative beneficiary of an alien described in subsection (d) of this section, a petition filed under section 1154 of this title for classification of the alien’s parent under subsection (a), (b), or (c) of this section.

(3) Retention of priority date

If the age of an alien is determined under paragraph (1) to be 21 years of age or older for the purposes of subsections (a)(2)(A) and (d) of this section, the alien’s petition shall automatically be converted to the appropriate category and the alien shall retain the original priority date issued upon receipt of the original petition.

(4) Application to self-petitioners

Paragraphs (1) through (3) shall apply to self-petitioners and derivatives of self-petitioners.

References in Text

The enactment date of this subsection, referred to in subsec. (b)(2)(B)(ii)(IV), probably means the date of enactment of Pub. L. 106–95, which amended subsec. (b)(2)(B) of this section generally, and which was approved Nov. 12, 1999.

Amendments


Subsec. (b)(5)(A)(ii) to (iii). Pub. L. 107–273, §11036(a)(1)(B), (C), redesignated cls. (ii) and (iii) as (i)
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and (ii), respectively, and struck out former cl. (i) which read as follows: "which the alien has established."


2000—Subsec. (b)(4). Pub. L. 106–536 inserted before period at end "and not more than 100 may be made available in any fiscal year to special immigrants, excluding spouses and children, who are described in section 1101(a)(27)(M) of this title".

1999—Subsec. (b)(2)(B). Pub. L. 106–95 and Pub. L. 106–113 amended subpar. (B) generally in substantially identical manner. Pub. L. 106–95 provided headings. Text is based on Pub. L. 106–113. Prior to amendment, text read as follows: "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; and substituted "Targeted" and "targeted" for "Targeted" and "targeted", respectively, wherever appearing in headings and text.

Subsec. (b)(6)(C). Pub. L. 103–416, § 1219(c), substituted "Targeted" and "targeted" for "Targeted" and "targeted", respectively, wherever appearing in headings and text.

Subsec. (b)(6)(C). Pub. L. 103–416, § 1219(b), struck out subpar. (C) which related to application of separate numerical limitations.


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. (f). Pub. L. 102–232, § 302(c)(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, § 1112, added subsec. (a) and struck out former subsec. (a) which related to allocation of visas of aliens subject to section 1151(a) limitations.


Subsec. (b). Pub. L. 101–649, § 1111, 121(a), added subsec. (b) and redesignated former subsec. (b) as (d).

Subsec. (c). Pub. L. 101–649, § 1111, 131, added subsec. (c) and redesignated former subsec. (a) as (e).

Subsec. (d). Pub. L. 101–649, § 162(a), added subsec. (d) and struck out former subsec. (d) which related to order of consideration given applications for immigrant visas.


Subsec. (f). Pub. L. 101–649, § 162(b), added subsec. (e) and struck out former subsec. (e) which related to order of issuance of immigrant visas.

Subsec. (g). Pub. L. 101–649, § 1111, redesignated subsec. (c) as (e). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 101–649, § 162(a), added subsec. (f) which related to pre-
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 in 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 skilled or unskilled persons capable of filling labor shortages in the United States 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 anticipated 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).


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 2002 Amendments

Pub. L. 107–273, div. C, title I, §11086(c), Nov. 2, 2002, 116 Stat. 1947, provided that: “The amendments made by this section [amending this section and section 1166 of this title] shall take effect on the date of the enactment of this Act [Nov. 2, 2002] and shall apply to aliens having any of the following petitions pending on or after the date of the enactment of this Act:

“(1) a petition under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), with respect to status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)),

“(2) a petition under section 216A(c)(1)(A) of such Act (8 U.S.C. 1168c(c)(1)(A)) to remove the conditional basis of an alien’s permanent resident status.”


Effective Date of 2000 Amendment


Effective Date of 1994 Amendment


Effective Date of 1991 Amendments


Effective Date of 1990 Amendment


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 603(a)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Effective Date of 1980 Amendment


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 29 of Pub. L. 89–236, set out as a note under section 1151 of this title.

Abolition of Immigration and Naturalization Service and Transfer of Functions

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

GAO Study


“(a) In General.—Not later than 1 year after the date of enactment of this Act [Dec. 3, 2003], the Government Accountability Office shall report to Congress on the immigrant investor program created under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)).

“(b) Contents.—The report described in subsection (a) shall include information regarding—

“(1) the number of immigrant investors that have received visas under the immigrant investor program in each year since the inception of the program,

“(2) the country of origin of the immigrant investors;
“(3) the localities where the immigrant investors are settling and whether those investors generally remain in the localities where they initially settle;
“(4) the number of immigrant investors that have sought to become citizens of the United States;
“(5) the types of commercial enterprises that the immigrant investors have established; and
“(6) the types and number of jobs created by the immigrant investors.”

RECAPTURE OF UNUSED EMPLOYMENT-BASED IMMIGRANT VISAS

“(1) IN GENERAL.—Notwithstanding any other provision of law, the number of employment-based visas (as defined in paragraph (3)) made available for a fiscal year (beginning with fiscal year 2001) shall be increased by the number described in paragraph (2). Visas made available under this subsection shall only be available in a fiscal year to employment-based immigrants under paragraph (1), (2), or (3) of section 203(b) of the Immigration and Nationality Act [8 U.S.C. 1153(b)] and any such visa that is made available due to the difference between the number of employment-based visas that were made available in fiscal years 2001, 2002, 2003, or 2004 and the number of such visas that were actually used in such fiscal year shall be available only to employment-based immigrants (and their family members accompanying or following to join under section 203(d) of such Act [8 U.S.C. 1153(d)]) whose immigrant worker petitions were approved based on schedule A, as defined in section 656.5 of title 20, Code of Federal Regulations, as promulgated by the Secretary of Labor.
“(2) NUMBER AVAILABLE.—
“(A) IN GENERAL.—Subject to subparagraph (B), the number described in this paragraph is the difference between the number of employment-based visas that were made available in fiscal years 1999 through 2004 and the number of such visas that were actually used in such fiscal years.
“(B) REDUCTION.—The number described in subparagraph (A) shall be reduced, for each fiscal year after fiscal year 2001, by the cumulative number of immigrant visas actually used under paragraph (1) for previous fiscal years.
“(C) CONSTRUCTION.—Nothing in this subsection shall be construed as affecting the application of section 201(c)(3)(C) of the Immigration and Nationality Act [8 U.S.C. 1151(c)(3)(C)].

EMPLOYMENT-BASED VISAS DEFINED

For purposes of this subsection, the term ‘employment-based visa’ means an immigrant visa which is issued pursuant to section 203(b) of the Immigration and Nationality Act [8 U.S.C. 1153(b)]."

TEMPORARY REDUCTION IN WORKERS’ VISAS

“(1) IN GENERAL.—The Attorney General, in consultation with the Secretary of State, shall include among the aliens selected for diversity immigrant visas for fiscal year 1997 pursuant to section 203(c) of the Immigration and Nationality Act [8 U.S.C. 1153(c)] any alien who, on or before September 30, 1995—
“(A) was admitted as an alien lawfully admitted for permanent residence prior to or on the date of the enactment of this Act [Nov. 19, 1997];
“(B) did not become an alien lawfully admitted for permanent residence during fiscal year 1995;
“(C) was admitted as an alien lawfully admitted for permanent residence during fiscal year 1995 under section 203(c) of the Immigration and Nationality Act [8 U.S.C. 1153(c)]; and
“(D) was selected pursuant to section 203(c) of the Immigration and Nationality Act [8 U.S.C. 1153(c)] by random selection procedures by the Secretary of State by October 1, 1995.

“(2) REDUCTION.—The number of diversity immigrant visas described in paragraph (1) shall be reduced by the number computed under subsection (d)(2)(A) [section 203(d)(2)(A) of Pub. L. 105-100, 8 U.S.C. 1151 note];

“(3) ELIGIBILITY FOR VISAS FOR POLISH APPLICANTS FOR 1995 DIVERSITY IMMIGRANT PROGRAM

Pub. L. 104-208, div. C, title VI, §637, Sept. 30, 1996, 110 Stat. 3009-701, provided that: ‘‘(a) IN GENERAL.—The Attorney General, in consultation with the Secretary of State, shall include among the aliens selected for diversity immigrant visas for fiscal year 1997 pursuant to section 203(c) of the Immigration and Nationality Act [8 U.S.C. 1153(c)] any alien who, on or before September 30, 1995—

“(A) was selected as a diversity immigrant under such section for fiscal year 1995;

“(B) was not an alien who was selected as a diversity immigrant under subsection (a) of section 203 of the Immigration and Nationality Act [8 U.S.C. 1153(c)] for fiscal year 1996; and

“(C) was not an alien who was selected as a diversity immigrant under subsection (a) of section 203 of the Immigration and Nationality Act [8 U.S.C. 1153(c)] for fiscal year 1997.

“(b) ELIGIBILITY.—The aliens selected under subsection (a) shall be eligible for visas for fiscal year 1997 pursuant to section 203(c) of the Immigration and Nationality Act [8 U.S.C. 1153(c)].’’

SOVIET SCIENTISTS IMMIGRATION

Pub. L. 107-228, div. B, title XIII, §1304(d), Sept. 30, 2002, 116 Stat. 1437, provided that: ‘‘The Attorney General shall consult with the Secretary, the Secretary of Defense, the Secretary of Energy, and the heads of other appropriate agencies of the United States regarding—

“(1) previous experience in implementing the Soviet Scientists Immigration Act of 1992 [Pub. L. 102-509 set out below]; and

“(2) any changes that those officials would recommend in the regulations prescribed under that Act.’’

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 '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. A scientist is not eligible for designation under this subsection if the scientist has previously been granted the status of an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

(b) Regulations. —The Attorney General shall prescribe regulations to carry out subsection (a).

(c) Limitation. —Not more than 950 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 admitted under section 203(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(A)).

(d) Duration of Authority. —The authority under subsection (a) shall be in effect during the following periods:

(1) The period beginning on the date of the enactment of this Act (Oct. 24, 1992) and ending 4 years after such date.

(2) The period beginning on the date of the enactment of the Security Assistance Act of 2002 (Sept. 30, 2002) and ending 4 years after such date.

PILOT IMMIGRATION PROGRAM


(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 Secretary of Homeland Security, shall set aside visas for the purpose of implementing the provisions of section 203(b)(5) of such Act. Such pilot program shall involve a regional center in the United States designated by the Secretary of Homeland Security on the basis of a general proposal, for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.

(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 Secretary of Homeland Security, shall set aside 3,000 visas annually until September 30, 2012 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 who 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)(i)(II)(iii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(i)(II)(iii)), and notwithstanding the requirements of 8 CFR 204.6, the Secretary of Homeland Security shall permit aliens admitted under the pilot program described 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, improved regional productivity, job creation, or increased domestic capital investment resulting from the pilot program.

(d) In processing petitions under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154a(a)(1)(H)) for classification under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), the Secretary of Homeland Security may give priority to petitions filed by aliens seeking admission under the pilot program described in this section. Notwithstanding section 203(e) of such Act (8 U.S.C. 1153(e)), immigrant visas made available under such section 203(b)(5) may be issued to such aliens in an order that takes into account any priority accorded under the preceding sentence.''


(1) any proposal for a regional center pending before the Attorney General (whether for an initial decision or on appeal) on or after the date of the enactment of this Act; and

(2) any of the following petitions, if filed on or after the date of the enactment of this Act:

(A) A petition under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154a(a)(1)(H)) (or any predecessor provision) (or any predecessor provision) (or any predecessor provision), with respect to status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)),

(B) A petition under section 216A(c)(1)(A) of such Act (8 U.S.C. 1156a(c)(1)(A)) (or any predecessor provision) (or any predecessor provision) (or any predecessor provision) (or any predecessor provision) (or any predecessor provision) (or any predecessor provision) (or any predecessor provision), to prove the professional and educational background of an alien's permanent resident status.'
(Section 116(b) of Pub. L. 105–119 provided that: "The amendment made by subsection (a)(2) [amending section 610 of Pub. L. 102–385, set out above] shall be deemed to have become effective on October 6, 1992.")

**Transition for Spouses and Minor Children of Legalized Aliens**


"(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)(2) 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 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 255A of the Immigration and Nationality Act [8 U.S.C. 1255a], or


"(d) Definitions.—In this section:

"(1) Aliens.—The terms 'aliens' and 'aliens lawfully admitted for permanent residence,' as defined in section 101(a)(13) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(13)], shall apply in the administration of this section.

"(2) Employment.—The term ‘employment’ has the meaning given such term in section 101(a)(2) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(2)].

"(3) Employment.—In this section:

"(A) The term 'aliens lawfully admitted for permanent residence' includes aliens who—

"(i) have been lawfully admitted for permanent residence (as defined in section 101(a)(13) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(13)]) in the United States, and (ii) have been employed in the United States, and (iii) have a good moral character.

"(B) The term 'aliens lawfully admitted for permanent residence' includes aliens who—

"(i) have been lawfully admitted for permanent residence (as defined in section 101(a)(13) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(13)]) in the United States, and (ii) have been employed in the United States, and (iii) have a good moral character.

"(C) The term 'aliens lawfully admitted for permanent residence' includes aliens who—

"(i) have been lawfully admitted for permanent residence (as defined in section 101(a)(13) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(13)]) in the United States, and (ii) have been employed in the United States, and (iii) have a good moral character.

"(D) The term 'aliens lawfully admitted for permanent residence' includes aliens who—

"(i) have been lawfully admitted for permanent residence (as defined in section 101(a)(13) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(13)]) in the United States, and (ii) have been employed in the United States, and (iii) have a good moral character.

"(3) Employment.—In this section:

"(1) Employment.—The term ‘employment’ has the meaning given such term in section 101(a)(2) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(2)].

"(2) Employment.—In this section:

"(A) The term 'aliens lawfully admitted for permanent residence' includes aliens who—

"(i) have been lawfully admitted for permanent residence (as defined in section 101(a)(13) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(13)]) in the United States, and (ii) have been employed in the United States, and (iii) have a good moral character.

"(B) The term 'aliens lawfully admitted for permanent residence' includes aliens who—

"(i) have been lawfully admitted for permanent residence (as defined in section 101(a)(13) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(13)]) in the United States, and (ii) have been employed in the United States, and (iii) have a good moral character.

"(C) The term 'aliens lawfully admitted for permanent residence' includes aliens who—

"(i) have been lawfully admitted for permanent residence (as defined in section 101(a)(13) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(13)]) in the United States, and (ii) have been employed in the United States, and (iii) have a good moral character.

"(D) The term 'aliens lawfully admitted for permanent residence' includes aliens who—

"(i) have been lawfully admitted for permanent residence (as defined in section 101(a)(13) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(13)]) in the United States, and (ii) have been employed in the United States, and (iii) have a good moral character.

"(4) Employment.—In this section:

"(1) Employment.—The term ‘employment’ has the meaning given such term in section 101(a)(2) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(2)].

"(2) Employment.—In this section:

"(A) The term 'aliens lawfully admitted for permanent residence' includes aliens who—

"(i) have been lawfully admitted for permanent residence (as defined in section 101(a)(13) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(13)]) in the United States, and (ii) have been employed in the United States, and (iii) have a good moral character.

"(B) The term 'aliens lawfully admitted for permanent residence' includes aliens who—

"(i) have been lawfully admitted for permanent residence (as defined in section 101(a)(13) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(13)]) in the United States, and (ii) have been employed in the United States, and (iii) have a good moral character.

"(C) The term 'aliens lawfully admitted for permanent residence' includes aliens who—

"(i) have been lawfully admitted for permanent residence (as defined in section 101(a)(13) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(13)]) in the United States, and (ii) have been employed in the United States, and (iii) have a good moral character.

"(D) The term 'aliens lawfully admitted for permanent residence' includes aliens who—

"(i) have been lawfully admitted for permanent residence (as defined in section 101(a)(13) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(13)]) in the United States, and (ii) have been employed in the United States, and (iii) have a good moral character.
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 312(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.


"(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 made available (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 not use the ground of exclusion specified in section 212(a)(6)(C) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(6)(C)], 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.

"(g) DETERMINATION.—The amendment made by this section to section 132(b)(1) of Pub. L. 101–649, set out above, is effective after fiscal year 1992.

"(h) DETERMINATION.—The amendment made by this 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 1151 and 1152 of this title, there were to be made available (but not made available under this section) 1,000 immigrant visas for qualified immigrants who were notified by Secretary of State before May 1, 1990, of their selection for issuance of visa under section 314 of Pub. L. 101–649, for fiscal year 1991, immigrant visa numbers for qualified immigrants who were notified by Secretary of State before May 1, 1990, of their selection for issuance of visa under section 314 of Pub. L. 101–649, for fiscal year 1991, and were qualified for issuance of such visa but for numerical and fiscal year limitations on issuance of such visas, former section 1182(a)(19) of this title or section 1182(e) of this title, or fact that immigrant was a national, but not a native, of foreign state described in section 314 of Pub. L. 101–649.

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, notwithstanding the numerical limitations in sections 1151 and 1152 of this title, there were to be made available to qualified displaced Tibetans who were natives of Tibet and had been continuously residing in India or Nepal since Nov. 29, 1990, 1,000 immigrant visas in the 5-fiscal-year period beginning with fiscal year 1991.

EXPEDITED ISSUANCE OF LEBANESE SECOND AND FIFTH PREFERENCE VISAS

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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 [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.


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


NONQUOTA IMMIGRANT STATUS OF SKILLED SPECIALISTS; ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS FILED PRIOR TO APRIL 1, 1962

ISSUANCE OF NONQUOTA IMMIGRANT VISAS TO CERTAIN ELIGIBLE ORPHANS


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. 689, 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 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 12A of Pub. L. 85–316 effective upon expiration of the one hundred and eighthieth 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 eighthieth 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 eighthieth 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 eighthieth 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.

§ 1154. Procedure for granting immigrant status

(a) Petitioning procedure

(1)(A)(i) Except as provided in clause (viii), 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)(I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien’s spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien—

(aa)(AA) who is the spouse of a citizen of the United States;

(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and—

aaa whose spouse died within the past 2 years;

bbb whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or

ccc who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title or who would have been so classi-
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fied but for the bigamy of the citizen of the United States that the alien intended to marry; and

(DD) who has resided with the alien’s spouse or intended spouse.

(iv) An alien who is the child of a citizen of the United States, or who was a child of a United States citizen parent who within the past 2 years lost or renounced citizenship status related to an incident of domestic violence, and 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 resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien’s citizen parent. For purposes of this clause, residence includes any period of visitation.

(v) An alien who—

(I) is the spouse, intended spouse, or child living abroad of a citizen whose marriage or relationship has been terminated but for the bigamy of the citizen of the United States; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien’s spouse or intended spouse.

(vi) For the purposes of any petition filed under clause (ii) or (iv), the denaturalization, loss or renunciation of citizenship, death of the abuser, divorce, or changes to the abuser’s citizenship status after filing of the petition shall not adversely affect the approval of the petition, and for approved petitions shall not preclude the classification of the eligible self-petitioning spouse or child as an immediate relative or eligible to be classified under section 1153(a)(2) of this title after filing of the petition.

(vii) An alien may file a petition with the Secretary of Homeland Security under this subparagraph for classification of the alien under section 1151(b)(2)(A)(i) of this title if the alien—

(I) is the parent of a citizen of the United States or was a parent of a citizen of the United States who, within the past 2 years, lost or renounced citizenship status related to an incident of domestic violence or died;

(II) is a person of good moral character;

(III) is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title;

(IV) resides, or has resided, with the citizen daughter or son; and

(V) demonstrates that the alien has been battered or subject to extreme cruelty by the citizen daughter or son.

(viii) Clause (i) shall not apply to a citizen of the United States who has been convicted of a specified offense against a minor, unless the Secretary of Homeland Security, in the Secretary’s sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition described in clause (i) is filed.

(II) For purposes of subclause (I), the term ‘‘specified offense against a minor’’ is defined as in section 16911 of title 42.

(B)(i) Except as provided in subclause (II), 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.

(1) Subclause (I) shall not apply in the case of an alien lawfully admitted for permanent residence who has been convicted of a specified offense against a minor (as defined in subparagraph (A)(viii)(II)), unless the Secretary of Homeland Security, in the Secretary’s sole and unreviewable discretion, determines that such person poses no risk to the alien with respect to whom a petition described in subclause (I) is filed.

(II) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if such a child has not been classified under clause (iii) of section 1153(a)(2)(A) of this title and if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the lawful permanent resident was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien’s spouse or intended spouse.

(III) For purposes of subclause (I), an alien described in this paragraph is an alien—

(aa)(AA) who is the spouse of a lawful permanent resident of the United States; or

(bb) who believed that he or she had married a lawful permanent resident of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fide of a marriage, but whose marriage is not legitimate solely because of the bigamy of such lawful permanent resident of the United States; or

(cc) who was a bona fide spouse of a lawful permanent resident within the past 2 years and—

(aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence; or

(bb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse;
(bb) who is a person of good moral character;  
(cc) who is eligible to be classified as a  
spouse of an alien lawfully admitted for  
permanent residence under section 1153(a)(2)(A) of  
this title or who would have been so classified  
but for the bighamy of the lawful permanent  
resident of the United States that the alien inten-  
ted to marry; and  
(dd) who has resided with the alien’s spouse  
or intended spouse.  

(iii) An alien who is the child of an alien law-  
fully admitted for permanent residence, or who  
was the child of a lawful permanent resident  
who within the past 2 years lost lawful perma-  
nent resident status due to an incident of do-  
mestic violence, and who is a person of good  
moral character, who is eligible for classifica-  
tion under section 1153(a)(2)(A) of this title, and  
who resides, or has resided in the past, with  
the alien’s permanent resident alien parent may file  
a petition with the Attorney General under this  
subparagraph for classification of the alien (and  
any child of the alien) under such section if the  
alien demonstrates to the Attorney General that  
the alien has been battered by or has been  
subjected to extreme cruelty perpetrated by the  
alien’s permanent resident parent.  

(iv) An alien who—  
(I) is the spouse, intended spouse, or child  
living abroad of a lawful permanent resident  
who—  
(aa) is an employee of the United States  
Government;  
(bb) is a member of the uniformed services  
(as defined in section 101(a) of title 10); or  
(cc) has subjected the alien or the alien’s  
child to battery or extreme cruelty in the  
United States; and  
(II) is eligible to file a petition under clause  
(ii) or (iii),  
shall file such petition with the Attorney Gen-  
eral under the procedures that apply to self-pet-  
tioners under clause (ii) or (iii), as applicable.  

(v) For the purposes of any petition filed or  
approved under clause (ii) or (iii), divorce, or the  
loss of lawful permanent resident status by a  
spouse or parent after the filing of a petition  
under that clause shall not adversely affect ap-  
proval of the petition, and, for an approved peti-  
tion, shall not affect the alien’s ability to adjust  
status under subsections (a) and (c) of section  
1255 of this title or obtain status as a lawful per-  
mament resident based on an approved self-pet-  
tion under clause (i) or (ii).  

(II) Upon the lawful permanent resident  
spouse or parent becoming or establishing the  
existence of United States citizenship through  
naturalization, acquisition of citizenship, or  
other means, any petition filed with the Immi-  
gration and Naturalization Service and pending  
or approved under clause (ii) or (iii) on behalf of  
an alien who has been battered or subjected to  
extreme cruelty shall be deemed reclassified as  
a petition filed under subparagraph (A) even if  
the acquisition of citizenship occurs after di-  
vorce or termination of parental rights.  

(C) Notwithstanding section 1101(f) of this  
title, an act or conviction that is waivable with  
respect to the petitioner for purposes of a deter-  
mination of the petitioner’s admissibility under  
section 1182(a) of this title or deportability  
under section 1227(a) of this title shall not bar  
the Attorney General from finding the peti-  
tioner to be of good moral character under sub-  
paragraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) if  
the Attorney General finds that the act or con-  
viction was connected to the alien’s having been  
battered or subjected to extreme cruelty.  

(D)(i)(I) Any child who attains 21 years of age  
who has filed a petition under clause (iv) of sub-  
section (a)(1)(A) of this section or subsection  
(a)(1)(B)(iii) of this section that was filed or ap-  
proved before the date on which the child attai- 

ned 21 years of age shall be considered (if the  
child has not been admitted or approved for law- 
ful permanent residence by the date the child  
attained 21 years of age) a petitioner for pref- 

erence status under paragraph (I), (II), or (III)  
of section 1153(a) of this title, whichever paragraph  
is applicable, with the same priority date as- 

signed to the self-petition filed under clause (iv)  
of subsection (a)(1)(A) of this section or sub- 
section (a)(1)(B)(iii) of this section. No new peti- 
tion shall be required to be filed.  

(II) Any individual described in subclause (I) is  
eligible for deferred action and work authoriza- 
tion.  

(III) Any derivative child who attains 21 years  
of age who is included in a petition described in  
clause (ii) that was filed or approved before the  
date on which the child attained 21 years of age  
shall be considered (if the child has not been ad- 
mitted or approved for lawful permanent resi- 
dence by the date the child attained 21 years of  
age) a VAWA self-petitioner with the same prior- 
ty date as that assigned to the petitioner in  
any petition described in clause (ii). No new peti- 
tion shall be required to be filed.  

(IV) Any individual described in subclause (III)  
and any derivative child of a petition described  
in clause (ii) is eligible for deferred action and  
work authorization.
filing a petition under subparagraph (A)(iv) or (B)(iii).

(E) 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.

(F) 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.

(G)(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.

(H) 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.

(I)(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) 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.

(J) 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.

(K) The Secretary of State shall prescribe such regulations as may be necessary to carry out this clause.

(L) Notwithstanding the previous provisions of this paragraph, an individual who was a VAWA petitioner or who had the status of a nonimmigrant under subparagraph (T) or (U) of section 1101(a)(15) of this title may not file a petition for classification under this section or section 1184 of this title to classify any person who committed the battery or extreme cruelty or trafficking against the individual (or the individual’s child) which established the individual’s eligibility as a VAWA petitioner or for such nonimmigrant status.

(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 eligible 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

8So in original. Probably should be “child’s.”
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

(1) Notwithstanding the provisions of subsections (a) and (b) of this section no petition may be approved on behalf of a child defined in subparagraph (F) or (G) of section 1101(b)(1) 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, by an appropriate public or private adoption agency which is licensed in the United States.

(2) 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)(G) of this title unless the Secretary of State has certified that the central authority of the child’s country of origin has notified the United States central authority under the convention referred to in such section 1101(b)(1)(G) of this title that a United States citizen habitually resident in the United States has effected final adoption of the child, or has been granted custody of the child for the purpose of emigration and adoption, in accordance with such convention and the Intercountry Adoption Act of 2000 [42 U.S.C. 14901 et seq.].

(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 be admitted to 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 1153(a)(1), or 1153(a)(2) 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 subparagraph (4)(A) and (B) of subsection (a), (b), or (c) of section 1153 of this title or as an immediate relative under section 1151(b)(1) of this title.

(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 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, and 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, whatever 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 percent 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)(B)(ii) of this section or a petition filed under subsection (a)(1)(B)(i) of this section pursuant to conditions described in subsection (a)(1)(A)(ii)(I) of this section. Remarriage of an alien whose petition was approved under subsection (a)(1)(B)(ii) or (a)(1)(A)(ii) of this section or marriage of an alien described in clause (iv) or (vi) of subsection (a)(1)(A) of this section or in subsection (a)(1)(B)(iii) of this section shall not be the basis for revocation of a petition approval under section 1155 of this title.

(i) Professional athletes

(1) In general

A petition under subsection (a)(4)(D) of this section for classification of a professional athlete shall remain valid for the athlete after the athlete changes employers, if the new employer is a team in the same sport as the team which was the employer who filed the petition.

(2) “Professional athlete” defined

For purposes of paragraph (1), the term “professional athlete” means an individual who is employed as an athlete by—

(A) a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed $10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(B) any minor league team that is affiliated with such an association.

(j) Job flexibility for long delayed applicants for adjustment of status to permanent residence

A petition under subsection (a)(1)(D) of this section for an individual whose application for adjustment of status pursuant to section 1255 of this title has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed.

(k) Procedures for unmarried sons and daughters of citizens

(1) In general

Except as provided in paragraph (2), in the case of a petition under this section initially filed for an alien unmarried son or daughter’s classification as a family-sponsored immigrant under section 1153(a)(2)(B) of this title, based on a parent of the son or daughter being an alien lawfully admitted for permanent residence, if such parent subsequently becomes a naturalized citizen of the United States, such petition shall be converted to a petition to classify the unmarried son or daughter as a family-sponsored immigrant under section 1153(a)(1) of this title.

(2) Exception

Paragraph (1) does not apply if the son or daughter files with the Attorney General a written statement that he or she elects not to have such conversion occur (or if it has occurred, to have such conversion revoked). Where such an election has been made, any determination with respect to the son or daughter’s eligibility for admission as a family-sponsored immigrant shall be made as if such naturalization had not taken place.

(3) Priority date

Regardless of whether a petition is converted under this subsection or not, if an unmarried son or daughter described in this subsection was assigned a priority date with respect to such petition before such naturalization, he or she may maintain that priority date.

(4) Clarification

This subsection shall apply to a petition if it is properly filed, regardless of whether it was approved or not before such naturalization.

(l) Surviving relative consideration for certain petitions and applications

(1) In general

An alien described in paragraph (2) who resided in the United States at the time of the death of the qualifying relative and who continues to reside in the United States shall have such petition described in paragraph (2), or an application for adjustment of status to that of a person admitted for lawful permanent residence based upon the family relationship described in paragraph (2), and any related applications, adjudicated notwithstanding the death of the qualifying relative, unless the Secretary of Homeland Security determines, in the unreviewable discretion of the Secretary, that approval would not be in the public interest.

(2) Alien described

An alien described in this paragraph is an alien who, immediately prior to the death of his or her qualifying relative, was—

(A) the beneficiary of a pending or approved petition for classification as an immediate relative (as described in section 1151(b)(2)(A)(i) of this title);

(B) the beneficiary of a pending or approved petition for classification under section 1151(b)(2)(D) of this title;
(C) a derivative beneficiary of a pending or approved petition for classification under section 1153(b) of this title (as described in section 1153(d) of this title);

(D) the beneficiary of a pending or approved refugee/asylee relative petition under section 1157 or 1158 of this title;

(E) an alien admitted in “T” non-immigrant status as described in section 1101(a)(15)(T)(ii) of this title or in “U” non-immigrant status as described in section 1101(a)(15)(U)(ii) of this title; or

(F) an asylee (as described in section 1158(b)(3)) of this title.


REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1)(A)(ii) and (B)(ii) of this section, was added by Pub. L. 111–83, 123 Stat. 2187.


AMENDMENTS


2000—Subsec. (a)(1)(A)(iii). Pub. L. 106–386, § 1503(b)(1)(A), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “An alien who is the spouse of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative under section 1153(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 removal, in the opinion of the Attorney General, would result in extreme hardship to the alien or a child of the alien.”

Subsec. (a)(1)(A)(iv). Pub. L. 106–386, § 1503(b)(2), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: “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 1153(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 parent; and

“(ii) the alien is a person whose removal, in the opinion of the Attorney General, would result in extreme hardship to the alien.”


read as follows: “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.”

Subsec. (a)(1)(B)(iii). Pub. L. 106–386, § 1503(c)(2), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “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 parent alien 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 removal, in the opinion of the Attorney General, would result in extreme hardship to the alien.”


Subsec. (a)(1)(C) to (I). Pub. L. 106–386, § 1505(d)(1), (2), added subpars. (C) and (D) and redesignated former subpars. (C) to (G) as (E) to (I), respectively. Former subpar. (H) redesignated (J).

Subsec. (a)(1)(J). Pub. L. 106–386, § 1503(d)(1), (3), redesignated subpar. (H) as (J) and inserted “or in making determinations under subparagraphs (C) and (D),” after “subparagraph (B),”.

Subsec. (d). Pub. L. 106–279 redesignated existing provisions as par. (1), substituted “subparagraph (F) or (G) of section 1101(b)(1)” for “section 1101(b)(1)(F)”, and added par. (2).

Subsec. (h). Pub. L. 106–386, § 1507(b), inserted at end “Remarriage of an alien whose petition was approved under subsection (a)(1)(B)(ii) or (a)(1)(A)(iii) of this section or marriage of an alien described in clause (iv) or (v) of subsection (a)(1)(A) of this section or in subsection (a)(1)(B)(iii) of this section shall not be the basis for revocation of a petition approval under section 1155 of this title.”


Subsec. (a)(1)(B). Pub. L. 104–208, § 1624(b), added subsec. (B). Subsec. (c)(2). Pub. L. 103–322, § 4070(a), in subpar. (A), redesignated first sentence as cl. (i) and second sentence as cl. (ii) and added clss. (iii) and (iv), in subpar. (B), designated existing provisions as cl. (i) and added clss. (ii) and (iii), and added subpar. (H).

Subsec. (d). Pub. L. 97–116, §3, redesignated subsec. (e) as (d). Former subsec. (d), directing that the Attorney General forward to 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.


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 preferences stating the basis for his approval and the facts pertinent in establishing qualifications for preferential status.

Subsec. (c). Pub. L. 95–417, §2, struck out "...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.


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.


EFFECTIVE DATE OF 2000 AMENDMENT


EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENTS


EFFECTIVE DATE OF 1991 AMENDMENT


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 1151 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 before, on, or after the date of the enactment of this Act [Nov. 10, 1986]."

EFFECTIVE DATE OF 1981 AMENDMENT


EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–371 effective on first day of first month which begins more than sixty days after Oct. 20, 1976, see section 10 of Pub. L. 94–371, 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.

CONSTRUCTION OF 2009 AMENDMENT

Pub. L. 111–83, title V, § 568(d)(2), Oct. 28, 2009, 123 Stat. 2387, provided that: "Nothing in the amendment made by paragraph (1) [amending this section] may be construed to limit or waive any ground of removal, basis for denial of petition or application, or other criteria for adjudicating petitions or applications as otherwise provided under the immigration laws of the
United States other than ineligibility based solely on the lack of a qualifying family relationship as specifically provided by such amendment.’”

**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.

**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.

**§ 1155. Revocation of approval of petitions; effective date**

The Secretary of Homeland Security 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.


**Amendments**

2004—Pub. L. 108–458 substituted “Secretary of Homeland Security” for “Attorney General” and struck out at end “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, the beneficiary applies for admission to the United States, and the beneficiary applies for admission to the United States. If notice of revocation is not so given, the beneficiary applies for admission to the United States, and the beneficiary applies for admission to the United States, the admissibility shall be determined in the manner provided for by sections 1225 and 1229a of this title.”

1996—Pub. L. 104–208 substituted “1229a” for “1226”.

1965—Pub. L. 89–236 struck out entire section which had set out, in subsec. (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 the approval of petitions for good and sufficient cause.

1961—Subsec. (b). Pub. L. 87–301, §3(a), provided that no petition for quota immigrant 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)(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. 89–893, §9(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.

**Effective Date of 2004 Amendment**

Pub. L. 108–458, title V, §5304(d), Dec. 17, 2004, 118 Stat. 3736, provided that: “The amendments made by this section [amending this section and sections 1201 and 1227 of this title] shall take effect on the date of enactment of this Act [Dec. 17, 2004] and shall apply to revocations under sections 205 and 221(i) of the Immigration and Nationality Act (8 U.S.C. 1155, 1221(i)) made before, on, or after such date.”

**Effective Date of 1996 Amendment**

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

**Effective Date of 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.

**§ 1156. Unused immigrant visas**

If an immigrant having an immigrant visa is denied admission to the United States and removed, 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.


**Amendments**

1996—Pub. L. 104–208 substituted “denied admission to the United States and removed” for “excluded from admission to the United States and deported”.

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 1996 Amendment**

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

(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) 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.

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

(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 commit-
tees 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 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 estimated 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.

(f) Training

(1) The Attorney General, in consultation with the Secretary of State, shall provide all United States officials adjudicating refugee cases under this section with the same training as that provided to officers adjudicating asylum cases under section 1158 of this title.

(2) Such training shall include country-specific conditions, instruction on the internationally recognized right to freedom of religion, instruction on methods of religious persecution practiced in foreign countries, and applicable distinctions within a country between the nature of and treatment of various religious practices and believers.


references in text

this chapter, referred to in subsec. (c)(4), (2)(a), was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 stat. 161, known as the immigration and nationality act, which is classified principally to this chapter. for complete classification of this act to the code, see short title note set out under section 1101 of this title and tables.

prior provisions

a prior section 1157, act June 27, 1952, ch. 477, title ii, ch. 1, §207, 66 stat. 161, 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, prior to repeal by pub. l. 89–696, §7, oct. 3, 1965, 79 stat. 916.

amendments

2005—Subsec. (a)(5). Pub. L. 109–13 struck out par. (5) which read as follows: "For any fiscal year, not more than a total of 1,000 refugees may be admitted under this subsection or granted asylum under section 1158 of this title pursuant to a determination under the third sentence of section 1101(a)(42) of this title (relating to persecution for resistance to coercive population control methods)."

2002—Subsec. (c)(2). Pub. L. 107–208 designated existing provisions as subpar. (A) and added subpar. (B).


Subsec. (c)(3). Pub. L. 101–649, §603(a)(4), substituted "(4), (5), and (7)(A)" for "(14), (15), (20), (21), (25), and
amendments in Iraq and in countries, where appropriate, in the region in which—

(1) aliens described in section 1243 may apply and interview for admission to the United States as refugees; and

(2) aliens described in section 1244(b) may apply and interview for admission to United States as special immigrants.

(b) SUSPENSION.—If such is determined necessary, the Secretary of State, in consultation with the Secretary of Homeland Security, may suspend in-country processing under subsection (a) for a period not to exceed 90 days. Such suspension may be extended by the Secretary of State upon notification to the Committee on the Judiciary of the House of Representatives, the Committee on Foreign Affairs of the Senate, and the Committee on Foreign Relations of the Senate. The Secretary of State shall submit to such committees a report outlining the basis of any such suspension and any extensions thereof.

(c) REPORT.—Not later than 90 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of State, in consultation with the Secretary of Homeland Security, shall submit to the committees specified in subsection (b) a report that—

(1) describes the Secretary of State’s plans to establish the processing mechanisms required under subsection (a);

(2) contains an assessment of in-country processing that makes use of videoconferencing; and

(3) describes the Secretary of State’s diplomatic efforts to improve issuance of exit permits to Iraqis who have been provided special immigrant status under section 1244 and Iraqi refugees under section 1243.

SEC. 1243. UNITED STATES REFUGEE PROGRAM PROCESSING PRIORITIES.

(a) IN GENERAL.—Refugees of special humanitarian concern eligible for Priority 2 processing under the refugee resettlement priority system who are or will be entered directly into the United States Admission Program shall include—

(1) Iraqis who were or are employed by the United States Government in Iraq;

(2) Iraqis who establish to the satisfaction of the Secretary of State that they are or were employed in Iraq by—

(A) a media or nongovernmental organization headquartered in the United States; or

(B) an organization or entity closely associated with the United States mission in Iraq that has received United States Government funding through an official and documented contract, award, grant, or cooperative agreement; and

(3) spouses, children, and parents whether or not accompanying or following to join, and sons, daughters, and siblings of aliens described in paragraph (1), paragraph (2), or section 1244(b)(1); and

(4) Iraqis who are members of a religious or minority community, have been identified by the Secretary of State, or the designee of the Secretary, as a persecuted group, and have close family members (as described in section 201(b)(2)(A)(i) or 203(a) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i) and 1153(a))) in the United States.

(b) IDENTIFICATION OF OTHER PERSECUTED GROUPS.—The Secretary of State, or the designee of the Secretary, is authorized to identify other Priority 2 groups of Iraqis, including vulnerable populations.

(c) INELIGIBLE ORGANIZATIONS AND ENTITIES.—Organizations and entities described in subsection (a)(3) shall not include any that appear on the Department of the Treasury’s list of Specially Designated Nationals or any entity specifically excluded by the Secretary of Homeland Security, after consultation with the Secretary of State and the heads of relevant elements of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))).
“(d) Applicability of Other Requirements.—Aliens under this section who qualify for Priority 2 processing under the refugee resettlement priority system shall satisfy the requirements of section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) for admission to the United States.

“(e) Numerical Limitations.—In determining the number of Iraqi refugees who shall be resettled in the United States under paragraphs (2), (3), and (4) of subsection (a) and subsection (b) of section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), the President shall consult with the heads of nongovernmental organizations that have a presence in Iraq or experience in assessing the problems faced by Iraqi refugees.

“(f) Eligibility for Admission as Refugee.—No alien shall be denied the opportunity to apply for admission under this section solely because such alien qualifies as an immediate relative or is eligible for any other immigrant classification.

“SEC. 124H. SPECIAL IMMIGRANT STATUS FOR CERTAIN IRAQIS.

“(a) In General.—Subject to subsection (c), the Secretary of Homeland Security, or, notwithstanding any other provision of law, the Secretary of State in consultation with the Secretary of Homeland Security, may provide an alien described in subsection (b) with the status of a special immigrant under section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)), if the alien—

“(1) is the spouse or child of a principal alien described in paragraph (1) of such section; or

“(2) is otherwise eligible to receive an immigrant visa;

“(3) is otherwise admissible to the United States for permanent residence (excluding the grounds for inadmissibility specified in section 212(a)(4)) of such Act (8 U.S.C. 1182(a)(4)); and

“(4) cleared a background check and appropriate screening, as determined by the Secretary of Homeland Security.

“(b) Aliens Described.—(1) Principal Aliens.—An alien is described in this subsection if the alien—

“(A) is a citizen or national of Iraq;

“(B) was or is employed by or on behalf of the United States Government in Iraq, on or after March 20, 2003, for not less than one year;

“(C) provided faithful and valuable service to the United States Government, which is documented in a positive recommendation or evaluation, subject to paragraph (4), from the employee’s senior supervisor or the person currently occupying that position, or a more senior person, if the employee’s senior supervisor has left the employer or has left Iraq; and

“(D) has experienced or is experiencing an ongoing serious threat as a consequence of the alien’s employment by the United States Government.

“(2) Spouses and Children.—An alien is described in this subsection if the alien—

“(A) is the spouse or child of a principal alien described in paragraph (1); and

“(B) is accompanying or following to join the principal alien in the United States.

“(c) Treatment of Surviving Spouse or Child.—An alien is described in subsection (b) if the alien—

“(1) was the spouse or child of a principal alien described in paragraph (1) who had a petition for classification approved pursuant to this section or section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 8 U.S.C. 1103 note), which included the alien as an accompanying spouse or child; and

“(2) due to the death of the principal alien—

“(i) such petition was revoked or terminated (or otherwise rendered null); and

“(ii) such petition would have been approved if the principal alien had survived.

“(d) Approval by Chief of Mission Required.—A recommendation or evaluation required under paragraph (1)(C) shall be accompanied by approval from the Chief of Mission, or the designee of the Chief of Mission, who shall conduct a risk assessment of the alien and an independent review of records maintained by the United States Government or hiring organization or entity who have been employed or experienced and faithful and valuable service to the United States Government prior to approval of a petition under this section.

“(e) Numerical Limitations.—

“(1) In General.—The total number of principal aliens who may be provided special immigrant status under this section may not exceed 5,000 per year for fiscal years 2008 through 2012.

“(2) Exclusion from Numerical Limitations.—Aliens provided special immigrant status under this section shall not be counted against any numerical limitation under sections 203(d), 202(a), or 205(b)(4) of the Immigration and Nationality Act (8 U.S.C. 1151(d), 1152(a), and 1155(b)(4)).

“(f) Carry Forward.—

“(1) Fiscal Years 2008 Through 2011.—If the numerical limitation specified in paragraph (1) is not reached during a given fiscal year referred to in such paragraph (with respect to fiscal years 2008 through 2011), the numerical limitation specified in such paragraph for the following fiscal year shall be increased by a number equal to the difference between—

“(i) the numerical limitation specified in paragraph (1) for the given fiscal year; and

“(ii) the number of principal aliens provided special immigrant status under this section during the given fiscal year.

“(2) Fiscal Years 2012 and 2013.—If the numerical limitation specified in paragraph (1) is not reached in fiscal year 2012, the total number of principal aliens who may be provided special immigrant status under this section for fiscal year 2013 shall be equal to the difference between—

“(i) the numerical limitation specified in paragraph (1) for fiscal year 2012; and

“(ii) the number of principal aliens provided such status under this section during fiscal year 2012.

“(g) Visa and Passport Issuance and Finder.—Neither the Secretary of State nor the Secretary of Homeland Security may charge an alien described in subsection (b) any fee in connection with an application for, or issuance of, a special immigrant visa. The Secretary of State may make a reasonable effort to ensure that aliens described in this section who are issued special immigrant visas are provided with the appropriate series Iraqi passport necessary to enter the United States.

“(h) Protection of Aliens.—The Secretary of State, in consultation with the heads of other relevant Federal agencies, shall make a reasonable effort to provide an alien described in this section who is applying for a special immigrant visa with protection or the immediate removal from Iraq, if possible, of such alien if the Secretary determines after consultation that such alien is in imminent danger.

“(i) Eligibility for Admission Under Other Classification.—No alien shall be denied the opportunity to apply for admission under this section solely because such alien qualifies as an immediate relative or is eligible for any other immigrant classification.

“(j) Resettlement Support.—Iraqi aliens granted special immigrant status described in section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) shall be eligible for resettlement assistance, entitlement programs, and other benefits available to refugees admitted under section 207 of such Act (8 U.S.C. 1155) to the same extent, and for the same period of time, as such refugees.

“(k) Rule of Construction.—Nothing in this section may be construed to affect the authority of the Sec-

``SEC. 1245. SENIOR COORDINATOR FOR IRAQI REFUGEES AND INTERNALLY DISPLACED PERSONS.

“(a) Designation in Iraq.—The Secretary of State shall designate in the embassy of the United States in Baghdad, Iraq a Senior Coordinator for Iraqi Refugees and Internally Displaced Persons (referred to in this section as the ‘Senior Coordinator’).

“(b) Responsibilities.—The Senior Coordinator shall be responsible for the oversight of processing for the resettlement in the United States of refugees of special humanitarian concern, special immigrant visa programs in Iraq, and the development and implementation of appropriate policies and programs concerning Iraqi refugees and internally displaced persons. The Senior Coordinator shall have the authority to refer persons to the United States refugee resettlement program.

“(c) Designation of Additional Senior Coordinators.—The Secretary of State shall designate in the embassies of the United States in Cairo, Egypt, Amman, Jordan, Damascus, Syria, and Beirut, Lebanon, a Senior Coordinator to oversee resettlement in the United States of refugees of special humanitarian concern in those countries to ensure their applications to the United States refugee resettlement program are processed in an orderly manner and without delay.

``SEC. 1246. COUNTRIES WITH SIGNIFICANT POPULATIONS OF IRAQI REFUGEES.

With respect to each country with a significant population of Iraqi refugees, including Iraq, Jordan, Egypt, Syria, Turkey, and Lebanon, the Secretary of State shall—

“(1) as appropriate, consult with the appropriate government officials of such countries and other countries and the United Nations High Commissioner for Refugees regarding resettlement of the most vulnerable members of such refugee populations; and

“(2) as appropriate, except where otherwise prohibited by the laws of the United States, develop mechanisms in and provide assistance to countries with a significant population of Iraqi refugees to ensure the well-being and safety of such populations in their host environments.

``SEC. 1247. MOTION TO REOPEN DENIAL OR TERMINATION OF ASYLUM.

An alien who applied for asylum or withholding of removal who was denied on or after March 1, 2003, by an asylum officer or an immigration judge solely, or in part, on the basis of changed country conditions may, notwithstanding any other provision of law, file a motion to reopen such claim in accordance with subparagraphs (A) and (B) of section 240(c)(7) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(7)) not later than six months after the date of the enactment of the Refugee Crisis in Iraq Act (of 2007) [Jan. 28, 2008] if the alien—

“(1) is a citizen or national of Iraq; and

“(2) has remained in the United States since the date of such denial.

``SEC. 1248. REPORTS.

“(a) Secretary of Homeland Security.—Not later than 120 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Homeland Security shall submit to the Committee on the Judiciary of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, the Committee on the Judiciary of the Senate, and the Committee on Foreign Relations of the Senate a report containing plans to expedite the processing of Iraqi refugees for resettlement, including information relating to—

“(1) expediting the processing of Iraqi refugees for resettlement, including through temporary expansion of the Refugee Corps of United States Citizenship and Immigration Services;

“(2) increasing the number of personnel of the Department of Homeland Security devoted to refugee processing in Iraq, Jordan, Egypt, Syria, Turkey, and Lebanon;

“(3) enhancing existing systems for conducting background and security checks of persons applying for special immigrant status and of persons considered Priority 2 refugees of special humanitarian concern under the refugee resettlement priority system, which enhancements shall support immigration security and provide for the orderly processing of such applications without delay; and

“(4) the projections of the Secretary, per country and per month, for the number of refugee interviews that will be conducted in fiscal year 2008 and fiscal year 2009.

“(b) President.—Not later than 120 days after the date of the enactment of this Act [Jan. 28, 2008], and annually thereafter through 2013, the President shall submit to Congress an unclassified report, with a classified annex if necessary, which includes—

“(1) an assessment of the financial, security, and personnel considerations and resources necessary to carry out the provisions of this subtitle;

“(2) the number of aliens described in section 1243(a)(1);

“(3) the number of such aliens who have applied for special immigrant visas;

“(4) the date of such applications; and

“(5) in the case of applications pending for longer than six months, the reasons that such visas have not been expeditiously processed.

“(c) Report on United States Citizens and Nationals Employed by the United States Government or Federal Contractors in Iraq.—

“(1) In General.—Not later than 120 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense, the Secretary of State, the Administrator of the United States Agency for International Development, the Secretary of the Treasury, and the Secretary of Homeland Security shall—

“(A) review internal records and databases of their respective agencies for information that can be used to verify employment of Iraqi nationals by the United States Government; and

“(B) request from each prime contractor or grantee that has performed work in Iraq since March 20, 2003, under a contract, grant, or cooperative agreement with their respective agencies that is valued in excess of $100,000 information that can be used to verify the employment of Iraqi nationals by such contractor or grantee.

“(2) Information Required.—To the extent data is available, the information referred to in paragraph (1) shall include the name and dates of employment of, biometric data for, and other data that can be used to verify the employment of each Iraqi citizen or national who has performed work in Iraq since March 20, 2003, under a contract, grant, or cooperative agreement with an executive agency.

“(3) Executive Agency Defined.—In this subsection, the term ‘executive agency’ has the meaning given the term in section 41 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 403(1)) [now 41 U.S.C. 133].

“(d) Report on Establishment of Database.—Not later than 120 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense, in consultation with the Secretary of State, the Administrator of the United States Agency for International Development, the Secretary of the Treasury, and the Secretary of Homeland Security, shall submit to Congress a report examining the options for establishing a unified, classified database of information related to contracts, grants, or cooperative agreements entered into by executive agencies for the performance of work in Iraq since March 20, 2003, including the information described and collected under subsection (c), to be used by relevant Federal departments and agencies to adjudicate refugee, asylum, special immigrant visa, and other immigration claims and applications.
(e) Noncompliance Report.—Not later than 180 days after the date of the enactment of this Act (Jan. 28, 2008), the President shall submit a report to Congress that describes—

“(1) the inability or unwillingness of any contractor or grantee to provide the information requested under subsection (c)(1)(B); and

“(2) the reasons for failing to provide such information.


There are authorized to be appropriated such sums as may be necessary to carry out this Act, and this Act may be cited as the ‘Bring Them Home Act of 2008’.


There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, and this Act may be cited as the ‘Bring Them Home Alive Program’.

SEC. 1. Short Title.

This Act may be cited as the ‘Bring Them Home Alive Act of 2008’.

SEC. 2. AMERICAN VIETNAM WAR POW/MIA ASYLUM PROGRAM.

(a) Asylum for Eligible Alien.—Notwithstanding any other provision of law, the Attorney General shall grant refugee status in the United States to any alien described in subsection (b), upon the application of that alien.

(b) Eligibility.—Refugee status shall be granted under subsection (a) to—

“(1) any alien who—

“(a) is a national of Vietnam, Cambodia, Laos, China, or any of the independent states of the former Soviet Union; and

“(B) personally delivers into the custody of the United States Government an American Vietnam War POW/MIA; and

“(2) any parent, spouse, or child of an alien described in paragraph (1).

(c) Definitions.—In this section:

“(1) American Vietnam War POW/MIA.—

“(A) In general.—Except as provided in subparagraph (B), the term ‘American Vietnam War POW/MIA’ means an individual—

“(i) who is a member of a uniformed service (within the meaning of section 101(3) of title 37, United States Code) in a missing status (as defined in section 551(2) of such title and this subsection) as a result of the Vietnam War; or

“(ii) who is an employee (as defined in section 5561(2) of title 5, United States Code) in a missing status (as defined in section 5561(5) of such title) as a result of the Korean War.

“(B) Exclusion.—Such term does not include an individual with respect to whom it is officially determined under section 552(c) of title 37, United States Code, that such individual is officially absent from such individual’s post of duty without authority.

“(2) Missing Status.—The term ‘missing status’, with respect to the Vietnam War, means the status of an individual as a result of the Vietnam War if immediately before that status began the individual—

“(A) was performing service in Vietnam; or

“(B) was performing service in Southeast Asia in direct support of military operations in Vietnam.

“(3) Vietnam War.—The term ‘Vietnam War’ means the conflict in Southeast Asia during the period that began on February 28, 1961, and ended on May 7, 1975.

SEC. 3. AMERICAN KOREAN WAR POW/MIA ASYLUM PROGRAM.

(a) Asylum for Eligible Alien.—Notwithstanding any other provision of law, the Attorney General shall grant refugee status in the United States to any alien described in subsection (b), upon the application of that alien.

(b) Eligibility.—Refugee status shall be granted under subsection (a) to—

“(1) any alien—

“(A) who is a national of North Korea, China, or any of the independent states of the former Soviet Union; and

“(B) who personally delivers into the custody of the United States Government a living American Korean War POW/MIA; and

“(2) any parent, spouse, or child of an alien described in paragraph (1).

(c) Definitions.—In this section:

“(1) American Korean War POW/MIA.—

“(A) In general.—Except as provided in subparagraph (B), the term ‘American Korean War POW/MIA’ means an individual—

“(i) who is a member of a uniformed service (within the meaning of section 101(3) of title 37, United States Code) in a missing status (as defined in section 551(2) of such title and this subsection) as a result of the Korean War; or

“(ii) who is an employee (as defined in section 5561(2) of title 5, United States Code) in a missing status (as defined in section 5561(5) of such title) as a result of the Korean War.

“(B) Exclusion.—Such term does not include an individual with respect to whom it is officially determined under section 552(c) of title 37, United States Code, that such individual is officially absent from such individual’s post of duty without authority.

“(2) Korean War.—The term ‘Korean War’ means the conflict on the Korean Peninsula during the period that began on June 27, 1950, and ended January 31, 1955.

“(3) Missing Status.—The term ‘missing status’, with respect to the Korean War, means the status of an individual as a result of the Korean War if immediately before that status began the individual—

“(A) was performing service in the Korean peninsula; or

“(B) was performing service in Asia in direct support of military operations in the Korean peninsula.

SEC. 3A. AMERICAN PERSIAN GULF WAR POW/MIA ASYLUM PROGRAM.

(a) Asylum for Eligible Alien.—Notwithstanding any other provision of law, the Attorney General shall grant refugee status in the United States to any alien described in subsection (b), upon the application of that alien.

(b) Eligibility.—Refugee status shall be granted under subsection (a) to—

“(1) any alien—

“(A) who is a national of Iraq or a nation of the Greater Middle East Region (as determined by the Secretary of State); and

“(B) who personally delivers into the custody of the United States Government a living American Persian Gulf War POW/MIA; and

“(2) any parent, spouse, or child of an alien described in paragraph (1).

(c) Definitions.—In this section:

“(1) American Persian Gulf War POW/MIA.—

“(A) In general.—Except as provided in subparagraph (B), the term ‘American Persian Gulf War POW/MIA’ means an individual—

“(i) who is a national of North Korea, China, or any of the independent states of the former Soviet Union; and

“(ii) who personally delivers into the custody of the United States Government a living American Persian Gulf War POW/MIA; and

“(B) Exclusion.—Such term does not include an individual with respect to whom it is officially determined under section 552(c) of title 37, United States Code, that such individual is officially absent from such individual’s post of duty without authority.

“(1) Persian Gulf War.—The term ‘Persian Gulf War’ means the conflict in the Persian Gulf Region (as determined by the Secretary of State); and

“(2) Greater Middle East Region.—The term ‘Greater Middle East Region’, for purposes of this section, means the region of the Middle East and North Africa (as determined by the Secretary of State); and

“(3) Missing Status.—The term ‘missing status’, with respect to the Persian Gulf War, means the status of an individual as a result of the Persian Gulf War if immediately before that status began the individual—

“(A) was performing service in the Persian Gulf Region; or

“(B) was performing service in Asia in direct support of military operations in the Greater Middle East Region.

“(i) was a national of Iraq or a nation of the Greater Middle East Region (as determined by the Secretary of State); and

“(ii) personally delivers into the custody of the United States Government a living American Persian Gulf War POW/MIA; and

“(B) any parent, spouse, or child of an alien described in subparagraph (A).

“(2) Exceptions.—An alien described in this subsection does not include a terrorist, a persecutor, a person who has been convicted of a serious criminal offense, or a person who presents a danger to the security of the United States, as set forth in clauses (i) through (v) of section 208(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)).

“(c) Definitions.—In this section:

“(1) American Persian Gulf War POW/MIA.—

“(A) In general.—Except as provided in subparagraph (B), the term ‘American Persian Gulf War POW/MIA’ means an individual—

“(i) who is a member of a uniformed service (within the meaning of section 101(3) of title 37, United States Code) in a missing status (as defined in section 551(2) of such title) as a result of the Persian Gulf War; or

“(ii) who is an employee (as defined in section 5561(2) of title 5, United States Code) in a missing status (as defined in section 5561(5) of such title) as a result of the Persian Gulf War.

“(B) Exclusion.—Such term does not include an individual with respect to whom it is officially determined under section 552(c) of title 37, United States Code, that such individual is officially absent from such individual’s post of duty without authority.

“(1) Persian Gulf Region.—The term ‘Persian Gulf Region’, for purposes of this section, means the region of the Middle East and North Africa (as determined by the Secretary of State).
“(1) who is a member of a uniformed service (within the meaning of section 101(3) of title 37, United States Code) in a missing status (as defined in section 552(c) of such title and this subsection) as a result of the Persian Gulf War, or any successor conflict, operation, or action; or

“(ii) who is an employee (as defined in section 552(c) of title 5, United States Code) in a missing status (as defined in section 556(5) of such title) as a result of the Persian Gulf War, or any successor conflict, operation, or action;

(2) EXCLUSION.—Such term does not include an individual with respect to whom it is officially determined under section 552(c) of title 37, United States Code, that such individual is officially absent from a location of such individual’s post of duty without authority.

(3) PERSIAN GULF WAR.—The term ‘Persian Gulf War’ means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

“SEC. 4. BROADCASTING INFORMATION ON THE ‘BRING THEM HOME ALIVE’ PROGRAM.

“(a) REQUIREMENT.—

“(1) IN GENERAL.—The International Broadcasting Bureau shall broadcast, through WORLDNET Television and Film Service and Radio, VOA-TV, VOA Radio, or otherwise, information that promotes the ‘Bring Them Home Alive’ refugee program under this Act to foreign countries covered by paragraph (2).

“(2) COVERED COUNTRIES.—The foreign countries covered by paragraph (1) are—

“(A) Vietnam, Cambodia, Laos, China, and North Korea;

“(B) Russia and the other independent states of the former Soviet Union; and

“(C) Iraq, Kuwait, or any other country of the Greater Middle East Region (as determined by the International Broadcasting Bureau in consultation with the Attorney General and the Secretary of State).

“(b) LEVEL OF PROGRAMMING.—The International Broadcasting Bureau shall broadcast—

“(1) at least 20 hours of the programming described in subsection (a)(1) during the 30-day period that begins 15 days after the date of enactment of this Act [Nov. 9, 2000]; and

“(2) at least 10 hours of the programming described in subsection (a)(1) each calendar quarter during the period beginning with the first calendar quarter that begins after the date of enactment of this Act and ending five years after the date of enactment of this Act.

“(c) AVAILABILITY OF INFORMATION ON THE INTERNET.—The International Broadcasting Bureau shall ensure that information regarding the ‘Bring Them Home Alive’ refugee program under this Act is readily available on the World Wide Web sites of the Bureau.

“(d) SENSE OF CONGRESS.—It is the sense of Congress that RFE/RL, Incorporated, Radio Free Asia, and any other recipient of Federal grants that engages in international broadcasting to the countries covered by subsection (a)(2) should broadcast information similar to the information required to be broadcast by subsection (a)(1).

“(e) DEFINITION.—The term ‘International Broadcasting Bureau’ means the International Broadcasting Bureau of the United States Information Agency or, on and after the effective date of title XIII of the Foreign Affairs Reform and Restructuring Act of 1999 (as contained in division G of Public Law 106–277) [see Effective Date note set out under section 6531 of Title 22, Foreign Relations and Intercourse], the International Broadcasting Bureau of the Broadcasting Board of Governors.

“SEC. 5. INDEPENDENT STATES OF THE FORMER SOVIET UNION DEFINED.

“In this Act, the term ‘independent states of the former Soviet Union’ has the meaning given the term in section 3 of the FREEDOM Support Act (22 U.S.C. 5801).”

“GENDER-RELATED PERSECUTION TASK FORCE


“(a) ESTABLISHMENT OF TASK FORCE.—The Secretary of State, in consultation with the Attorney General and other appropriate Federal agencies, shall establish a task force with the goal of determining eligibility guidelines for women seeking refugee status overseas due to gender-related persecution.

“(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Nov. 29, 1999], the Secretary of State shall prepare and submit to the Congress a report outlining the guidelines determined by the task force under subsection (a).”

“ESTABLISHING CATEGORIES OF ALIENS FOR PURPOSES OF REFUGEE DETERMINATIONS


“(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;

(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; and

(C) one or more categories of aliens who are or were nationals and residents of the Islamic Republic of Iran who, as members of a religious minority in Iran, 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.

(2) 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 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).


(C) Written Reasons for Denials of Refugee Status.—Each decision to deny an application for refugee status of an 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 deemed to reapply for such status, 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 deemed 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, 2012.

(2) Subsection (c) shall apply to decisions made after the date of the enactment of this Act and before October 1, 2012.

(3) Subsection (d) shall take effect on the date of the enactment of this Act and shall only apply to re-applications for refugee status submitted before October 1, 2012.
§ 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

(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 each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

(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 1101(b)(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 (updated not less often than quarterly) who have indicated their availability to represent 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 databases 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 circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed;

(iii) in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application 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, including a hearing under section 1229a of this title, the application may be dismissed or the applicant may be otherwise sanctioned for such failure.

(B) Additional regulatory conditions

The Attorney General may provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with this chapter.

(6) Frivolous applications

If the Attorney General determines that an alien has knowingly made a frivolous application 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 construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(e) Commonwealth of the Northern Mariana Islands

The provisions of this section and section 1159(b) of this title shall apply to persons physically 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.


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 Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Table.

AMENDMENTS


2002—Subsec. (b)(3). Pub. L. 107–208 reenacted heading 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.”

2001—Subsec. (b)(2)(A)(v). Pub. L. 107–56 substituted “(III), (IV), or (VI)” for “(III), or (IV)”.

1996—Pub. L. 104–208 substituted “Asylum” for “Asylum 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 excludable 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.”


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 708(b) of Pub. L. 110-229, set out as an Effective Date note under section 1006 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 as if enacted on March 1, 2005.

(2) The amendments made by subsections (a)(3), (b), (c), and (d) [amending this section and sections 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
Amendment by Pub. L. 107-208 effective Aug. 6, 2002, and applicable to certain beneficiary aliens, see section 8 of Pub. L. 107-208, set out as a note under section 1151 of this title.

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

EFFECTIVE DATE OF 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 this section] 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. 1255(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.

(1) EMPLOYMENT AUTHORIZATION.—Amended this section.

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

(1) $61,000,000 for fiscal year 1995;

(2) $50,000,000 for fiscal year 1996;

(3) $50,000,000 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,
shall, at the end of such year period, return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 1225, 1229a, and 1231 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 an immigration judge 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) Requirements for adjustment

The Secretary of Homeland Security or the Attorney General, in the Secretary’s or the Attorney General’s discretion and under such regulations as the Secretary or the Attorney General may prescribe, may adjust to the status of a lawful permanent resident the status of any alien lawfully admitted for permanent residence 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 Secretary of Homeland Security or 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) Coordination with section 1182

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 Secretary of Homeland Security or 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.


REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2) and (b)(5), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS


Pub. L. 109–13, § 101(g)(1)(B)(ii), added introductory provisions and struck out former introductory provisions which read as follows: “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 permanent residence the status of any alien granted asylum who—”.


Subsec. (a)(2). Pub. L. 104–208, § 371(b)(2), substituted “an immigration judge” for “a special inquiry officer”.


1990—Subsec. (b), Pub. L. 101–649, § 104(a)(1), substituted “10,000” for “five thousand”.

Subsec. (c). Pub. L. 101–649, § 106(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 1996 AMENDMENT

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


EFFECTIVE DATE OF 1991 AMENDMENT

Section 371(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.

**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.

**Waiver of Numerical Limitation for Certain Current Asylees; Adjustment of Certain Former Asylees**

Section 104(c), (d) of Pub. L. 101–649, as amended by Pub. L. 104–208, div. C, title VI, §604(b)(2), Sept. 30, 1996, 110 Stat. 3009–694, 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 of the Immigration and Nationality Act [8 U.S.C. 1158]),

(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)(b) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 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—
§ 1160

(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 documentation abroad (including commutation from a residence abroad) and shall be granted an employment authorized endorsement or other appropriate documentation as allowed by a court order issued pursuant to this section by designated entities operating under this section.

(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, except as allowed by a court order issued pursuant to paragraph (6) of this subsection.

(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, except as allowed by a court order issued pursuant to paragraph (6) of this subsection.
(6) Confidentiality of information

(A) In general

Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, including a determination under subsection (a)(3)(B) of this section, or for enforcement of paragraph (7);

(ii) make any publication whereby the information furnished by any particular individual can be identified; or

(iii) 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.

(B) Required disclosures

The Attorney General shall provide information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) Construction

(i) In general

Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal convictions

Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(D) Crime

Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than $10,000.

(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 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 (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 marijuana.

(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.
§ 1160

(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 (as in effect before October 1, 1996).

(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 assistance under a State program funded 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 assistance under a State program funded under part A of title IV of the Social Security Act but for the previous sentence, the provisions of paragraph
court order issued pursuant to paragraph (6) of this subsection”.

Subsec. (b)(6). Pub. L. 104–208, § 603(b), amended par. (6) generally, substituting subpars. (A) to (D) for former subpars. (A) to (C) and introductory and concluding provisions, relating to confidentiality of information.

Pub. L. 104–208, § 384(d)(1), substituted “Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than $5,000 for each violation.” for “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.” in concluding provisions.

Pub. L. 104–132, § 431(b)(2), inserted before “Anyone who uses” in concluding provisions “Notwithstanding the preceding sentence, the Attorney General may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant an order authorizing, disclosure of information contained in the application of the alien to be used for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated, or for criminal law enforcement purposes against the alien whose application is to be disclosed or to discover information leading to the location or identity of the alien.”


Subsec. (f). Pub. L. 104–132 substituted “assistance under a State program funded under” for “aid under a State plan approved under” in two places.


See 1991 Amendment note below.


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 reference to this clause involving corresponding provision of original act.


Pub. L. 102–232, § 309(b)(6)(G), made technical amendment reference to subsection (b)(1)(A) of this section involving corresponding provision of original act.


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)(i)(I). 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)(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)”.


REFERENCES IN TEXT

[Further text follows regarding references, amendments, and notes related to the Social Security Act and its provisions.]


Subsec. (b)(6)(A). Pub. L. 101–238, §4(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the use of 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. 100–235 substituted "sections (a)(5) and (f)" for "subsections (b)(5) and (f)".


Effective Date of 1996 Amendments

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

Section 384(d)(2) of div. C of Pub. L. 104–208 provided that: "The amendments made by this subsection (amending this section and section 1258a of this title) shall apply to offenses occurring on or after the date of the enactment of this Act [Sept. 30, 1996]."

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantial moderred programs and continuation in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

Effective Date of 1994 Amendment


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.

Abolition of Immigration and Naturalization Service and Transfer of Functions

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

Commission on Agricultural Workers


Effective Date of Repeal

§ 1182. Inadmissible aliens

(a) Classes of aliens ineligible for visas or admission

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

(1) Health-related grounds

(A) In general

Any alien—

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance;¹

(ii) except as provided in subparagraph (C), who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices,

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a history of 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

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict, is inadmissible.

(B) Waiver authorized

For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g) of this section.

(C) Exception from immunization requirement for adopted children 10 years of age or younger

Clause (ii) of subparagraph (A) shall not apply to a child who—

(i) is 10 years of age or younger,

(ii) is described in subparagraph (F) or (G) of section 1101(b) of this title;¹ and

(iii) is seeking an immigrant visa as an immediate relative under section 1151(b) of this title, if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the provisions of subparagraph (A)(ii) and will ensure that, within 30 days of the child’s admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in such subparagraph.

¹So in original. The semicolon probably should be a comma.
§ 1182

(2) Criminal and related grounds

(A) Conviction of certain crimes

(i) In general

Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21), is inadmissible.

(ii) Exception

Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) Multiple criminal convictions

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

(C) Controlled substance traffickers

Any alien who the consular officer or the Attorney General knows or has reason to believe—

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 802 of title 21), or is or has been a knowing aider, abettor, assister, conspirator, orcolluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(D) Prostitution and commercialized vice

Any alien who—

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution, is inadmissible.

(E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution

Any alien—

(i) who has committed in the United States at any time a serious criminal offense (as defined in section 1101(h) of this title),

(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense, and

(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and

(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense, is inadmissible.

(F) Waiver authorized

For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h) of this section.

(G) Foreign government officials who have committed particularly severe violations of religious freedom

Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 6402 of title 22, is inadmissible.

(H) Significant traffickers in persons

(i) In general

Any alien who commits or conspires to commit human trafficking offenses in the United States or outside the United States, or is an illicit trafficker, is inadmissible.
States, or who the consular officer, the Secretary of Homeland Security, the Secretary of State, or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 7102 of title 22, is inadmissible.

(ii) Beneficiaries of trafficking

Except as provided in clause (iii), any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(iii) Exception for certain sons and daughters

Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.

(I) Money laundering

Any alien—

(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of title 18 (relating to laundering of monetary instruments); or

(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;

is inadmissible.

(3) Security and related grounds

(A) In general

Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

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

(ii) any other unlawful activity, or

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

is inadmissible.

(B) Terrorist activities

(i) In general

Any alien who—

(I) has engaged in a terrorist activity;

(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

(iii) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

(iv) is a representative (as defined in clause (v)) of—

(aa) a terrorist organization (as defined in clause (vi)); or

(bb) a political, social, or other group that endorses or espouses terrorist activity;

(v) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

(vi) is a member of a terrorist organization described in clause (v)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or

(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years.

is inadmissible. An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this chapter, to be engaged in a terrorist activity.

(ii) Exception

Subclause (IX) of clause (i) does not apply to a spouse or child—

(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.

(iii) “Terrorist activity” defined

As used in this chapter, the term “terrorist activity” means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The highjacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).
(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any—
   (a) biological agent, chemical agent, or nuclear weapon or device, or
   (b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain),
   with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.

(iv) “Engage in terrorist activity” defined

As used in this chapter, the term “engage in terrorist activity” means, in an individual capacity or as a member of an organization—

(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

(II) to prepare or plan a terrorist activity;

(III) to gather information on potential targets for terrorist activity;

(IV) to solicit funds or other things of value for—
   (aa) a terrorist activity;
   (bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or
   (cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

(V) to solicit any individual—
   (aa) to engage in conduct otherwise described in this subsection;
   (bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or
   (cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—
   (aa) for the commission of a terrorist activity;
   (bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;
   (cc) to a terrorist organization described in subclause (I) or (II) of clause (vi) or to any member of such an organization;
   (dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.

(v) “Representative” defined

As used in this paragraph, the term “representative” includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

(vi) “Terrorist organization” defined

As used in this section, the term “terrorist organization” means an organization—

(I) designated under section 1189 of this title;

(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv); or

(III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).

(C) Foreign policy

(i) In general

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

(ii) Exception for officials

An alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office during the period immediately preceding the election for that office, shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) solely because of the alien’s past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States.
(iii) Exception for other aliens
An alien, not described in clause (ii), shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) because of the alien’s past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States, unless the Secretary of State personally determines that the alien’s admission would compromise a compelling United States foreign policy interest.

(iv) Notification of determinations
If a determination is made under clause (iii) with respect to an alien, the Secretary of State must notify a timely basis the chairmen of the Committees on the Judiciary and Foreign Affairs of the House of Representatives and of the Committees on the Judiciary and Foreign Relations of the Senate of the identity of the alien and the reasons for the determination.

(D) Immigrant membership in totalitarian party
(i) In general
Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.

(ii) Exception for involuntary membership
Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.

(iii) Exception for past membership
Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that—

(I) the membership or affiliation terminated at least—
   (a) 2 years before the date of such application, or
   (b) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and

(II) the alien is not a threat to the security of the United States.

(iv) Exception for close family members
The Attorney General may, in the Attorney General’s discretion, waive the application of clause (i) in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son, or daughter of an alien lawfully admitted for permanent residence for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the immigrant is not a threat to the security of the United States.

(E) Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing
(i) Participation in Nazi persecutions
Any alien who, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(I) the Nazi government of Germany,

(II) any government in any area occupied by the military forces of the Nazi government of Germany,

(III) any government established with the assistance or cooperation of the Nazi government of Germany, or

(IV) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion is inadmissible.

(ii) Participation in genocide
Any alien who ordered, incited, assisted, or otherwise participated in genocide, as defined in section 1091(a) of title 18, is inadmissible.

(iii) Commission of acts of torture or extrajudicial killings
Any alien who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of—

(I) any act of torture, as defined in section 2340 of title 18; or

(II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note),

is inadmissible.

(F) Association with terrorist organizations
Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.

(G) Recruitment or use of child soldiers
Any alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18 is inadmissible.
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(4) Public charge

(A) In general

Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

(B) Factors to be taken into account

(i) In determining whether an alien is inadmissible under this paragraph, the consular officer or the Attorney General may also consider any affidavit of support under section 1183a of this title for purposes of exclusion under this paragraph.

(C) Family-sponsored immigrants

Any alien who seeks admission or adjustment of status under a visa number issued under section 1151(b)(2) or 1153(a) of this title is inadmissible under this paragraph unless—

(i) the alien has obtained—

(I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 1154(a)(1)(A) of this title;

(II) classification pursuant to clause (ii) or (iii) of section 1154(a)(1)(B) of this title; or

(III) classification or status as a VAWA self-petitioner; or

(ii) the person petitioning for the alien’s admission (and any additional sponsor required under section 1183a(f) of this title or any alternative sponsor permitted under paragraph (5)(B) of such section) has executed an affidavit of support described in section 1183a of this title with respect to such alien.

(D) Certain employment-based immigrants

Any alien who seeks admission or adjustment of status under a visa number issued under section 1153(b) of this title by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is inadmissible under this paragraph unless such relative has executed an affidavit of support described in section 1183a of this title with respect to such alien.

(5) Labor certification and qualifications for certain immigrants

(A) Labor certification

(i) In general

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor; and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(ii) Certain aliens subject to special rule

For purposes of clause (i)(I), an alien described in this clause is an alien who—

(I) is a member of the teaching profession, or

(II) has exceptional ability in the sciences or the arts.

(iii) Professional athletes

(I) In general

A certification made under clause (i) with respect to a professional athlete shall remain valid with respect to the athlete after the athlete changes employer, if the new employer is a team in the same sport as the team which employed the athlete when the athlete first applied for the certification.

(II) “Professional athlete” defined

For purposes of subclause (I), the term “professional athlete” means an individual who is employed as an athlete by—

(aa) a team that is a member of an association of 6 or more professional sports teams whose total combined annual revenues exceed $10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(bb) any minor league team that is affiliated with such an association.

(iv) Long delayed adjustment applicants

A certification made under clause (i) with respect to an individual whose petition is covered by section 1154(j) of this title shall remain valid with respect to a new job accepted by the individual after the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the certification was issued.

(B) Unqualified physicians

An alien who is a graduate of a medical school not accredited by a body or bodies approved by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien (i) has passed parts I and II of
the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral and written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C) Uncertified foreign health-care workers

Subject to subsection (r) of this section, any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is inadmissible unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Secretary of Health and Human Services, verifying that—

(i) the alien’s education, training, license, and experience—

(I) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;

(II) are comparable with that required for an American health-care worker of the same type; and

(III) are authentic and, in the case of a license, unencumbered;

(ii) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant’s ability to speak and write; and

(iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession’s licensing or certification examination, the alien has passed such a test or has passed such an examination.

For purposes of clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review.

(D) Application of grounds

The grounds for inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 1153(b) of this title.

(6) Illegal entrants and immigration violators

(A) Aliens present without admission or parole

(i) In general

An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

(ii) Exception for certain battered women and children

Clause (i) shall not apply to an alien who demonstrates that—

(I) the alien is a VAWA self-petitioner;

(II)(a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse’s or parent’s family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or (b) the alien’s child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the spouse’s or parent’s family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and

(III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien’s unlawful entry into the United States.

(B) Failure to attend removal proceeding

Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien’s inadmissibility or deportability who seeks admission to the United States within 5 years of such alien’s subsequent departure or removal is inadmissible.

(C) Misrepresentation

(i) In general

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

(ii) Falsely claiming citizenship

(I) In general

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

(II) Exception

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

(iii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (i) of this section.

(D) Stowaways

Any alien who is a stowaway is inadmissible.

(E) Smugglers

(i) In general

Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

(ii) Special rule in the case of family reunification

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

(iii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (d)(11) of this section.

(F) Subject of civil penalty

(i) In general

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

(ii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (d)(12) of this section.

(G) Student visa abusers

An alien who obtains the status of a nonimmigrant under section 1101(a)(15)(F)(i) of this title and who violates a term or condition of such status under section 1184(l) of this title is inadmissible until the alien has been outside the United States for a continuous period of 5 years after the date of the violation.

(7) Documentation requirements

(A) Immigrants

(i) In general

Except as otherwise specifically provided in this chapter, any immigrant at the time of application for admission—

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181(a) of this title, or

(II) whose visa has been issued without compliance with the provisions of section 1133 of this title,

is inadmissible.

(ii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (d)(4) of this section.

(B) Nonimmigrants

(i) In general

Any nonimmigrant who—

(I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien’s admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period, or

(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission,

is inadmissible.

(ii) General waiver authorized

For provision authorizing waiver of clause (i), see subsection (d)(4) of this section.

(iii) Guam and Northern Mariana Islands visa waiver

For provision authorizing waiver of clause (i) in the case of visitors to Guam or the Commonwealth of the Northern Mariana Islands, see subsection (l).

(iv) Visa waiver program

For authority to waive the requirement of clause (i) under a program, see section 1187 of this title.

(8) Ineligible for citizenship

(A) In general

Any immigrant who is permanently ineligible to citizenship is inadmissible.

(B) Draft evaders

Any person who has departed from or who has remained outside the United States to
avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency is inadmissible, except that this subparagraph shall not apply to an alien who at the time of such departure was a nonimmigrant and who is seeking to reenter the United States as a nonimmigrant.

(9) Aliens previously removed

(A) Certain aliens previously removed

(i) Arriving aliens

Any alien who has been ordered removed under section 1225(b)(1) of this title or at the end of proceedings under section 1229a of this title initiated upon the alien’s arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens

Any alien not described in clause (i) who—

(I) has been ordered removed under section 1229a of this title or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien’s departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception

Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien’s reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien’s reapplying for admission.

(B) Aliens unlawfully present

(i) In general

Any alien (other than an alien lawfully admitted for permanent residence) who—

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e)3 of this title) prior to the commencement of proceedings under section 1225(b)(1) of this title or section 1229a of this title, and again seeks admission within 3 years of the date of such alien’s departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10

3 So in original. Probably should be a reference to section 1229c of this title.

years of the date of such alien’s departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence

For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(iii) Exceptions

(I) Minors

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(II) Asylees

No period of time in which an alien has a bona fide application for asylum pending under section 1158 of this title shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

(III) Family unity

No period of time in which the alien is a beneficiary of family unity protection pursuant to section 301 of the Immigration Act of 1990 shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(IV) Battered women and children

Clause (i) shall not apply to an alien who would be described in paragraph (6)(A)(ii) if “violation of the terms of the alien’s nonimmigrant visa” were substituted for “unlawful entry into the United States” in subclause (III) of that paragraph.

(V) Victims of a severe form of trafficking in persons

Clause (i) shall not apply to an alien who demonstrates that the severe form of trafficking (as that term is defined in section 7102 of title 22) was at least one central reason for the alien’s unlawful presence in the United States.

(iv) Tolling for good cause

In the case of an alien who—

(I) has been lawfully admitted or paroled into the United States,

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and

(III) has not been employed without authorization in the United States before or during the pendency of such application,

the calculation of the period of time specified in clause (i)(I) shall be tolled during
the pendency of such application, but not to exceed 120 days.

(v) Waiver
The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

(C) Aliens unlawfully present after previous immigration violations

(i) In general
Any alien who—
(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
(II) has been ordered removed under section 1225(b)(1) of this title, section 1229a of this title, or any other provision of law,
and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception
Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien’s last departure from the United States if, prior to the alien’s reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien’s reapplying for admission.

(iii) Waiver
The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—
(I) the alien’s battering or subjecting to extreme cruelty; and
(II) the alien’s removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

(10) Miscellaneous

(A) Practicing polygamists
Any immigrant who is coming to the United States to practice polygamy is inadmissible.

(B) Guardian required to accompany helpless alien
Any alien—
(i) who is accompanying another alien who is inadmissible and who is certified to be helpless from sickness, mental or physical disability, or infancy pursuant to section 1222(c) of this title, and
(ii) whose protection or guardianship is determined to be required by the alien described in clause (i),
is inadmissible.

(C) International child abduction

(i) In general
Except as provided in clause (ii), any alien who, after entry of an order by a court in the United States granting custody to a person of a United States citizen child who detains or retains the child, or withholds custody of the child, outside the United States from the person granted custody by that order, is inadmissible until the child is surrendered to the person granted custody by that order.

(ii) Aliens supporting abductors and relatives of abductors
Any alien who—
(I) is known by the Secretary of State to have intentionally assisted an alien in the conduct described in clause (i),
(II) is known by the Secretary of State to be intentionally providing material support or safe haven to an alien described in clause (i), or
(III) is a spouse (other than the spouse who is the parent of the abducted child), child (other than the abducted child), parent, sibling, or agent of an alien described in clause (i), if such person has been designated by the Secretary of State at the Secretary’s sole and unreviewable discretion, is inadmissible until the child described in clause (i) is surrendered to the person granted custody by the order described in that clause, and such person and child are permitted to return to the United States or such person’s place of residence.

(iii) Exceptions
Clauses (i) and (ii) shall not apply—
(I) to a government official of the United States who is acting within the scope of his or her official duties;
(II) to a government official of any foreign government if the official has been designated by the Secretary of State at the Secretary’s sole and unreviewable discretion; or
(III) so long as the child is located in a foreign state that is a party to the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.

(D) Unlawful voters

(i) In general
Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible.

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

(E) Former citizens who renounced citizenship to avoid taxation

Any alien who is a former citizen of the United States who officially renounced United States citizenship and who is determined by the Attorney General to have renounced United States citizenship for the purpose of avoiding taxation by the United States is inadmissible.

(b) Notices of denials

(1) Subject to paragraphs (2) and (3), if an alien’s application for a visa, for admission to the United States, or for adjustment of status is denied by an immigration or consular officer because the officer determines the alien to be inadmissible under subsection (a) of this section, the officer shall provide the alien with a timely written notice that:

(A) states the determination, and

(B) lists the specific provision or provisions of law under which the alien is inadmissible or adjustment of status.

(2) The Secretary of State may waive the requirements of paragraph (1) with respect to a particular alien or any class of classes of inadmissible aliens.

(3) Paragraph (1) does not apply to any alien inadmissible under paragraph (2) or (3) of subsection (a) of this section.


(d) Temporary admission of nonimmigrants

(1) The Attorney General shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(S) of this title. The Attorney General, in the Attorney General’s discretion, may waive the application of subsection (a) of this section (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 1101(a)(15)(S) of this title, if the Attorney General considers it to be in the national interest to do so. Nothing in this section shall be regarded as prohibiting the Immigration and Naturalization Service from instituting removal proceedings against an alien admitted as a nonimmigrant under section 1101(a)(15)(S) of this title for conduct committed after the alien’s admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien’s admission as a nonimmigrant under section 1101(a)(15)(S) of this title.


(3)(A) Except as provided in this subsection, an alien (i) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under subsection (a) of this section (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (ii) who is inadmissible under subsection (a) of this section (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General. The Attorney General shall prescribe conditions, including exaction of such bonds as may be necessary, to the admission and return of inadmissible aliens applying for temporary admission under this paragraph.

(B)(i) The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, may determine in such Secretary’s sole unreviewable discretion that subsection (a)(3)(B) shall not apply with respect to an alien within the scope of that subsection or that subsection (a)(3)(B)(vi)(III) shall not apply to a group within the scope of that subsection, except that no such waiver may be extended to an alien who is within the scope of subsection (a)(3)(B)(i)(II), no such waiver may be extended to an alien who is a member or representative of, has voluntarily and knowingly engaged in or endorsed or espoused or persuaded others to endorse or espouse or support terrorist activity on behalf of, or has voluntarily and knowingly received military-type training from a terrorist organization that is described in subsection (i) or (II) of subsection (a)(3)(B)(vi), and no such waiver may be extended to a group that has engaged terrorist activity against the United States or another democratic country or that has purposefully engaged in a pattern or practice of terrorist activity that is directed at civilians. Such a determination shall neither prejudice the ability of the United States Government to commence criminal or civil proceedings involving a beneficiary of such a determination or any other person, nor create any substantive or procedural right or benefit for a beneficiary of such a determination or any other person. Notwithstanding any other provision of law (statutory or non-statutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review such a determination or revocation except in a proceeding for review of a final order of removal pursuant to section 1252 of this title, and review shall be limited to the extent provided in section 1252(a)(2)(D), The Secretary of State may not exercise the discretion

\(^4\) So in original. Probably should be preceded by “ineligible for”.
provided in this clause with respect to an alien at any time during which the alien is the subject of pending removal proceedings under section 1229a of this title.

(ii) Not later than 90 days after the end of each fiscal year, the Secretary of Homeland Security shall each provide to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on International Relations of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Homeland Security of the House of Representatives a report on the aliens to whom such Secretary has applied clause (i). Within one week of applying clause (i) to a group, the Secretary of State or the Secretary of Homeland Security shall provide a report to such Committees.

(4) Either or both of the requirements of paragraph (7)(B)(i) of subsection (a) of this section may be waived by the Attorney General and the Secretary of State acting jointly (A) on the basis of unforeseen emergency in individual cases, or (B) on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals, or (C) in the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in section 1229c of this title.

(5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(B) The Attorney General may not parole into the United States an alien who is a refugee 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.


(7) The provisions of subsection (a) of this section (other than paragraph (7)) shall be applicable to any alien who shall leave Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States. The Attorney General shall by regulations provide a method and procedure for the temporary admission to the United States of the aliens described in this pro-

visio. Any alien described in this paragraph, who is denied admission to the United States, shall be immediately removed in the manner provided by section 1231(c) of this title.

(8) Upon a basis of reciprocity accredited officials of foreign governments, their immediate families, attendants, servants, and personal employees may be admitted in immediate and continuous transit through the United States without regard to the provisions of this section except paragraphs (3)(A), (3)(B), (3)(C), and (7)(B) of subsection (a) of this section.


(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 voluntary and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 1181(b) of this title and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 1153(a) of this title (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien’s spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(12) The Attorney General may, in the discretion of the Attorney General for humanitarian purposes or to assure family unity, waive application of clause (i) of subsection (a)(6)(F) of this section—

(A) in the case of an alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation or removal and who is otherwise admissible to the United States as a returning resident under section 1181(b) of this title, and

(B) in the case of an alien seeking admission or adjustment of status under section 1151(b)(2) of this title or under section 1153(a) of this title, if no previous civil money penalty was imposed against the alien under section 1229c of this title and the offense was committed solely to assist, aid, or support the alien’s spouse or child (and not another individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this paragraph.

(13)(A) The Secretary of Homeland Security shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(T) of this title, except that the ground for inadmissibility described in subsection (a)(4) of this section shall not apply with respect to such a nonimmigrant.

(B) In addition to any other waiver that may be available under this section, in the case of a nonimmigrant described in section 1101(a)(15)(T)

5So in original.
of this title, if the Secretary of Homeland Security considers it to be in the national interest to do so, the Secretary of Homeland Security, in the Attorney General’s discretion, may waive the application of—

(i) subsection (a)(1) of this section; and

(ii) any other provision of subsection (a) of this section (excluding paragraphs (3), (4), (10)(C), and (10)(E)) if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 1101(a)(15)(T)(i)(I) of this title.

(14) The Secretary of Homeland Security shall determine whether a ground of inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(U) of this title. The Secretary of Homeland Security, in the Attorney General’s discretion, may waive the application of subsection (a) of this section (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 1101(a)(15)(U) of this title, if the Secretary of Homeland Security considers it to be in the public or national interest to do so.

(e) Educational visitor status; foreign residence requirement; waiver

No person admitted under section 1101(a)(15)(J) of this title or acquiring such status after admission (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or last residence, (ii) who at the time of admission or acquisition of status under section 1101(a)(15)(J) of this title had 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 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 regulations prescribed by him, the Secretary of Health and Human Services, or its equivalent, or in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States Government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 1184(c) of this title: And provided further, That, except in the case of an alien described in clause (iii), the Attorney General may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien’s nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

(f) Suspension of entry or imposition of restrictions by President

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate. Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.

(g) Bond and conditions for admission of alien inadmissible on health-related grounds

The Attorney General may waive the application of—

(1) subsection (a)(1)(A)(i) in the case of any alien who—

(A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa,

(B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; or

(C) is a VAWA self-petitioner.

in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe;

(2) subsection (a)(1)(A)(ii) of this section in the case of any alien—

(A) who receives vaccination against the vaccine-preventable disease or diseases for
which the alien has failed to present documentation of previous vaccination,
(B) for whom a civil surgeon, medical officer, or panel physician (as those terms are defined by section 34.2 of title 42 of the Code of Federal Regulations) certifies, according to such regulations as the Secretary of Health and Human Services may prescribe, that such vaccination would not be medically appropriate, or
(C) under such circumstances as the Attorney General provides by regulation, with respect to whom the requirement of such a vaccination would be contrary to the alien’s religious beliefs or moral convictions; or
(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)(ii) of subsection (a)(1) of this section in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe.
(i) Admission of immigrant inadmissible for fraud or willful misrepresentation of material fact
(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant would result in extreme hardship to the alien or the alien’s United States citizen, lawful permanent resident, or qualified alien parent or child.
(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).
(j) Limitation on immigration of foreign medical graduates
(1) The additional requirements referred to in section 1101(a)(15)(J) of this title for an alien who is coming to the United States under a program under which he will receive graduate medical education or training are as follows:
(A) A school of medicine or of one of the other health professions, which is accredited by a body or bodies approved for the purpose by the Secretary of Education, has agreed in writing to provide the graduate medical education or training under the program for which the alien is coming to the United States or to assume responsibility for arranging for the provision thereof by an appropriate public or nonprofit private institution or agency, except that, in the case of such an agreement by a school of medicine, any one or more of its affiliated hospitals which are to participate in the provision of the graduate medical education or training must join in the agreement.
(B) Before making such agreement, the accredited school has been satisfied that the alien (i) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States); or (ii) (I) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services), (II) has competency in oral and written English, (III) will be able to adapt to the educational
and cultural environment in which he will be receiving his education or training, and (IV) has adequate prior education and training to participate satisfactorily in the program for which he is coming to the United States. For the purposes of this subparagraph, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C) The alien has made a commitment to return to the country of his nationality or last residence upon completion of the education or training for which he is coming to the United States, and the government of the country of his nationality or last residence has provided a written assurance, satisfactory to the Secretary of Health and Human Services, that there is a need in that country for persons with the skills the alien will acquire in such education or training.

(D) The duration of the alien’s participation in the program of graduate medical education or training for which the alien is coming to the United States is limited to the time typically required to complete such program, as determined by the Director of the United States Information Agency at the time of the alien’s admission into the United States, based on criteria which are established in coordination with the Secretary of Health and Human Services and which take into consideration the published requirements of the medical specialty board which administers such education or training program; except that—

(i) such duration is further limited to seven years unless the alien has demonstrated to the satisfaction of the Director that the country to which the alien will return at the end of such specialty education or training has an exceptional need for an individual trained in such specialty, and

(ii) the alien may, once and not later than two years after the date the alien is admitted to the United States as an exchange visitor or acquires exchange visitor status, change the alien’s designated program of graduate medical education or training if the Director approves the change and if a commitment and written assurance with 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 at tests 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 non-immigrant 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) the alien has competency in oral and written English or (II) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States).

(3) Omitted.

(k) Attorney General’s discretion to admit otherwise inadmissible aliens who possess immigrant visas

Any alien, inadmissible from the United States under paragraph (5)(A) or (7)(A)(i) of subsection (a) of this section, who is in possession of an immigrant visa may, if otherwise admissible, be admitted in the discretion of the Attorney General if the Attorney General is satisfied that inadmissibility was not known to, and could not have been ascertained by the exercise of reasonable diligence by, the immigrant before the time of departure of the vessel or aircraft from the last port outside the United States and outside foreign contiguous territory or, in the case of an immigrant coming from foreign contiguous territory, before the time of the immigrant’s application for admission.

(l) Guam and Northern Mariana Islands visa waiver program

(1) In general

The requirement of subsection (a)(7)(B)(i) may be waived by the Secretary of Homeland Security, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay in Guam or the Commonwealth of the Northern Mariana Islands for a period not to exceed 45 days, if the Secretary of Homeland Security, after consultation with the Secretary of the Interior, the Secretary of State, the Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands, determines that—

(A) an adequate arrival and departure control system has been developed in Guam and the Commonwealth of the Northern Mariana Islands; and

(B) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.

(2) Alien waiver of rights

An alien may not be provided a waiver under this subsection unless the alien has waived any right—

(A) to review or appeal under this chapter an immigration officer's determination as to
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monitor the admission of nonimmigrant visitors to Guam and the Commonwealth of the Northern Mariana Islands; or (B) to contest, other than on the basis of an application for withholding of removal under section 1231(b)(3) of this title or under the Convention Against Torture, or an application for asylum if permitted under section 1158 of this title, any action for removal of the alien.

(3) Regulations

All necessary regulations to implement this subsection shall be promulgated by the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State, on or before the 180th day after May 8, 2008. The promulgation of such regulations shall be considered a foreign affairs function for purposes of section 553(a) of title 5. At a minimum, such regulations should include, but not necessarily be limited to—

(A) a listing of all countries whose nationals may obtain the waiver also provided by this subsection, except that such regulations shall provide for a listing of any country from which the Commonwealth has received a significant economic benefit from the number of visitors for pleasure within the one-year period preceding May 8, 2008, unless the Secretary of Homeland Security determines that such country’s inclusion on such list would represent a threat to the welfare, safety, or security of the United States or its territories; and

(B) any bonding requirements for nationals of some or all of those countries who may present an increased risk of overstays or other potential problems, if different from such requirements otherwise provided by law for nonimmigrant visitors.

(4) Factors

In determining whether to grant or continue providing the waiver under this subsection to nationals of any country, the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State, shall consider all factors that the Secretary deems relevant, including electronic travel authorizations, procedures for reporting lost and stolen passports, repatriation of aliens, rates of refusal for nonimmigrant visitor visas, overstays, exit systems, and information exchange.

(5) Suspension

The Secretary of Homeland Security shall monitor the admission of nonimmigrant visitors to Guam and the Commonwealth of the Northern Mariana Islands under this subsection. If the Secretary determines that such admissions have resulted in an unacceptable number of visitors from a country remaining unlawfully in Guam or the Commonwealth of the Northern Mariana Islands, unlawfully obtaining entry to other parts of the United States, or seeking withholding of removal or asylum, or that visitors from a country pose a risk to law enforcement or security interests of Guam or the Commonwealth of the Northern Mariana Islands or of the United States (including the interest in the enforcement of the immigration laws of the United States), the Secretary shall suspend the admission of nationals of such country under this subsection. The Secretary of Homeland Security may in the Secretary’s discretion suspend the Guam and Northern Mariana Islands visa waiver program at any time, on a country-by-country basis, for other good cause.

(6) Addition of countries

The Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands may request the Secretary of the Interior and the Secretary of Homeland Security to add a particular country to the list of countries whose nationals may obtain the waiver provided by this subsection, and the Secretary of Homeland Security may grant such request after consultation with the Secretary of the Interior and the Secretary of State, and may promulgate regulations with respect to the inclusion of that country and any special requirements the Secretary of Homeland Security, in the Secretary’s sole discretion, may impose prior to allowing nationals of that country to obtain the waiver provided by this subsection.

(m) Requirements for admission of nonimmigrant nurses

(1) The qualifications referred to in section 1101(a)(15)(H)(i)(c) of this title, with respect to an alien who is coming to the United States to perform nursing services for a facility, are that the alien—

(A) has obtained a full and unrestricted license to practice professional nursing in the United States; or

(B) has passed an appropriate examination (recognized in regulations promulgated in consultation with the Secretary of Health and Human Services) or has a full and unrestricted license under State law to practice professional nursing in the State of intended employment; and

(C) is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed by the facility.

(2)(A) The attestation referred to in section 1101(a)(15)(H)(i)(c) of this title, with respect to a facility for which an alien will perform services, is an attestation as to the following:

(i) The facility meets all the requirements of paragraph (6).

(ii) The employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed.

(iii) The alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility.

(iv) The facility has taken and is taking timely and significant steps designed to re-
cruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses.

(v) There is not a strike or lockout in the course of a labor dispute, the facility did not lay off and will not lay off a registered nurse employed by the facility within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

(vi) At the time of the filing of the petition for registered nurses under section 1101(a)(15)(H)(i)(c) of this title, notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to the registered nurses employed at the facility through posting in conspicuous locations.

(vii) The facility will not, at any time, employ a number of aliens issued visas or otherwise provided nonimmigrant status under section 1101(a)(15)(H)(i)(c) of this title that exceeds 33 percent of the total number of registered nurses employed by the facility.

(viii) The facility will not, with respect to any alien issued a visa or otherwise provided nonimmigrant status under section 1101(a)(15)(H)(i)(c) of this title—

(I) authorize the alien to perform nursing services at any worksite other than a worksite controlled by the facility; or

(II) transfer the place of employment of the alien from one worksite to another.

Nothing in clause (iv) shall be construed as requiring a facility to have taken significant steps described in such clause before November 12, 1999. A copy of the attestation shall be provided, within 30 days of the date of filing, to registered nurses employed at the facility on the date of filing.

(B) For purposes of subparagraph (A)(iv), each of the following shall be considered a significant step reasonably designed to recruit and retain registered nurses:

(i) Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.

(ii) Providing career development programs and other methods of facilitating health care workers to become registered nurses.

(iii) Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area.

(iv) Providing reasonable opportunities for meaningful salary advancement by registered nurses.

The steps described in this subparagraph shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of subparagraph (A)(iv). Nothing in this subparagraph shall require a facility to take more than one step if the facility can demonstrate that taking a second step is not reasonable.

(C) Subject to subparagraph (E), an attestation under subparagraph (A)—

(i) shall expire on the date that is the later of—

(I) the end of the one-year period beginning on the date of its filing with the Secretary of Labor; or

(II) the end of the period of admission under section 1101(a)(15)(H)(i)(c) of this title of the last alien with respect to whose admission it was applied (in accordance with clause (ii)); and

(ii) shall apply to petitions filed during the one-year period beginning on the date of its filing with the Secretary of Labor if the facility states in each such petition that it continues to comply with the conditions in the attestation.

(D) A facility may meet the requirements under this paragraph with respect to more than one registered nurse in a single petition.

(E)(i) The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a list identifying facilities which have filed petitions for nonimmigrants under section 1101(a)(15)(H)(i)(c) of this title and, for each such facility, a copy of the facility’s attestation under subparagraph (A) (and accompanying documentation) and each such petition filed by the facility.

(ii) The Secretary of Labor shall establish a process, including reasonable time limits, for the receipt, investigation, and disposition of complaints respecting a facility’s failure to meet conditions attested to or a facility’s misrepresentation of a material fact in an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary). The Secretary shall conduct an investigation under this clause if there is reasonable cause to believe that a facility fails to meet conditions attested to. Subject to the time limits established under this clause, this subparagraph shall apply regardless of whether an attestation is expired or unexpired at the time a complaint is filed.

(iii) Under such process, the Secretary shall provide, within 180 days after the date such a complaint is filed, for a determination as to whether or not a basis exists to make a finding described in clause (iv). If the Secretary determines that such a basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint within 60 days of the date of the determination.

(iv) If the Secretary of Labor finds, after notice and opportunity for a hearing, that a facility (for which an attestation is made) has failed to meet a condition attested to or that there was a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and may, in addi-
tion, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per nurse per violation, with the total penalty not to exceed $10,000 per violation) as the Secretary determines to be appropriate. Upon receipt of such notice, the Attorney General shall not approve petitions filed with respect to a facility during a period of at least one year for nurses to be employed by the facility.

(v) In addition to the sanctions provided for under clause (iv), if the Secretary of Labor finds, after notice and an opportunity for a hearing, that a facility has violated the condition attested to under subparagraph (A)(iii) (relating to payment of registered nurses at the prevailing wage rate), the Secretary shall order the facility to provide for payment of such amounts of back pay as may be required to comply with such condition.

(F)(i) The Secretary of Labor shall impose on a facility filing an attestation under subparagraph (A) a filing fee, in an amount prescribed by the Secretary based on the costs of carrying out the Secretary’s duties under this subsection, but not exceeding $250.

(ii) Fees collected under this subparagraph shall be deposited in a fund established for this purpose in the Treasury of the United States.

(iii) The collected fees in the fund shall be available to the Secretary of Labor, to the extent and in such amounts as may be provided in appropriations Acts, to cover the costs described in clause (i), in addition to any other funds that are available to the Secretary to cover such costs.

(3) The period of admission of an alien under section 1101(a)(15)(H)(1)(c) of this title shall be 3 years.

(4) The total number of nonimmigrant visas issued pursuant to petitions granted under section 1101(a)(15)(H)(1)(c) of this title in each fiscal year shall not exceed 500. The number of such visas issued for employment in each State in each fiscal year shall not exceed 50.

(A) For States with populations of less than 9,000,000, based upon the 1990 decennial census of population, 25 visas.

(B) For States with populations of 9,000,000 or more, based upon the 1990 decennial census of population, 50 visas.

(C) If the total number of visas available under this paragraph for a fiscal year quarter exceeds the number of qualified nonimmigrants who may be issued such visas during those quarters, the visas made available under this paragraph shall be issued without regard to the numerical limitation under subparagraph (A) or (B) of this paragraph during the last fiscal year quarter.

(5) A facility that has filed a petition under section 1101(a)(15)(H)(1)(c) of this title to employ a nonimmigrant to perform nursing services for the facility—

(A) shall provide the nonimmigrant a wage rate and working conditions commensurate with the wage rates and working conditions of nurses similarly employed by the facility;

(B) shall require the nonimmigrant to work hours commensurate with those of nurses similarly employed by the facility; and

(C) shall not interfere with the right of the nonimmigrant to join or organize a union.

(6) For purposes of this section and section 1101(a)(15)(H)(1)(c) of this title, the term “facility” means a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) that meets the following requirements:

(A) As of March 31, 1997, the hospital was located in a health professional shortage area (as defined in section 254(e) of title 42).

(B) Based on its settled cost report filed under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for its cost reporting period beginning during fiscal year 1994—

(i) the hospital has not less than 190 licensed acute care beds;

(ii) the number of the hospital’s inpatient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of such title (42 U.S.C. 1395c et seq.) is not less than 35 percent of the total number of such hospital’s acute care inpatient days for such period; and

(iii) the number of the hospital’s inpatient days for such period which were made up of patients who (for such days) were eligible for medical assistance under a State plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), is not less than 28 percent of the total number of such hospital’s acute care inpatient days for such period.

(7) For purposes of paragraph (2)(A)(v), the term “lay off”, with respect to a worker—

(A) means to cause the worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract; but

(B) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

Nothing in this paragraph is intended to limit an employee’s or an employer’s rights under a collective bargaining agreement or other employment contract.

(n) Labor condition application

(1) No alien may be admitted or provided status as an H–1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

(A) The employer—

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status as an H–1B nonimmigrant wages that are at least—

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

(II) the prevailing wage level for the occupational classification in the area of employment,
whichever is greater, based on the best information available as of the time of filing the application, and
(ii) will provide working conditions for such a nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

(B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

(C) The employer, at the time of filing the application—

(i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer’s employees in the occupational classification and area for which aliens are sought, or

(ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which H–1B nonimmigrants are sought.

(D) The application shall contain a specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.

(E)(i) In the case of an application described in clause (ii), the employer did not displace and will not displace a United States worker (as defined in paragraph (4)) employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the employer within the period beginning 90 days (as defined in paragraph (4)) employed by the other employer described in such subparagraph. Nothing in subparagraph (G) shall apply to an application filed with respect to the employment of an H–1B nonimmigrant if the other employer described in such subparagraph displaces a United States worker as described in subparagraph (F).

(E)(ii) The conditions described in clause (i) shall not apply to an application filed with respect to the employment of an H–1B nonimmigrant who is described in subparagraph (A), (B), or (C) of section 1153(b)(1) of this title.

The employer shall make available for public examination, within one working day after the date on which an application under this paragraph is filed, at the employer’s principal place of business or worksite, a copy of each such application (and such accompanying documents as necessary). The Secretary shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under this subsection. Such list shall include the wage rate, number of aliens sought, period of intended employment, and date of need. The Secretary shall make such list available for public examination in Washington, D.C. The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall provide the certification described in section 1101(a)(15)(H)(i)(b) of this title within 7 days of the date of the filing of the application. The application form shall include a clear statement explaining the liability under subparagraph (F) of a placing employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph. Nothing in subparagraph (G) shall be construed to prohibit an employer from using legitimate selection criteria relevant to the job that are normal or customary to the type of job involved, so long as such criteria are not applied in a discriminatory manner.

(2)(A) Subject to paragraph (3)(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

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filing a petition under section 1154 or 1184(c) of this title during a period of at least 3 years for aliens to be employed by the employer.

(iv) It is a violation of this clause for an employer who has filed an application under this subsection to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this clause, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of this subsection or any rule or regulation pertaining to this subsection.

(v) The Secretary of Labor and the Attorney General shall devise a process under which an H–1B nonimmigrant who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

(vi)(I) It is a violation of this clause for an employer who has filed an application under this subsection to require an H–1B nonimmigrant to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer. The Secretary shall determine whether a required payment is a penalty (and not liquidated damages) pursuant to relevant State law.

(II) It is a violation of this clause for an employer who has filed an application under this subsection to require an alien who is the subject of a petition filed under section 1184(c)(1) of this title, for which a fee is imposed under section 1184(c)(9) of this title, to reimburse, or otherwise compensate, the employer for part or all of the cost of such fee. It is a violation of this clause for such an employer otherwise to accept such reimbursement or compensation from such an alien.

(III) If the Secretary finds, after notice and opportunity for a hearing, that an employer has committed a violation of this clause, the Secretary may impose a civil monetary penalty of $1,000 for each such violation and issue an administrative order requiring the return to the nonimmigrant of any amount paid in violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.

(vii)(I) It is a failure to meet a condition of paragraph (1)(A) for an employer, who has filed an application under this subsection and who places an H–1B nonimmigrant designated as a full-time employee on the petition filed under
section 1184(c)(1) of this title by the employer with respect to the nonimmigrant, after the nonimmigrant has entered into employment with the employer, in nonproductive status due to a decision by the employer (based on factors such as lack of work, or due to the nonimmigrant’s lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such nonproductive time.

(ii) It is a failure to meet a condition of paragraph (1)(A) for an employer, who has filed an application under this subsection and who places an H–1B nonimmigrant designated as a part-time employee on the petition filed under section 1184(c)(1) of this title by the employer with respect to the nonimmigrant, after the nonimmigrant has entered into employment with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated on such petition consistent with the rate of pay identified on such petition.

(iii) In the case of an H–1B nonimmigrant who has not yet entered into employment with an employer who has had approved an application under this subsection, a petition under section 1184(c)(1) of this title, with respect to the nonimmigrant, the provisions of subclauses (I) and (II) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States pursuant to the petition, or 60 days after the date the nonimmigrant becomes eligible to work for the employer (in the case of a nonimmigrant who is present in the United States on the date of the approval of the petition).

(iv) This clause does not apply to a failure to pay wages to an H–1B nonimmigrant for nonproductive time due to non-work-related factors, such as the voluntary request of the nonimmigrant for an absence or circumstances rendering the nonimmigrant unable to work.

(v) This clause shall not be construed as prohibiting an employer that is a school or other educational institution from applying to an H–1B nonimmigrant an established salary practice of the employer, under which the employer pays to H–1B nonimmigrants and United States workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, if—

(aa) the nonimmigrant agrees to the compressed annual salary payments prior to the commencement of the employment; and

(bb) the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to violate any condition of the nonimmigrant’s authorization under this chapter to remain in the United States.

(vi) This clause shall not be construed as superseding clause (viii).

(viii) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an application under this subsection to fail to offer to an H–1B nonimmigrant, during the nonimmigrant’s period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and noncash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers to United States workers.

(D) If the Secretary finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified under the application and required under paragraph (1), the Secretary shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed.

(E) If an H–1B-dependent employer places a nonexempt H–1B nonimmigrant with another employer as provided under paragraph (1)(F) and the other employer has displaced or displaces a United States worker employed by such other employer during the period described in such paragraph, such displacement shall be considered for purposes of this paragraph a failure, by the placing employer, to meet a condition specified in an application submitted under paragraph (1); except that the Attorney General may impose a sanction described in subclause (II) of subparagraph (C)(i), (C)(ii), or (C)(iii) only if the Secretary of Labor found that such placing employer—

(i) knew or had reason to know of such displacement at the time of the placement of the nonimmigrant with the other employer; or

(ii) has been subject to a sanction under this subparagraph based upon a previous placement of an H–1B nonimmigrant with the same other employer.

(F) The Secretary may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date (on or after October 21, 1998) on which the employer is found by the Secretary to have committed a willful failure to meet a condition of paragraph (1) (or has been found under paragraph (5) to have committed a willful failure to meet the condition of paragraph (1)(G)(i)(II)) or to have made a willful misrepresentation of material fact in an application. The preceding sentence shall apply to an employer regardless of whether or not the employer is an H–1B-dependent employer. The authority of the Secretary under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

(G)(i) The Secretary of Labor may initiate an investigation of any employer that employs nonimmigrants described in section 1101(a)(15)(H)(i)(b) of this title if the Secretary of Labor has reasonable cause to believe that the employer is not in compliance with this subsection. In the case of an investigation under this clause, the Secretary of Labor (or the acting Secretary in the case of the absence of a disability of the Secretary of Labor) shall personally certify that reasonable cause exists and shall approve commencement of the investigation. The investigation may be initiated for rea—

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persons other than completeness and obvious inaccuracies by the employer in complying with this subsection.

(ii) If the Secretary of Labor receives specific credible information from a source who is likely to be knowledgeable of an employer’s practices or employment conditions, or an employer’s compliance with the employer’s labor condition application under paragraph (1), and whose identity is known to the Secretary of Labor, and such information provides reasonable cause to believe that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(1)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary of Labor may conduct an investigation into the alleged failure or failures. The Secretary of Labor may withhold the identity of the source from the employer, and the source’s identity shall not be subject to disclosure under section 552 of title 5.

(iii) The Secretary of Labor shall establish a procedure for any person desiring to provide to the Secretary of Labor information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the information in writing on a form developed and provided by the Secretary of Labor and completed by or on behalf of the person. The person may not be an officer or employee of the Department of Labor, unless the information satisfies the requirement of clause (iv)(II) (although an officer or employee of the Department of Labor may complete the form on behalf of the person).

(iv) Any investigation initiated or approved by the Secretary of Labor under clause (ii) shall be based on information that satisfies the requirements of such clause and that—

(I) originates from a source other than an officer or employee of the Department of Labor; or

(II) was lawfully obtained by the Secretary of Labor in the course of lawfully conducting another Department of Labor investigation under this chapter of any other Act.

(v) The receipt by the Secretary of Labor of information submitted by an employer to the Attorney General or the Secretary of Labor for purposes of securing the employment of a non-immigrant described in section 1101(a)(15)(H)(i)(b) of this title shall not be considered a receipt of information for purposes of clause (ii).

(vi) No investigation described in clause (ii) (or hearing described in clause (vii) based on such investigation) may be conducted with respect to information about a failure to meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months after the date of the alleged failure.

(vii) The Secretary of Labor shall provide notice to an employer with respect to whom there is reasonable cause to initiate an investigation described in clauses (i) or (ii), prior to the commencement of an investigation under such clauses, of the intent to conduct an investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary of Labor is not required to comply with this clause if the Secretary of Labor determines that to do so would interfere with an effort by the Secretary of Labor to secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary of Labor under this clause.

(viii) An investigation under clauses (i) or (ii) may be conducted for a period of up to 60 days. If the Secretary of Labor determines after such an investigation that a reasonable basis exists to make a finding that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(1)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing in accordance with section 556 of title 5 within 120 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 120 days after the date of the hearing.

(H)(i) Except as provided in clauses (ii) and (iii), a person or entity is considered to have complied with the requirements of this subsection, notwithstanding a technical or procedural failure to meet such requirements, if there was a good faith attempt to comply with the requirements.

(ii) Clause (i) shall not apply if—

(I) the Department of Labor (or another enforcement agency) has explained to the person or entity the basis for the failure;

(II) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure; and

(III) the person or entity has not corrected the failure voluntarily within such period.

(iii) A person or entity that, in the course of an investigation, is found to have violated the prevailing wage requirements set forth in paragraph (1)(A), shall not be assessed fines or other penalties for such violation if the person or entity can establish that the manner in which the prevailing wage was calculated was consistent with recognized industry standards and practices.

(iv) Clauses (i) and (ii) shall not apply to a person or entity that has engaged in or is engaging in a pattern or practice of willful violations of this subsection.

(I) Nothing in this subsection shall be construed as superseding or preempting any other enforcement-related authority under this chapter (such as the authorities under section 1324b of this title), or any other Act.

(3)(A) For purposes of this subsection, the term “H–1B-dependent employer” means an employer that—

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(i)(I) has 25 or fewer full-time equivalent employees who are employed in the United States; and (II) employs more than 7 H–1B nonimmigrants; or
(ii)(I) has at least 26 but not more than 50 full-time equivalent employees who are employed in the United States; and (II) employs more than 12 H–1B nonimmigrants; or
(iii)(I) has at least 51 full-time equivalent employees who are employed in the United States; and (II) employs H–1B nonimmigrants in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.

(B) For purposes of this subsection—
(i) the term “exempt H–1B nonimmigrant” means an H–1B nonimmigrant who—
(I) receives wages (including cash bonuses and similar compensation) at an annual rate equal to at least $60,000; or
(II) has attained a master’s or higher degree (or its equivalent) in a specialty related to the intended employment; and

(ii) the term “nonexempt H–1B nonimmigrant” means an H–1B nonimmigrant who is not an exempt H–1B nonimmigrant.

(C) For purposes of subparagraph (A)—
(i) in computing the number of full-time equivalent employees and the number of H–1B nonimmigrants, exempt H–1B nonimmigrants shall not be taken into account during the longer of—
(I) the 6-month period beginning on October 21, 1998; or
(II) the period beginning on October 21, 1998, and ending on the date final regulations are issued to carry out this paragraph; and

(ii) any group treated as a single employer under subsection (b), (c), (m), or (o) of section 1101(a)(15)(H)(i)(b) of this title.

(D) For purposes of this subsection:

(A) The term “area of employment” means the area within normal commuting distance of the worksite or physical location where the work of the H–1B nonimmigrant is or will be performed. The area within normal commuting distance of the worksite or location is a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

(B) In the case of an application with respect to one or more H–1B nonimmigrants by an employer, the employer is considered to “displace” a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the job for which the nonimmigrant or nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

(C) The term “H–1B nonimmigrant” means an alien admitted or provided status as a nonimmigrant described in section 1101(a)(15)(H)(i)(b) of this title.

(D)(i) The term “lays off”, with respect to a worker—

(I) means to cause the worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in subparagraph (E) or (F) of paragraph (1)); but

(II) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under paragraph (1)(F), with either employer described in such paragraph) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

(ii) Nothing in this subparagraph is intended to limit an employee’s rights under a collective bargaining agreement or other employment contract.

(E) The term “United States worker” means an employee who—

(i) is a citizen or national of the United States; or

(ii) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 1157 of this title, is granted asylum under section 1158 of this title, or is an immigrant otherwise authorized, by this chapter or by the Attorney General, to be employed.

(5)(A) This paragraph shall apply instead of subparagraphs (A) through (E) of paragraph (2) in the case of a violation described in subparagraph (B), but shall not be construed to limit or affect the authority of the Secretary or the Attorney General with respect to any other violation.

(B) The Attorney General shall establish a process for the receipt, initial review, and disposition in accordance with this paragraph of complaints respecting an employer’s failure to meet the condition of paragraph (1)(G)(i)(II) or a petitioner’s misrepresentation of material facts with respect to such condition. Complaints may be filed by an aggrieved individual who has submitted a resume or otherwise applied in a reasonable manner for the job that is the subject of the condition. No proceeding shall be conducted under this paragraph on a complaint concerning such a failure or misrepresentation unless the Attorney General determines that the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively.

(C) If the Attorney General finds that a complaint has been filed in accordance with subparagraph (B) and there is reasonable cause to believe that such a failure or misrepresentation described in such complaint has occurred, the Attorney General shall initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from the roster of arbitrators maintained by such Service. The procedure and rules...
of such Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings. The Attorney General shall pay the fee and expenses of the arbitrator.

(D)(i) The arbitrator shall make findings respecting whether a failure or misrepresentation described in subparagraph (B) occurred. If the arbitrator concludes that failure or misrepresentation was willful, the arbitrator shall make a finding to that effect. The arbitrator may not find such a failure or misrepresentation (or that such a failure or misrepresentation was willful) unless the complainant demonstrates such a failure or misrepresentation (or its willful character) by clear and convincing evidence. The arbitrator shall transmit the findings in the form of a written opinion to the parties to the arbitration and the Attorney General. Such findings shall be final and conclusive, and, except as provided in this subparagraph, no official or court of the United States shall have power or jurisdiction to review any such findings.

(ii) The Attorney General may review and reverse or modify the findings of an arbitrator only on the same bases as an award of an arbitrator may be vacated or modified under section 9 or 11 of title 9.

(iii) With respect to the findings of an arbitrator, a court may review only the actions of the Attorney General under clause (ii) and may set aside such actions only on the grounds described in subparagraph (A), (B), or (C) of section 706(a)(2) of title 5. Notwithstanding any other provision of law, such judicial review may only be brought in an appropriate United States court of appeals.

(E) If the Attorney General receives a finding of an arbitrator under this paragraph that an employer has failed to meet the condition of the Attorney General under clause (ii) and may set aside such actions only on the grounds described in subparagraph (A), (B), or (C) of section 706(a)(2) of title 5. Notwithstanding any other provision of law, such judicial review may only be brought in an appropriate United States court of appeals.

(F) If the Attorney General receives a finding of an arbitrator under this paragraph that an employer has failed to meet the condition of the Attorney General under clause (ii) and may set aside such actions only on the grounds described in subparagraph (A), (B), or (C) of section 706(a)(2) of title 5. Notwithstanding any other provision of law, such judicial review may only be brought in an appropriate United States court of appeals.

(g) Academic honoraria

Any alien admitted under section 1101(a)(15)(B) of this title may accept an honorarium payment and associated incidental expenses for a usual academic activity or activities (lasting not more than 9 days at any single institution), as defined by the Attorney General in consultation with the Secretary of Education, if such payment is offered by an institution or organization described in subsection (p)(6) of this section and is made for services conducted for the benefit of that institution or entity and if the alien has not accepted such payment or expenses from more than 5 institutions or organizations in the previous 6-month period.

(h) Exception for certain alien nurses

Subsection (a)(5)(C) of this section shall not apply to an alien who seeks to enter the United States for the purpose of performing labor as a nurse who presents to the consular officer (or in the case of an adjustment of status, the Attorney General) a certified statement from the Commission on Graduates of Foreign Nursing Schools (or an equivalent independent credentialing organization approved for the certification of nurses under subsection (a)(5)(C) of this section by the Attorney General in consultation with the Secretary of Health and Human Services) that—
(1) the alien has a valid and unrestricted license as a nurse in a State where the alien intends to be employed and such State verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(2) the alien has passed the National Council Licensure Examination (NCLEX);

(3) the alien is a graduate of a nursing program—
   (A) in which the language of instruction was English;
   (B) located in a country—
      (i) designated by such commission not later than 30 days after November 12, 1999, based on such commission’s assessment that the quality of nursing education in that country, and the English language proficiency of those who complete such programs in that country, justify the country’s designation; or
      (ii) designated on the basis of such an assessment by unanimous agreement of such commission and any equivalent credentialing organizations which have been approved under subsection (a)(5)(C) of this section for the certification of nurses under this subsection; and

   (C)(i) which was in operation on or before November 12, 1999; or
   (ii) has been approved by unanimous agreement of such commission and any equivalent credentialing organizations which have been approved under subsection (a)(5)(C) of this section for the certification of nurses under this subsection.

(s) **Consideration of benefits received as battered alien in determination of inadmissibility as likely to become public charge**

In determining whether an alien described in subsection (a)(4)(C)(i) of this section is inadmissible under subsection (a)(4) of this section or ineligible to receive an immigrant visa or otherwise to adjust to the status of permanent resident by reason of subsection (a)(4) of this section, the consular officer or the Attorney General shall not consider any benefits the alien may have received that were authorized under section 1641(c) of this title.

(f) **Nonimmigrant professionals; labor attestations**

(1) No alien may be admitted or provided status as a nonimmigrant under section 1101(a)(15)(H)(i)(b) of this title or section 1101(a)(15)(E)(iii) of this title in an occupational classification unless the employer has filed with the Secretary of Labor an attestation stating the following:

   (A) The employer—
      (i) is offering and will offer during the period of authorized employment to aliens admitted or provided status under section 1101(a)(15)(H)(i)(b) of this title or section 1101(a)(15)(E)(iii) of this title wages that are at least—
      (II) the prevailing wage level for the occupational classification in the area of employment,
      whichever is greater, based on the best information available as of the time of filing the attestation; and
   (ii) will provide working conditions for such a nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

(B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

(C) The employer, at the time of filing the attestation—
   (i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer’s employees in the occupational classification and area for which aliens are sought; or
   (ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which nonimmigrants are sought under section 1101(a)(15)(H)(i)(b) of this title or section 1101(a)(15)(E)(iii) of this title.

(D) A specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.

(2)(A) The employer shall make available for public examination, within one working day after the date on which an attestation under this subsection is filed, a list by employer and by occupational classification of the attestations filed under this subsection. Such list shall include, with respect to each attestation, the wage rate, number of aliens sought, period of intended employment, and date of need.

(B)(i) The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the attestations filed under this subsection. Such list shall include, with respect to each attestation, the wage rate, number of aliens sought, period of intended employment, and date of need.

(C) The Secretary of Labor shall review an attestation filed under this subsection only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that an attestation is incomplete or obviously inaccurate, the Secretary of Labor shall provide the certification described in section 1101(a)(15)(H)(i)(b) of this title or section 1101(a)(15)(E)(iii) of this title within 7 days of the date of the filing of the attestation.

(3)(A) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting the failure of an employer to meet a condition specified in an attestation submitted under this subsection or misrepresentation by the employer of material facts in such an attestation. Complaints may be

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11 So in original. Two subsections (t) have been enacted.
filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

(B) Under the process described in subparagraph (A), the Secretary of Labor shall provide, within 30 days after the date a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

(C)(i) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a substantial failure to meet a condition of paragraph (1)(C) or (1)(D), or a misrepresentation of material fact in an attestation—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $35,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 1154, 1184(c), 1101(a)(15)(H)(i)(b1), or 1101(a)(15)(E)(iii) of this title during a period of at least 3 years for aliens to be employed by the employer.

(ii) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an attestation, or a violation of clause (iv)—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $35,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 1154, 1184(c), 1101(a)(15)(H)(i)(b1), or 1101(a)(15)(E)(iii) of this title during a period of at least 2 years for aliens to be employed by the employer.

(iii) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1) or a willful misrepresentation of material fact in an attestation, in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition or application supported by the attestation—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $35,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 1154, 1184(c), 1101(a)(15)(H)(i)(b1), or 1101(a)(15)(E)(iii) of this title during a period of at least 3 years for aliens to be employed by the employer.

(iv) It is a violation of this clause for an employer who has filed an attestation under this subsection to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this clause, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer’s compliance with the requirements of this subsection or any rule or regulation pertaining to this subsection.

(v) The Secretary of Labor and the Secretary of Homeland Security shall devise a process under which a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

(vi)(I) It is a violation of this clause for an employer who has filed an attestation under this subsection to require a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer. The Secretary of Labor shall determine whether a required payment is a penalty (and not liquidated damages) pursuant to relevant State law.
(II) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an employer has committed a violation of this clause, the Secretary of Labor may impose a civil monetary penalty of $1,000 for each such violation and issue an administrative order requiring the return to the nonimmigrant of any amount paid in violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.

(vii)(I) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(ii)(ii) of this title designated as a part-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such nonproductive time.

(II) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title designated as a full-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status due to a decision by the employer (based on factors such as lack of work), or due to the nonimmigrant’s lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such nonproductive time.

(III) In the case of a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(ii)(ii) of this title who has not yet entered into employment with an employer who has had approved an attestation under this subsection with respect to the nonimmigrant, the provisions of subclauses (I) and (II) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States, or 60 days after the date the nonimmigrant becomes eligible to work for the employer in the case of a nonimmigrant who is present in the United States on the date of the approval of the attestation filed with the Secretary of Labor.

(V) This clause does not apply to a failure to pay wages to a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title for nonproductive time due to non-work-related factors, such as the voluntary request of the nonimmigrant for an absence or circumstances rendering the nonimmigrant unable to work.

(V) This clause shall not be construed as prohibiting an employer that is a school or other educational institution from applying to a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title an established salary practice of the employer, under which the employer pays to nonimmigrants under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title and United States workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, if—

(aa) the nonimmigrant agrees to the compressed annual salary payments prior to the commencement of the employment; and

(bb) the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to violate any condition of the nonimmigrant’s authorization under this chapter to remain in the United States.

(VI) This clause shall not be construed as superseding clause (viii).

(viii) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection to fail to offer to a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(ii)(ii) of this title, during the nonimmigrant’s period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and non-cash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers to United States workers.

(D) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified in the attestation and required under paragraph (1), the Secretary of Labor shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed.

(E) The Secretary of Labor may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date on which the employer is found by the Secretary of Labor to have committed a willful failure to meet a condition of paragraph (1) or to have made a willful misrepresentation of material fact in an attestation. The authority of the Secretary of Labor under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

(F) Nothing in this subsection shall be construed as superseding or preempting any other enforcement-related authority under this chapter (such as the authorities under section 1324b of this title), or any other Act.

(4) For purposes of this subsection:

(A) The term “area of employment” means the area within normal commuting distance of the worksite or physical location where the work of the nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(ii)(ii) of this title is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

(B) In the case of an attestation with respect to one or more nonimmigrants under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(ii)(ii) of this title by an employer,
the employer is considered to "displace" a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the job for which the nonimmigrant or nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

(C)(i) The term "lays off", with respect to a worker—

(I) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract; but

(II) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

(ii) Nothing in this subparagraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

(D) The term "United States worker" means an employee who—

(i) is a citizen or national of the United States; or

(ii) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 1157 of this title, is granted asylum under section 1158 of this title, or is an immigrant otherwise authorized, by this chapter or by the Secretary of Homeland Security, to be employed.

(f) Foreign residence requirement

(1) Except as provided in paragraph (2), no person admitted under section 115(a)(15)(Q)(ii)(I) of this title, or acquiring such status after admission, shall be eligible to apply for nonimmigrant status, an immigrant visa, or permanent residence under this chapter until it is established that such person has resided and been physically present in the person's country of nationality or last residence for an aggregate of at least 2 years following departure from the United States.

(2) The Secretary of Homeland Security may waive the requirement of such 2-year foreign residence abroad if the Secretary determines that—

(A) departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or an alien lawfully admitted for permanent residence); or

(B) the admission of the alien is in the public interest or the national interest of the United States.

\[\text{So in original. Two subsecs. (t) have been enacted.}\]
AMENDMENT OF SECTION

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

REFERENCES IN TEXT

This chapter, referred to in text, was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 1305 of Title 8, Aliens and Nationality.

Codicification

Subsection (j)(3), which required the Director of the United States Information Agency to transmit an annual report to Congress on aliens submitting affidavits described in subsection (j)(1)(E) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 195 of House Document No. 103–7.

AMENDMENTS

2010—Subsec. (a)(1)(C)(ii). Pub. L. 111–227 substituted "subsection (F) or (G) of section 1101(b)(1) of this title," for "for section 1101(b)(1)(F) of this title."


2008—Subsec. (a)(1)(A)(i). Pub. L. 110–293 substituted a semicolon for "which shall include infection with the".

2007—Subsec. (a)(2)(H)(i). Pub. L. 110–457 substituted "who commits or conspires to commit human trafficking offenses in the United States or outside the United States, or who the consular officer, the Secretary of Homeland Security, the Secretary of State," for "for whom is listed in a report submitted pursuant to section 7108(b) of title 22, or who the consular officer".


2005—Subsec. (a)(7)(B)(ii). Pub. L. 110–229, § 702(b)(2), amended cl. (ii) generally. Prior to amendment, text read as follows: "For provision authorizing waiver of clause (i) in the case of visitors to Guam, see subsection (i) of this section."

Subsec. (d)(7), Pub. L. 110–229, § 702(d), inserted "the Commonwealth of the Northern Mariana Islands," after "Guam."

Subsec. (i), Pub. L. 110–229, § 702(b)(3), amended subsec. (i) generally. Prior to amendment, subsec. (i) consisted of pars. (1) to (3) relating to waiver of requirements for nonimmigrant visitors to Guam.


Subsec. (d)(3)(B)(i). Pub. L. 110–161, § 691(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may conclude in such Secretary’s sole unreviewable discretion that subsection (a)(3)(B)(i)(V)(b) or (a)(3)(B)(i)(VII) of this section shall not apply to an alien, that subsection (a)(3)(B)(i)(V) of this section shall not apply with respect to any material support an alien afforded to an organization or individual that has engaged in a terrorist activity, or that subsection (a)(3)(B)(i)(VII) of this section shall not apply to a group solely by virtue of having a subgroup within the scope of that subsection. The Secretary of State may not, however, exercise discretion under this clause with respect to an alien once removal proceedings against the alien are instituted under section 1229a of this title."


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of subsection (a)(9)(C)(i) of this section in the case of an Attorney General’s discretion may waive the provisions applying for admission. The Attorney General in the
(ii), (iii), or (iv) of section 1154(a)(1)(B) of this title, or classification under clause (ii) or (iii) of section 1154(a)(1)(A) of this title or classification under clause (iii)." appearing wherever
Subsec. (a)(9)(C)(ii). Pub. L. 109–271, § 6(b)(1)(C), added subpar. (ii) generally. Prior to amendment, subpar. (C) read as follows: “qualifies for classification under clause (iii) or (iv) of section 1154(a)(1)(A) of this title or classification under clause (ii) or (iii) of section 1154(a)(1)(B) of this title; and’’.
Subsec. (a)(9)(C)(iii). Pub. L. 109–271, § 6(b)(3), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “the alien qualifies for classification under clause (iii) or (iv) of section 1154(a)(1)(A) of this title or classification under clause (ii) or (iii) of section 1154(a)(1)(B) of this title; and’’.
2004—Subsec. (a)(2)(G). Pub. L. 108–458, § 5502(a), amended heading and text of subpar. (G) generally. Prior to amendment, text read as follows: “Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time during the preceding 24-month period, particularly severe violations of religious freedom, as defined in section 6462 of title 22, and the spouse and children, if any, are inadmissible.”
Subsec. (a)(3)(E). Pub. L. 108–458, § 5501(a)(1), substituted “ordered, incited, assisted, or otherwise participated in conduct outside the United States that would, if committed in the United States or by a United States national, be genocide, as defined in section 1091(a) of title 18, is inadmissible” for “has engaged in conduct that is defined as genocide for purposes of the International Convention on the Prevention and Punishment of Genocide is inadmissible”.
Subsec. (p). Pub. L. 108–449, § 1(b)(2)(A), which directed redesignation of subsec. (p), relating to consideration of benefits received as battered alien in determination of inadmissibility as likely to become public charge, as (s), could not be executed because of the previous temporary redesignation by Pub. L. 108–77, § 402(b)(1). See 2003 Amendment note below.
Subsec. (s). Pub. L. 108–449, § 1(b)(2)(A), which directed redesignation of subsec. (p), relating to consideration of benefits received as battered alien in determination of inadmissibility as likely to become public charge, as (s), could not be executed because of the previous redesignation by Pub. L. 108–77, § 402(b)(1). See 2003 Amendment note below.
that the organization engages in the activities described in subclause (I), (II), or (III) of clause (iv), or that the organization provides material support to the other terrorist activity, or
“(III) that is a group of two or more individuals, whether organized or not, which engages in the activities described in subclause (I), (II), or (III) of clause (iv).”
Subsec. (d)(3). Pub. L. 109–13, § 104, designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as clus. (i) and (ii), respectively, and added subpar. (B).
in subsection (a)(4) of this section shall not apply with respect to such a nonimmigrant” before period at end. Subsec. (d)(13)(B)(i). Pub. L. 108–193, §4(b)(4)(B)(i), amended cl. (i) generally. Pub. L. 107–56, read as follows: “(paragraphs (1) and (4) of subsection (a) of this section); and”.
Subsec. (d)(14). Pub. L. 108–193, §8(a)(2), redesignated par. relating to Attorney General’s determination whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(U) of this title, as (14).

“(i) The preparation or planning of a terrorist activity.

“(ii) The gathering of information on potential targets for terrorist activity.

“(iii) The providing of any type of material support, including a safe house, transportation, communications, funds, false documentation or identification, weapons, explosives, or training, to any individual the actor knows or has reason to believe has committed or plans to commit a terrorist activity.

“(iv) The soliciting of funds or other things of value for terrorist activity or for any terrorist organization.

“(v) The solicitation of any individual for membership in a terrorist organization.

“(B) The attorney general may waive the provisions of this section if the attorney general determines that the nonimmigrant is indispensable to the national security of the United States.”


Subsec. (a)(6)(C)(1). Pub. L. 106–395, §201(b)(2), amended heading and text of cl. (i) generally. Prior to amendment, text read as follows: “Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter (including section 132a of this title) or any other Federal or State law is inadmissible.”


Subsec. (a)(9)(C)(ii). Pub. L. 106–386, §1505(a), inserted at end “The Attorney General in the Attorney General’s discretion may waive the provisions of subsection (a)(9)(C)(i) of this section in the case of an alien to whom the Attorney General has granted classification under clause (ii), (iii), or (iv) of section 1154a(a)(1)(A) of this title, or classification under clause (ii), (iii), or (iv) of section 1154a(a)(1)(B) of this title, in any case in which there is a connection between—” and added subcls. (1) and (2).

Subsec. (a)(10)(D). Pub. L. 106–395, §201(b)(1), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: “Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible.”

Subsec. (d)(13). Pub. L. 106–386, §1513(e), added par. (13) relating to Attorney General’s determination whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(U) of this title.

Pub. L. 106–386, §107(e)(3), added par. (13) relating to Attorney General’s determination whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(T) of this title.


Subsec. (1)(1). Pub. L. 106–386, §1505(c)(1), inserted before period at end “or, in the case of an alien granted classification under clause (iii) or (iv) of section 1154a(a)(1)(A) of this title, in any case in which there is a connection between—”.


Subsec. (a)(3)(B)(iv). Pub. L. 107–56, §411(a)(1)(F), reenacted heading without change and amended text of cl. (iv) generally. Prior to amendment, text read as follows: “As used in this chapter, the term ‘engage in terrorist activity’ means to commit, in any individual capacity or as a member of an organization, an act of terrorism or an act which the actor knows, or reasonably should know, affords material support to any individual, organization, or entity in conducting a terrorist activity at any time, including any of the following acts:

“(I) The preparation or planning of a terrorist activity.

“(II) The gathering of information on potential targets for terrorist activity.

“(III) The providing of any type of material support, including a safe house, transportation, communications, funds, false documentation or identification, weapons, explosives, or training, to any individual the actor knows or has reason to believe has committed or plans to commit a terrorist activity.

“(IV) The soliciting of funds or other things of value for terrorist activity or for any terrorist organization.

“(V) The solicitation of any individual for membership in a terrorist organization.

“(B) The attorney general may waive the provisions of this section if the attorney general determines that the nonimmigrant is indispensable to the national security of the United States.”

Subsec. (a)(9)(C)(ii). Pub. L. 106–386, §1505(a), inserted at end “The Attorney General in the Attorney General’s discretion may waive the provisions of subsection (a)(9)(C)(i) of this section in the case of an alien to whom the Attorney General has granted classification under clause (ii), (iii), or (iv) of section 1154a(a)(1)(A) of this title, or classification under clause (ii), (iii), or (iv) of section 1154a(a)(1)(B) of this title, in any case in which there is a connection between—” and added subcls. (1) and (2).

Subsec. (a)(10)(D). Pub. L. 106–395, §201(b)(1), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: “Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible.”

Subsec. (d)(13). Pub. L. 106–386, §1513(e), added par. (13) relating to Attorney General’s determination whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(U) of this title.

Pub. L. 106–386, §107(e)(3), added par. (13) relating to Attorney General’s determination whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(T) of this title.


Subsec. (1)(1). Pub. L. 106–386, §1505(c)(1), inserted before period at end “or, in the case of an alien granted classification under clause (iii) or (iv) of section 1154a(a)(1)(A) of this title, in any case in which there is a connection between—”.


1999—Subsec. (a)(2)(C). Pub. L. 106–120 amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: “Any alien who the consular or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or collider with others in the illicit trafficking in any such controlled substance, is inadmissible.”

Subsec. (a)(5)(C). Pub. L. 106–95, § 4(a)(2), substituted “Subject to paragraph (5)(A), the Secretary” for “Any alien who seeks” for “Any alien who seeks” in introductory provisions.

Subsec. (m). Pub. L. 106–95, § 2(b), amended subsec. (m) generally, adding provisions providing that no more than 33 percent of a facility’s workforce may be nonimmigrant aliens and making issuance of visas dependent upon State populations, and revising period of admission from a maximum of 6 years to 3 years.


Subsec. (a)(10)(C)(ii), (iii). Pub. L. 105–277, § 2226(a), added cl. (ii) and (iii) and struck out heading and text of former cl. (ii). Text read as follows: “Clause (i) shall not apply so long as the child is located in a foreign state that is a party to the Hague Convention on the Civil Aspects of International Child Abduction.”


Pub. L. 105–277, § 412(a)(2), (3), inserted at end “The application form shall include a clear statement explaining the liability under subparagraph (F) of a placement employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph. Nothing in subparagraph (G) shall be construed to prohibit an employer from using legitimate selection criteria relevant to the job involved, so long as such criteria are not applied in a discriminatory manner.”


Subsec. (n)(1)(C)(ii). Pub. L. 105–277, § 412(c), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “If there is no such bargaining representative, has posted notice of filing in conspicuous locations at the place of employment.”

Subsec. (n)(1)(E) to (G). Pub. L. 105–277, § 412(a)(1), added subpars. (E) to (G).

Subsec. (n)(2)(A). Pub. L. 105–277, § 413(b)(2), substituted “Subject to paragraph (5)(A), the Secretary” for “The Secretary” in first sentence.

Subsec. (n)(2)(C). Pub. L. 105–277, § 413(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraphs (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.”


heading and text generally. Prior to amendment, text read as follows: “Any alien who—
par. (G).

dot.

(1), substituted “Subject to paragraphs (2) and (3), within one year of the date of such deportation or removal, or (b) who seeks admission within 5 years of the date of such deportation or removal, or (h) 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 reapplying for admission.”


— (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 reapplying for admission.”


Subsec. (a)(6)(F). Pub. L. 104–198, § 346(a)(1), amended heading and text of subpar. (F) generally. Prior to amendment, text read as follows: “An alien who is the subject of a final order for violation of section 1324c of this title is excludable.”


Subsec. (a)(10). Pub. L. 104–198, § 301(b)(11), redesignated par. (9) as (10).

Subsec. (a)(10)(B). Pub. L. 104–198, § 306(c)(2)(B), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: “Any alien accompanying another alien ordered to be excluded and deported and certified to be helpless from sickness or mental or physical disability or infancy pursuant to section 1225(c) of this title, whose protection or guardianship is required by the alien ordered excluded and deported, is excludable.”


Subsec. (b). Pub. L. 104–198, § 306(d)(1)(F), which directed amendment of par. (2) by striking “or ineligible for” and substituting “inadmissibility” for “excludable” wherever appearing.


Pub. L. 104–132, § 412, designated existing provisions as par. (1), substituted “Subject to paragraphs (2) and (3), if for “‘if”, redesignated former paras. (1) and (2) as subpars. (A) and (B), respectively, realigned margins, and added paras. (2) and (3).

Subsec. (c). Pub. L. 104–198, § 306(b), struck out subsec. (c) which read as follows: “Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of subsection (a) of this section (other than paragraphs (3) and (9)(C)). Nothing contained in this subsection shall limit the authority of the Attorney General to exercise the discretion vested in him under section 1181(b) of this title. This subsection shall not apply to an alien who is deportable by reason of having committed any criminal offense covered in section 1227(a)(2)(A)(ii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 1227(a)(2)(A)(i) of this title.” Pub. L. 104–132, §§ 449(d)(2), as amended by Pub. L. 104–208, §§ 306(d)(2), 306(g)(1), (10)(H), substituted “is deportable by reason of having committed any criminal offense covered in section 1227(a)(2)(A)(i), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 1227(a)(2)(A)(i) of this title.” for “has been convicted of one or more aggravated felonies and has served for such felony or felonies a term of imprisonment of at least 5 years.” Pub. L. 104–132, § 449(d)(1), substituted “This” for “The first sentence of this” in third sentence.


Subsec. (d)(4). Pub. L. 104–198, § 308(g)(1), substituted “section 1225(c)” for “section 1225(c)”.

Subsec. (d)(5)(A). Pub. L. 104–198, § 602(a), substituted “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit” for “for emergent reasons or for reasons deemed strictly in the public interest”.

Subsec. (d)(7). Pub. L. 104–198, § 308(c)(4)(B), substituted “section 1231(c)” for “section 1227(a)”.

Pub. L. 104–198, § 308(e)(2)(A), substituted “removed” for “deported”.

Pub. L. 104–198, § 308(d)(1)(G), substituted “denied admission” for “excluded from admission”.


Pub. L. 104–198, § 308(e)(1)(C), substituted “an individual who at the time of such action was” after “aided only”.

Pub. L. 104–198, § 308(e)(2)(A), substituted “removal” for “deportation”.


Subsec. (e). Pub. L. 104–198, § 622(b), inserted “; or in the case of a waiver requested by an interested United States Government agency on behalf of an alien described in clause (iii),” before “the waiver shall be subject to”.

Subsec. (f). Pub. L. 104–198, § 124(b)(1), inserted at end “Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to the entry of aliens for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.”

Subsec. (g). Pub. L. 104–198, § 341(b), substituted a semicolon for “; or” at end of par. (1)(B), inserted “in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe;” as par. (1) concluding provisions, and substituted paras. (2) and (3) for former par. (2) and concluding provisions which read as follows: “(2) subsection (a)(1)(A)(ii) of this section in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in his discretion without regard to the provisions of this section or regulations prescribed by the Secretary of Health and Human Services, may by regulation prescribe.”
Subsec. (h). Pub. L. 104–208, §348(a), inserted at end of concluding provisions “No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.”

Pub. L. 104–208, §308(g)(10)(A), which directed substitution of “paragraphs (1) and (2) of section 1229b(a) of this title” for “subsection (c) of this section”, could not be executed because the language “subsection (c) of this section” did not appear.


Subsec. (i). Pub. L. 104–208, §349, amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows


Pub. L. 104–208, §308(d)(4), substituted “the Attorney General” for “the Attorney General or the Immigration Judge as applicable”.

Subsec. (a)(5)(C). Pub. L. 102–232, §307(a)(6), as amended by Pub. L. 103–416, §319(z)(5), substituted “immigrants seeking admission” for “immigrants applying for admission or adjustment of status under paragraphs (2) or (3) of section 1158(b) of this title” for “immigrant aliens described in paragraph (3) or (6) of section 1153(a) of this title” and for “nonpreference immigrant aliens described in section 1153(a)(7) of this title”.

Pub. L. 102–232, §307(a)(7), in closing provisions, substituted “(a) who seeks for who seeks”, “(b) who seeks admission” for “(or)”, and “felony,” for “felony.”


Pub. L. 102–232, §307(a)(9), substituted “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 who has been surrendered to a court of the United States or permanent resident, retains, or withholds custody of the child outside the United States from the United States citizen child granted custody by that order” and “a court order granting custody to a citizen of the United States of a child who has been surrendered to a court of the United States or permanent resident, retains, or withholds custody of the child outside the United States from the United States citizen child granted custody by that order” for “a court order granting custody to a citizen of the United States of a child who has been surrendered to a court of the United States or permanent resident, retains, or withholds custody of the child outside the United States from the United States citizen child granted custody by that order”.

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 party”. See 1990 Amendment note below.

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 party”. See 1990 Amendment note below.

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 party”. See 1990 Amendment note below.

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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 party”. See 1990 Amendment note below.

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 party”. See 1990 Amendment note below.

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 party”. See 1990 Amendment note below.

Subsec. (d)(4). 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 1153(a)’ of this title.”


Subsec. (h)(1). Pub. L. 102–232, §307(h)(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. (ii), 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)(2). Pub. L. 102–232, §306(a)(6), 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. (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. 103–116, §209(c)(1), in introductory provisions substituted “admitted or provided status as a nonimmigrant described in section 1101(a)(15)(H)(i)(b) or (C)” 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)(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 “of 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), substituted “If” for “In addition to the sanctions provided under paragraph (C), if” and inserted before period at end “whether or not a penalty under subparagraph (C) has been imposed”.

Subsec. (a). Pub. L. 101–649, §501(a), amended subsec. (a) generally, decreasing number of classes of excludable aliens from 34 to 9 by broadening descriptions of such classes.


Subsec. (c). Pub. L. 101–649, §501(d)(1), substituted “subsection (a) of this section (other than sub paragraphs (A), (B), (C), or (D) of paragraph (3))” for “paragraph (1) through (25) and paragraphs (30) and (31) of subsection (a) of this section”.

Subsec. (d). 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). Pub. L. 101–649, §501(d)(2)(B), struck out pars. (1) and (2) which related to applicability of subsec. (a)(11), (25), and (26).

Subsec. (d)(3). Pub. L. 101–649, §501(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)(5)(A). Pub. L. 101–649, §202(b), inserted “or in section 118(f) of this title” after “except as provided in subparagraph (B)”.


Subsec. (d)(7). Pub. L. 101–649, §501(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, §501(d)(2)(B), substituted “(3)(A), (3)(B), (3)(C), and (7)(B)” for “(26), (27), and (29)”.

Subsec. (d)(9). (10). Pub. L. 101–649, §501(d)(2)(A), struck out pars. (9) and (10) which related to applicability of pars. (7) and (15), respectively, of subsec. (a).


Subsec. (g). Pub. L. 101–649, §501(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.

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Pub. L. 101–246, §131(c), substituted “(12), or (34)” for “(12)”.


Subsec. (k). Pub. L. 101–649, §601(d)(6), substituted “paragraph (5)(A) or (7)(A)(i)” for “paragraph (14), (20), or (21)”.


Subsec. (m)(2)(A). Pub. L. 101–649, §162(c)(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. (a)(17). Pub. L. 100–600 inserted “or within ten years in the case of an alien convicted of an aggravated felony” after “within five years”.


Subsec. (a)(32). Pub. L. 100–525, §9(1), substituted “Secretary of Education” for “Commissioner of Education” and “Secretary of Health and Human Services” for “Secretary of Health, Education, and Welfare”.


Subsec. (e). Pub. L. 100–525, §8(1)(B), 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. (h). Pub. L. 100–525, §9(1)(4), substituted “paragraph (9)” for “paragraphs (9)”.


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 knows or has 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 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;”.


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 proviso 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 involving possession of 30 grams or less of marijuana” 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)(C). Pub. L. 97–116, §5(b)(2)–(4), struck out “(including any extension of the duration thereof under subparagraph (D))” after “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 Inter-

Subsec. (j)(1)(E). Pub. L. 97–116, §5(b)(7)(C)–(F), substituted “(ii)” for “(II)”, before “will be able to adapt”, and “(IV)” before “has adequate prior education”;


Subsec. (j)(2)(B). Pub. L. 95–83, §307(q)(2)(B), substituted “there is a need in that country for per-

Subsec. (j)(2)(C). Pub. L. 95–83, §307(q)(2)(C), sub-

Subsec. (j)(2)(D). Pub. L. 95–83, §307(q)(2)(D), sub-


Subsec. (a)(14). Pub. L. 94–971, §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 mak-

Subsec. (a)(13). Pub. L. 94–971, §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. (e). Pub. L. 94–484, §601(c), substituted “(i) whose”, “(II)”, and “residence, (ii)” for “(I),” and “residence, or (ii)”.


1977—Subsec. (a)(32). Pub. L. 95–83, §307(q)(1)(A), 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)(C). Pub. L. 95–83, §307(p)(2)(B), substituted “that there is a need in that country for per-


Subsec. (j)(2)(C). Pub. L. 95–83, §307(p)(2)(C), sub-


Subsec. (j)(2)(F). Pub. L. 97–116, §5(b)(7)(C)–(F), substituted “(and (B)(i)(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 there is a need for;” and added cl. (ii).

Subsec. (j)(2)(G). 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)(i) is being carried out and that the participants in such program are being provided appropriate supervision in their medical education and training.


Subsec. (d)(5). Pub. L. 96–212, §203(d), redesignated existing provisions as subpar. (A), inserted provision excepting subpar. (B), and added subpar. (B).


1979—Subsec. (d)(9). Pub. L. 96–70 added pars. (9) and (10).
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, §16(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.


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(c) of title 18, by reason of punishment actually imposed or who admit commission of an offense classifiable as a misdemeanor under section 1(c) 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) (i). Pub. L. 87–301, §§12, 14, 15, added subsec. (f) to (h), which for purposes of codification have been designated as subsecs. (g) to (i).


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 21, 1914, as or nationals of the United States.


Subsec. (a)(29). Act July 18, 1956, included conspiracy to violate a narcotic law, and the illicit possession of narcotics, as additional grounds for exclusion.

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 111–122, §3(c), Dec. 22, 2009, 123 Stat. 3481, provided that: "The amendments made by subsections (b), (c), and (d) of the Child Soldiers Accountability Act of 2008 (Public Law 110–340) [probably means subsecs. (b) to (d) of section 2 of Public Law 110–340, amending this section and section 1227 of this title] shall apply to offenses committed before, on, or after the date of the enactment of the Child Soldiers Accountability Act of 2008 [Oct. 3, 2008]."

Amendment by Pub. L. 110–229 effective on the transition program effective date described in section 1806 of Title 48, Territories and Insular Possessions, see section 705(b) of Pub. L. 110–229, set out as an Effective Date note under section 1806 of Title 48.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–161, div. J, title VI, §691(f), Dec. 26, 2007, 121 Stat. 2666, provided that: "The amendments made by this section [amending this section] shall take effect on the date of enactment of this section [Dec. 26, 2007], and these amendments and sections 212(a)(3)(B) and 212(d)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B) and 1182(d)(3)(B)), as amended by these sections, shall apply to—"

"(1) removal proceedings instituted before, on, or after the date of enactment of this section; and"

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

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–13, div. B, title I, §103(d), May 11, 2005, 119 Stat. 308, provided that: "The amendments made by this section [amending this section] shall take effect on the date of enactment of this division [May 11, 2005], and these amendments, and section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)), as amended by this section, shall apply to offenses committed before, on, or after the date of enactment of this Act [Dec. 17, 2004]."

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–458, title V, §5501(c), Dec. 17, 2004, 118 Stat. 3740, provided that: "The amendments made by this section [amending this section] shall apply to offenses committed before, on, or after the date of enactment of this Act [Dec. 17, 2004]."


"(a) IN GENERAL.—Except as provided in subsection (b), this subtitle [subtitle B (§§421–430) of Title IV of div. J of Pub. L. 108–447, enacting section 1381 of this title, amending this section, sections 1184, and 1356 of this title, section 296a of Title 28, Labor, and section 1865c of Title 42] shall apply to offenses committed before, on, or after the date of enactment of this Act [Dec. 17, 2004]."


"(b) EXCEPTIONS.—The amendments made by sections 422(b), 426(a), and 427 [amending sections 1184 and 1356
of this title] shall take effect upon the date of enact-
ment of this Act [Dec. 8, 2004].”

**Effective and Termination Dates of 2003 Amendment**

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

**Effective Date of 2002 Amendments**

Pub. L. 107–273, div. C, title I, § 11018(d), Nov. 2, 2002, 116 Stat. 1232, provided that: “The amendments made by this section [amending this section, section 1184 of this title, and provisions set out as a note under this section] shall take effect as if this Act [see Tables for classification] were enacted on May 31, 2002.”

vided that: “The amendments made by subsection (a) [amending this section and section 1183a of this title] shall apply with respect to deaths occurring before, on,
or after the date of the enactment of this Act [Mar. 13, 2002], except that, in the case of a death occurring be-
fore such date, such amendments shall apply only if—
“(1) the sponsored alien—
“(A) requests the Attorney General to reinstate the classification petition that was filed with re-
spect to the alien by the deceased and approved under section 204 of the Immigration and National-
ity Act (8 U.S.C. 1154) before such death; and
“(B) demonstrates that he or she is able to satisfy the requirement of section 212(a)(4)(C)(i) of such Act (8 U.S.C. 1182(a)(4)(C)(i)) by reason of such amendments; and
“(2) the Attorney General reinstates such petition after making the determination described in section 213A(f)(5)(B)(i) of such Act (8 U.S.C. 1184(a)(5)(B)(i)) (as amended by subsection (a)(1) of this Act).”

**Effective Date of 2001 Amendment**


“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 1158, 1189, and 1227 of this title] shall take effect upon the date of the enact-
tment of this Act [Oct. 26, 2001] and shall apply to—
“(A) actions taken by an alien before, on, or after such date; and
“(B) all aliens, without regard to the date of entry or attempted entry into the United States—
“(i) in removal proceedings on or after such date (except for proceedings in which there has been a
final administrative decision before such date); or
“(ii) seeking admission to the United States on or after such date.
“(2) SPECIAL RULE FOR ALIENS IN EXCLUSION OR DEPOR-
TATION PROCEEDINGS.—Notwithstanding any other pro-
vision of law, sections 212(a)(3)(B) and 237(a)(4)(B) of the Immigration and Nationality Act, as amended by this Act (8 U.S.C. 1182(a)(3)(B), 1227(a)(4)(B)), shall apply to all aliens in exclusion or deportation proceedings on or after the date of the enactment of this Act [Oct. 26, 2001] (except for proceedings in which there has been a final administrative decision before such date) if such proceedings were removal proceedings.
“(3) SPECIAL RULE FOR SECTION 239 ORGANIZATIONS
AND ORGANIZATIONS DESIGNATED UNDER SECTION 212(a)(3)(B)(v)(II).—
“(a) IN GENERAL.—Notwithstanding paragraphs (1) and (2), no alien shall be considered inadmissible under section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)), or deportable under section 237(a)(4)(B) of such Act (8 U.S.C. 1227(a)(4)(B)), by reason of the amendment made by subsection (a) [amending this section], on the ground that the alien engaged in a terrorist activity described in subclause (IV)(bb), (V)(bb), or (VI)(cc) of section 212(a)(3)(B)(v)(II) of such Act (as so amended) with respect to a group at any time when the group was not a terrorist organi-
zation designated by the Secretary of State under section 219 of such Act (8 U.S.C. 1189) or otherwise designated under section 212(a)(3)(B)(v)(II) of such Act (as so amended).
“(b) STATUTORY CONSTRUCTION.—Subparagraph (A) shall not be construed to prevent an alien from being considered inadmissible or deportable for having en-
gaged in a terrorist activity—
“(i) described in subclause (IV)(bb), (V)(bb), or
(VI)(cc) of section 212(a)(3)(B)(v)(II) of such Act (as so amended) with respect to a terrorist organization at any time when such organization was designated by the Secretary of State under section 219 of such Act or otherwise designated under section 212(a)(3)(B)(v)(II) of such Act (as so amended); or
“(ii) described in subclause (IV)(cc), (V)(cc), or
(VI)(dd) of section 212(a)(3)(B)(v)(II) of such Act (as so amended) with respect to a terrorist organization described in section 212(a)(3)(B)(v)(III) of such Act
(as so amended).
“(4) EXCEPTION.—The Secretary of State, in consultation with the Attorney General, may determine that the amendments made by this section shall not apply with respect to actions by an alien taken outside the United States before the date of the enactment of this Act [Oct. 26, 2001] upon the recommendation of a con-
sular officer who has concluded that there is not rea-
sonable ground to believe that the alien knew or rea-
sonably should have known that the actions would fur-
ther a terrorist activity.”

[Another section 411(c) of Pub. L. 107–56 amended sec-
tion 1189 of this title.]

**Effective Date of 2000 Amendment**

Pub. L. 106–395, title II, §201(b)(3), Oct. 30, 2000, 114 Stat. 1634, provided that: “The amendment made by paragraph (1) [amending this section] shall be effective as if included in the enactment of section 347 of the Il-
legal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–638) and shall apply to voting occurring before, on, or after September 30, 1996. The amendment made by paragraph (2) [amending this section] shall be effective as if included in the enactment of section 344 of the Illegal Im-

**Effective Date of 1999 Amendment**

nonimmigrant status only during the period—
“(1) beginning on the date that interim or final reg-
ulations are first promulgated under subsection (d) [set out as a note below]; and
“(2) ending on the date that is 3 years after the date of the enactment of the Nursing Relief for Disadvan-
taged Areas Reauthorization Act of 2005 [Dec. 20, 2006].”

vided that: “The requirements of chapter 5 of title 5,
United States Code (commonly referred to as the ‘Ad-
mministrative Procedure Act’) or any other law relating to rulemaking, information collection or publication in the Federal Register, shall not apply to any action to implement the amendments made by section 2 [amend-
ing provisions set out as a note above] to the extent the Secretary Homeland of Security [sic], the Secretary of Labor, or the Secretary of Health and Human Services
determines that compliance with any such requirement would impede the expeditious implementation of such amendments.

The requirements of subsection (a) (amending this section) shall apply to activities occurring on or after the date of the enactment of this Act [Oct. 21, 1998].

Effective and Termination Dates of 1998 Amendments


(1) for applications filed on or after the date of the enactment of this Act [Oct. 21, 1998]; and

(2) for applications filed before such date, but only to the extent that the computation is subject to an administrative or judicial determination that is not final as of such date."


Amendment by sections 301(b)(1), (c)(1), 304(b), 305(c), 306(d), and 308(c)(2)(B), (d)(1), (e)(1)(B), (C), (2)(A), (6), (1)(c)(F)–(P), (3)(A), (g)(1), (4)(B), (10)(A), (H) of div. C of Pub. L. 104–208 effective on the first day of the first month beginning more than 180 days after Sept. 30, 1996, with certain transitional provisions, including authority for Attorney General to waive application of the alien registration provisions of section 245 of the Act [8 U.S.C. §1227(a)(1)] where, in the Attorney General’s opinion, such benefits under section 301 of Pub. L. 101–649, set out as a note under section 1255a of this title, and including provisions that no period of time before Sept. 30, 1996, be included in the period of 1 year described in section (a)(6)(B)(i) of this section, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

Amendment by section 322(a) of Pub. L. 104–208 applicable to convictions and sentences entered before, on, or after Sept. 30, 1996, see section 322(c) of Pub. L. 104–208, set out as a note under section 1101 of this title.

Section 341(c) of div. C of Pub. L. 104–208 provided that: "The amendments made by this section [amending this section] shall apply with respect to applications for immigrant visas or for adjustment of status filed after September 30, 1996."

Section 342(b) of div. C of Pub. L. 104–208 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Sept. 30, 1996]."

Section 343(b) of div. C of Pub. L. 104–208 provided that: "The amendments made by this section [amending this section] shall apply to aliens who obtain the status of a nonimmigrant under section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. §1101(a)(15)(F)) after the end of the 60-day period beginning on the date of the enactment of this Act [Sept. 30, 1996], including aliens whose status as such a nonimmigrant is extended after the end of such period."

Section 347(c) of div. C of Pub. L. 104–208 provided that: "The amendments made by this section [amending this section] shall apply by voting occurring before, on, or after the date of the enactment of this Act [Sept. 30, 1996]."

Section 348(b) of div. C of Pub. L. 104–208 provided that: "The amendment made by subsection (a) [amending this section] shall apply to any alien who is in exclusion or deportation proceedings as of such date, and in such proceedings the United States shall apply to representations made on or after the date of the enactment of this Act [Sept. 30, 1996]."

Section 351(c) of div. C of Pub. L. 104–208 provided that: "The amendments made by this section [amending this section] shall apply to adjustments of status filed before, on, or after the date of the enactment of this Act [Sept. 30, 1996]."

Section 352(b) of div. C of Pub. L. 104–208 provided that: "The amendments made by subsection (a) [amending this section] shall apply to adjustments of status filed before, on, or after the date of the enactment of this Act [Sept. 30, 1996]."

Section 353 of title III of div. C of Pub. L. 104–208 provided that: "The ensemble of such provisions shall apply to such an application for which a final determination has been made as of the date of the enactment of this Act."

Section 357 of title III of div. C of Pub. L. 104–208 provided that: "The amendments made by this section [amending this section] shall apply to applications submitted on or after such date, not earlier than 30 days and not...
later than 60 days after the date the Attorney General promulgates under section 551(c)(2) of this division [set out as a note under section 1183a of this title] a standard form for an affidavit of support, as the Attorney General shall specify, but subparagraphs (C) and (D) of section 212(a)(4) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4)(C), (D)], as so amended, shall not apply with respect to which an official interview with an immigration officer was conducted before such effective date.”

**Effective and Termination Dates of 1994 Amendments**

Section 203(c) of Pub. L. 103–416 provided that: “The amendments made by this section [amending this section and section 1251 of this title] shall apply to convictions occurring before, on, or after the date of the enactment of this Act [Oct. 25, 1994].”


Section 219(c) of Pub. L. 103–416 provided that the amendment made by subsec. (z)(1), (5) of that section is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232.


Pub. L. 105–119, title I, § 111(b), Nov. 26, 1997, 111 Stat. 2458, which directed the amendment of section 506(c) of Pub. L. 103–317, set out above, by striking “September 30, 1997” and inserting “October 23, 1997” was probably intended by Congress to extend the termination date “October 1, 1997” to “October 23, 1997.” For further temporary extensions of the October 23, 1997 termination date, see list of continuing Appropriations acts contained in a Continuing Appropriations for Fiscal Year 1998 note set out under section 635 of Title 12, Banks and Banking.

**Effective Date of 1993 Amendment**

Section 203(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**


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**


Section 302(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].”


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 734(b) of Pub. L. 100–600 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].”


**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.’’


**Effective Date of 1980 Amendment**

Amendment by section 203(d) of Pub. L. 96–212 effective, except as otherwise provided, Apr. 1, 1980, and applicable only to offenses committed after the taking effect of such amendment, see section 3201(d)(1) of Pub. L. 96–212, set out as a note under section 1101 of this title.

**Effective Date of 1979 Amendment**

Amendment by Pub. L. 96–70 effective Sept. 27, 1979, see section 3201(d)(1) of Pub. L. 96–70, set out as a note under section 1101 of this title.

Section 3201(d)(2) of Pub. L. 96–70 provided that: ‘‘Paragraph (9) of section 212(d) of the Immigration and Nationality Act [subsec. (d)(9) of this section], as added by subsection (b) of this section, shall cease to be effective at the end of the transition period [midnight Mar. 31, 1982, see section 2101 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to section 3831 of Title 22, Foreign Relations and Intercourse].’’

**Effective Date of 1976 Amendments**

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

Amendment by section 601(d) of Pub. L. 94–484 applicable only on and after Jan. 10, 1976, notwithstanding section 601(f) of Pub. L. 94–484, as added by section 307(q)(3) of Pub. L. 95–85, set out as an Effective Date of 1977 Amendment note under section 1101 of this title.

Section 601(f) of Pub. L. 94–484 provided that: ‘‘The amendments made by this section [amending this section and section 1101 of this title] shall take effect ninety days after the date of enactment of this section [Oct. 12, 1976].’’

**Effective Date of 1965 Amendment**

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

**Effective Date of 1956 Amendment**

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

**Construction of 1990 Amendment**

Section 302(e)(6) of Pub. L. 102–232 provided that: ‘‘(Paragraph (1) of section 162(e) of the Immigration Act of 1990 [Pub. L. 101–649, amending this section] is repealed, and the provisions of law amended by such paragraph are restored as though such paragraph had not been enacted.’’

**Regulations**

Pub. L. 106–95, §2(d), Nov. 12, 1999, 113 Stat. 1316, provided that: ‘‘Not later than 90 days after the date of the enactment of this Act [Nov. 12, 1999], the Secretary of Labor (in consultation, to the extent required, with the Secretary of Health and Human Services) and the Attorney General shall promulgate final or interim final regulations to carry out section 212(m) of the Immigration and Nationality Act [8 U.S.C. 1182(m)] (as amended by subsection (b)).’’ [Interim final regulations implementing subsection (m) of this section were promulgated Aug. 21, 2000, published Aug. 22, 2000, 65 F.R. 51138, and effective Sept. 21, 2000.]

Pub. L. 105–277, div. C, title IV, §412(e), Oct. 21, 1998, 112 Stat. 2681–645, provided that: ‘‘In first promulgating regulations to implement the amendments made by this section [amending this section] in a timely manner, the Secretary of Labor and the Attorney General may reduce to not less than 30 days the period of public comment on proposed regulations.’’

Section 124(b)(2) of div. C of Pub. L. 104–208 provided that: ‘‘The Attorney General shall first issue, in proposed form, regulations referred to in the second sentence of section 212(f) of the Immigration and Nationality Act [8 U.S.C. 1182(f)], as added by the amendment made by paragraph (1), not later than 90 days after the date of the enactment of this Act [Sept. 30, 1996].’’

**Transfer of Functions**

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

**Abolition of Immigration and Naturalization Service and Transfer of Functions**

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

**African National Congress: Waiver of Certain Inadmissibility Grounds**


‘‘(a) Exemption Authority.—The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may determine, in such Secretary’s sole and unreviewable discretion, that paragraphs (2)(A)(i)(I), (2)(B), and (3)(B) (other than clause (i)(II)) of section 212(a) of the Immi-
Stat. 1182(a)(a)) shall not apply to an alien with respect to activities undertaken in association with the African National Congress in opposition to apartheid rule in South Africa.

“(b) Sense of Congress.—It is the sense of the Congress that the Secretary of State and the Secretary of Homeland Security should immediately exercise in appropriate instances the authority in subsection (a) to exempt the anti-apartheid activities of aliens who are current or former officials of the Government of the Republic of South Africa.

‘‘SEC. 3. REMOVAL OF CERTAIN AFFECTED INDIVIDUALS FROM CERTAIN UNITED STATES GOVERNMENT DATABASES.

“The Secretary of State, in coordination with the Attorney General, the Secretary of Homeland Security, the Director of the Federal Bureau of Investigation, and the Director of National Intelligence, shall take all necessary steps to ensure that databases used to determine admissibility to the United States are updated so that they are consistent with the exemptions provided under section 2.’’

AVAILABILITY OF OTHER NONIMMIGRANT PROFESSIONALS

Pub. L. 110–229, title VII, § 702(k), May 8, 2008, 122 Stat. 867, provided that: ‘‘The requirements of section 212(m)(6)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(m)(6)(B)) shall not apply to a facility in Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands.’’

REPORT ON DURESS WAIVERS

Pub. L. 110–161, div. J, title VI, § 691(e), Dec. 26, 2007, 122 Stat. 3685, provided that: ‘‘The Secretary of Homeland Security shall provide to the Committees on the Judiciary of the United States Senate and House of Representatives a report, not less than 180 days after the enactment of this Act (Dec. 26, 2007) and every year thereafter, which may include a classified annex, if appropriate, describing—

‘‘(1) the number of individuals subject to removal from the United States for having provided material support to a terrorist group who allege that such support was provided under duress;

‘‘(2) a breakdown of the types of terrorist organizations to which the individuals described in paragraph (1) have provided material support;

‘‘(3) a description of the factors that the Department of Homeland Security considers when evaluating duress waivers; and

‘‘(4) any other information that the Secretary believes that the Congress should consider while overseeing the Department’s application of duress waivers.’’

INADMISSIBILITY OF FOREIGN OFFICIALS AND FAMILY MEMBERS INVOLVED IN KLEPTOCRACY

Pub. L. 112–74, div. I, title VII, § 703(c), Dec. 23, 2011, 125 Stat. 1221, provided that: ‘‘(1) Officials of foreign governments and their immediate family members who the Secretary of State has credible information have been involved in significant corruption, including corruption related to the extraction of natural resources, shall be ineligible for entry into the United States.

‘‘(2) Individuals shall not be ineligible if entry into the United States would further important United States law enforcement objectives or is necessary to permit the United States to fulfill its obligations under the United Nations Headquarters Agreement: Provided, That nothing in this provision shall be construed to derogate from United States Government obligations under applicable international agreements.

‘‘(3) The Secretary may waive the application of paragraph (1) if the Secretary determines that the waiver would serve a compelling national interest or that the circumstances which caused the individual to be ineligible have changed sufficiently.

‘‘(4) Not later than 90 days after enactment of this Act [div. I of Pub. L. 112–74, approved Dec. 23, 2011] and 180 days thereafter, the Secretary of State shall submit a report, in classified form if necessary, to the Committees on Appropriations describing the information regarding corruption concerning each of the individuals found ineligible pursuant to paragraph (1), a list of any other individuals who would serve a compelling national interest or that the circumstances which caused the individual to be ineligible have changed sufficiently.

Similar provisions were contained in the following prior acts:


MONEY LAUNDERING WATCHLIST

Pub. L. 107–56, title X, § 1006(b), Oct. 26, 2001, 115 Stat. 394, provided that: ‘‘Not later than 90 days after the date of the enactment of this Act [Oct. 26, 2001], the Secretary of State shall develop, implement, and certify to the Congress that there has been established a money laundering watchlist, which identifies individuals worldwide who are known or suspected of money laundering, which is readily accessible to, and checked by, a consular or other Federal official prior to the issuance of a visa or admission to the United States. The Secretary of State shall develop and continue to update the watchlist in cooperation with the Attorney General, the Secretary of the Treasury, and the Director of Central Intelligence.’’

[Reference to the Director of Central Intelligence or the Director of Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.]

RECOMMENDATIONS FOR ALTERNATIVE REMEDY FOR NURSING SHORTAGE

Pub. L. 106–95, § 3, Nov. 12, 1999, 113 Stat. 1317, provided that: ‘‘Not later than the last day of the 4-year period described in section 2(e) [set out as a note above], the Secretary of Health and Human Services and the Secretary of Labor shall jointly submit to the Congress recommendations (including legislative specifications) with respect to the following:

‘‘(1) A program to eliminate the dependence of facilities described in section 212(m)(6) of the Immigration and Nationality Act [8 U.S.C. 1182(m)(6)] (as amended by section 2(b)) on nonimmigrant registered nurses by providing for a permanent solution to the shortage of registered nurses who are United States citizens or aliens lawfully admitted for permanent residence.

‘‘(2) A method of enforcing the requirements imposed on facilities under sections 101(a)(15)(H)(i)(c) and 212(m) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(i)(c), 1182(m)] (as amended by section 2) that would be more effective than the process described in section 212(m)(2)(E) of such Act [8 U.S.C. 1182(m)(2)(E)] (as so amended).’’

ISSUANCE OF CERTIFIED STATEMENTS

Pub. L. 106–95, § 4(c), Nov. 12, 1999, 113 Stat. 1318, provided that: ‘‘The Commission on Graduates of Foreign Nursing Schools, or any approved equivalent independent credentialing organization, shall issue certified statements pursuant to the amendment under subsection (a) [amending this section] not more than 35 days after the receipt of a complete application for such a statement.’’
EXTENSION OF AUTHORIZED PERIOD OF STAY FOR CERTAIN NURSES

Pub. L. 104–302, §1, Oct. 11, 1996, 110 Stat. 3656, provided that:

"(a) ALIENS WHO PREVIOUSLY ENTERED THE UNITED STATES PURSUANT TO AN H–LA VISA.—"

"(1) IN GENERAL.—Notwithstanding any other provision of law, the authorized period of stay in the United States of any nonimmigrant described in paragraph (2) is hereby extended through September 30, 1997.

"(2) NONIMMIGRANT DESCRIBED.—A nonimmigrant described in this paragraph is a nonimmigrant—"


"(B) who was within the United States on or after September 1, 1995, and who is within the United States on the date of the enactment of this Act [Oct. 11, 1996]; and

"(C) whose period of authorized stay has expired or would expire before September 30, 1997 but for the provisions of this section.

"(3) LIMITATIONS.—Nothing in this section may be construed to extend the validity of any visa issued to a nonimmigrant described in section 101(a)(15)(H)(i)(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(i)(a)] to authorize the reentry of any person who was outside the United States on the date of the enactment of this Act.

"(b) CHANGE OF EMPLOYMENT.—A nonimmigrant whose authorized period of stay is extended by operation of this section shall not be eligible to change employers in accordance with section 214.2(h)(2)(i)(D) of title 8, Code of Federal Regulations (as in effect on the date of the enactment of this Act [Oct. 11, 1996]); and

"(c) REGULATIONS.—Not later than 30 days after the date of the enactment of this Act, the Attorney General shall issue regulations to carry out the provisions of this section.

"(d) INTERIM TREATMENT.—A nonimmigrant whose authorized period of stay is extended by operation of this section, and the spouse and child of such nonimmigrant, shall be considered as having continued to maintain lawful status as a nonimmigrant through September 30, 1997.

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

For purposes of carrying out this chapter, any reference in subsec. (a)(1)(A) of this section to "inadmissible" is deemed to include a reference to "excludable", and any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d) of Pub. L. 104–208, set out in an Effective Date of 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


"(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) [104 Stat. 980, 986].

"(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.

``(c) PROVISIONS OF APPROPRIATE COMMITTEES.—

``(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 maintain a record of the fingerprints on magnetic tape and make the fingerprints available 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.

``(d) After the date of enactment of this Act [Oct. 28, 1991], the Secretary of State shall—

``(1) adopt procedures to enable the Department on a fully reimbursable basis to readily communicate information about the inadmissibility of aliens under the Immigration and Nationality Act [8 U.S.C. 1182(a)(5)(A)] that—

``(I) 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, to employees employed at the workplace, or (B) if there is no such bargaining representative, to employees employed at the facility through posting in conspicuous locations.

``(II) any person may submit documentary evidence bearing on the application for certification, including the name of any alien who is not inadmissible from the United States under the Immigration and Nationality Act, subject to the provisions of this section.

``(2) ensure that the following requirements are met:

``(I) the applicable labor certification is founded on a job opportunity which sets forth the manner in which the employer's employees will be involved in activities in the United States. Such protocols and guidelines shall be developed in a manner that ensures that in the case of any alien—

``(i) there is a job site or plant in the United States on which the alien—

``(II) the procedures of this section shall be designed to avoid undue burden and delay for eligible immigrants and the United States Government.

``(3) The Secretary of State shall adopt procedures to enable the Department to 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).

``(g) Subsections (d) and (e) shall cease to have effect after May 1, 1998.

``(h) The Secretary shall—

``(1) correct the Automated Visa Lookout System, or any other system or list which maintains information about the inadmissibility of aliens under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], the name of any alien who is not inadmissible from the United States under the Immigration and Nationality Act, subject to the provisions of this section.

``(2) report to the Congress concerning the completion of such correction process.

``(i) The Attorney General and the Secretary of State shall develop protocols and guidelines for updating lookout systems 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 any alien—

``(1) there is a job site or plant in the United States on which the alien—

``(II) the procedures of this section shall be designed to avoid undue burden and delay for eligible immigrants and the United States Government.

``Changes in Labor Certification Process


``(1) 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—

``(I) 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, to employees employed at the workplace, or (B) if there is no such bargaining representative, to employees employed at the facility through posting in conspicuous locations.

``(II) any person may submit documentary evidence bearing on the application for certification.

``(2) any person may submit documentary evidence bearing on the application for certification, including the name of any alien who is not inadmissible from the United States under the Immigration and Nationality Act, subject to the provisions of this section.
if the alien is no longer inadmissible because of an amendment made by this section the alien's name shall be removed from such books and system and the alien shall be informed of such removal and if the alien continues to be inadmissible the alien shall be informed of such determination.”

IMPLEMENTATION OF REQUIREMENTS FOR ADMISSION OF NONNIMMIGRANT NURSES DURING 5-YEAR PERIOD

Section 3(c) of Pub. L. 101–246, title I, § 128, Feb. 16, 1990, 104 Stat. 30, provided that:

“(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—

“(1) concerning the impact of this section on the nursing shortage,

“(2) 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,

“(3) on the formulation of State recruitment and retention plans under section 212(m)(3) of the Immigration and Nationality Act, and

“(4) 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


“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


ANNUAL REPORT TO CONGRESS ON IMPLEMENTATION OF PROVISIONS AUTHORIZING WAIVER OF CERTAIN REQUIREMENTS FOR NONIMMIGRANT VISITORS TO GUAM


SHARING OF INFORMATION CONCERNING DRUG TRAFFICKERS


“(a) Reporting Systems.—In order to ensure that foreign narcotics traffickers are denied visas to enter the United States, as required by section 212(a)(23) of the Immigration and Naturalization Act ((former) 22 [8 U.S.C. 1182(a)(23)]—

“(1) the Department of State shall cooperate with United States law enforcement agencies, including the Drug Enforcement Administration and the United States Customs Service, in establishing a comprehensive information system on all drug arrests of foreign nationals in the United States, so that that information may be communicated to the appropriate United States embassies; and

“(2) the National Drug Enforcement Policy Board shall agree on uniform guidelines which would permit the sharing of information on foreign drug traffickers.

“(b) Report.—Not later than six months after the date of the enactment of this Act [Aug. 16, 1985], the Chairman of the National Drug Enforcement Policy Board shall submit a report to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate on the steps taken to implement this section.

“[For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]”

REFUGEES FROM DEMOCRATIC KAMPUCHEA (CAMBODIA); TEMPORARY PAROLE INTO UNITED STATES FOR FISCAL YEARS 1979 AND 1980


“it was the sense of Congress that United States give special consideration to plight of refugees from Democratic Kampuchea (Cambodia) and that Attorney General should parole into United States, under section 1182(d)(5) of this title for fiscal year 1979, 7,500 aliens who are nationals or citizens of Democratic Kampuchea and for fiscal year 1980, 7,500 such aliens.

RETROACTIVE ADJUSTMENT OF REFUGEE STATUS

Pub. L. 95–412, § 5, Oct. 5, 1978, 92 Stat. 909, as amended by Pub. L. 96–212, title II, § 203(g), Mar. 17, 1980, 94 Stat. 108, provided that any refugee, not otherwise eligible for retroactive adjustment of status, who was paroled into United States by Attorney General pursuant to section 1182(d)(5) of this title before Apr. 1, 1980, was to have his status adjusted pursuant to section 1153(g) and (h) of this title.

REPORT BY ATTORNEY GENERAL TO CONGRESSIONAL COMMITTEES ON ADMISSION OF CERTAIN EXCLUDABLE ALIENS

Pub. L. 95–370, title IV, § 401, Sept. 17, 1978, 92 Stat. 837, directed Attorney General, by October 30, 1979, to report to specific congressional committees on certain cases of the admission to the United States of aliens that may have been excludable under former section 1182(a)(27) to (29) of this title.

NATIONAL BOARD OF MEDICAL EXAMINERS EXAMINATION

Section 622(a), (b) of Pub. L. 95–83, title III, § 307(g)(3), Aug. 1, 1977, 91 Stat. 385, 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 Examin-
ers Examination if the alien was on January 9, 1977, a doctor of medicine fully and permanently licensed to practice medicine in a State, held on that date a valid specialty certificate issued by a constituent board of the American Board of Medical Specialties, and was on that date practicing medicine in a State, prior to repeal by Pub. L. 97–116, §5(a)(3), Dec. 29, 1981, 95 Stat. 1612.

LABOR CERTIFICATION FOR GRADUATES OF FOREIGN MEDICAL SCHOOLS; DEVELOPMENT OF DATA BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE NOT LATER THAN OCT. 12, 1977

Section 906 of Pub. L. 94–484 directed Secretary of Health, Education, and Welfare, not later than one year after Oct. 12, 1976, to develop sufficient data to enable the Secretary of Labor to make equitable determinations with regard to applications for labor certification by graduates of foreign medical schools, such data to include the number of physicians (by specialty and by percent of population) in a geographic area necessary to provide adequate medical care, including such care in hospitals, nursing homes, and other health care institutions, in such area.

RESETTLEMENT OF REFUGEE-ESCAPES; REPORTS; FORMULAS; TERMINATION DATE; PERSONS DIFFICULT TO RESettle; CREATION OF RECORD OF ADMISSION FOR PERMANENT RESIDENCE


“[SEC. 2. Any such alien who, pursuant to section 1 of this Act, is found, upon inspection by an immigration officer or after hearing before a special inquiry officer, to have been and to be admissible as an immigrant at the time of his arrival in the United States and at the time of his inspection and examination, except for the fact that he was not and is not in possession of the documents required by section 212(a)(20) of the Immigration and Nationality Act [former subsection (a)(20) of this section], shall be regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival.

“SEC. 3. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act [this chapter] or any other law relating to immigration, nationality, or naturalization.”

PROC. NO. 4865. HIGH SHAS INTERDICTION OF ILLEGAL ALIENS

Pub. L. 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 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 215a(1) of the Immigration and Nationality Act, as amended (8 U.S.C. sections 1182(f) and 1159a(1)), in order to protect the sovereignty of the United States, and in accordance with cooperative arrangements with certain foreign governments, and having found that the entry of undocumented aliens, arriving at the borders of the United States from the high seas, is detrimental to the interests of the United States, do proclaim that:

The entry of undocumented aliens from the high seas is hereby suspended and shall be prevented by the interdiction of certain vessels carrying such aliens.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and sixth.

RONALD REAGAN.

PROC. NO. 7750. TO SUSPEND ENTRY AS IMMIGRANTS OR NONIMMIGRANTS OF PERSONS ENGAGED IN OR BENEFITING FROM CORRUPTION

Pub. L. No. 7750, Jan. 12, 2004, 69 F.R. 2387, provided: In light of the importance of legitimate and transparent public institutions to world stability, peace, and development, and the serious negative effects that cor-
ruption of public institutions has on the United States efforts to promote security and to strengthen democratic institutions and free market systems, and in light of the importance to the United States and the international community of fighting corruption, as evidenced by the Third Global Forum on Fighting Corruption and Safeguarding Integrity and other intergovernmental efforts, I have determined that it is in the interests of the United States to take action to restrict the international travel and to suspend the entry into the United States, as immigrants or nonimmigrants, of certain persons who have committed, participated in, or are beneficiaries of corruption in the performance of public functions where that corruption has serious adverse effects on international activity of U.S. businesses, U.S. foreign assistance goals, the security of the United States against transnational crime and terrorism, or the stability of democratic institutions and nations.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including section 212(f) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1182(f), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would, except as provided in sections 2 and 3 of this proclamation, be detrimental to the interests of the United States.

I therefore hereby proclaim that:

SECTION 1. The entry into the United States, as immigrants or nonimmigrants, of the following persons is hereby suspended:

(a) Public officials or former public officials whose solicitation or acceptance of any article of monetary value, or other benefit, in exchange for any act or omission in the performance of their public functions has or had serious adverse effects on the national interests of the United States.

(b) Persons whose provision of or offer to provide any article of monetary value or other benefit to any public official in exchange for any act or omission in the performance of such official's public functions has or had serious adverse effects on the national interests of the United States.

(c) Public officials or former public officials whose misappropriation of public funds or interference with the judicial, electoral, or other public processes has or had serious adverse effects on the national interests of the United States.

(d) The spouses, children, and dependent household members of persons described in paragraphs (a), (b), and (c) above, who are beneficiaries of any articles of monetary value or other benefits obtained by such persons.

Ssc. 2. Section 1 of this proclamation shall not apply with respect to any person otherwise covered by section 1 where entry of the person into the United States would not be contrary to the interests of the United States.

Ssc. 3. Persons covered by sections 1 and 2 of this proclamation shall be identified by the Secretary of State or the Secretary's designee, in his or her sole discretion, pursuant to such standards and procedures as the Secretary may establish.

Ssc. 4. For purposes of this proclamation, "serious adverse effects on the national interests of the United States" means serious adverse effects on the international economic activity of U.S. businesses, U.S. foreign assistance goals, the security of the United States against transnational crime and terrorism, or the stability of democratic institutions and nations.

Ssc. 5. Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

Ssc. 6. The Secretary of State shall have responsibility for implementing this proclamation as well as any such procedures as the Secretary may, in the Secretary's discretion, establish.

Ssc. 7. This proclamation is effective immediately.

Ssc. 8. This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of January, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.

GEORGE W. BUSH.

PROC. NO. 8342, TO SUSPEND ENTRY AS IMMIGRANTS AND NONIMMIGRANTS OF FOREIGN GOVERNMENT OFFICIALS RESPONSIBLE FOR FAILING TO COMBAT TRAFFICKING IN PERSONS

PROC. NO. 8342, Jan. 16, 2009, 74 F.R. 4063, provided:

In order to foster greater resolve to address trafficking in persons (TIP), specifically in punishing acts of trafficking and providing protections to the victims of these crimes, consistent with the Trafficking Victims Protection Act of 2000, as amended (the "Act") (22 U.S.C. 7101 et seq.), it is in the interests of the United States to restrict the international travel and to suspend entry into the United States, as immigrants or nonimmigrants, of certain senior government officials responsible for domestic law enforcement, justice, or labor affairs who have impeded their governments' antitrafficking efforts, have failed to implement their governments' antitrafficking laws and policies, or who otherwise bear responsibility for their governments' antitrafficking efforts to take steps recognized internationally as appropriate to combat trafficking in persons, and whose governments have been ranked more than once as Tier 3 countries, which represent the worst anti-TIP performers, in the Department of State's annual Trafficking in Persons Report, and for which I have made a determination pursuant to section 110(d)(1)-(2) or (4) of the Act. The Act reflects international antitrafficking standards that guide efforts to eradicate this modern-day form of slavery around the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, including section 212(f) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1182(f), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would, except as provided for in sections 2 and 3 of this proclamation, be detrimental to the interests of the United States.

I therefore hereby proclaim that:

SECTION 1. The entry into the United States, as immigrants or nonimmigrants, of the following aliens is hereby suspended:

(a) Senior government officials—defined as the heads of ministries or agencies and officials occupying positions within the two bureaucratic levels below those top positions—responsible for domestic law enforcement, justice, or labor affairs who have impeded their governments' antitrafficking efforts, have failed to implement their governments' antitrafficking laws and policies, or who otherwise bear responsibility for their governments' failures to take steps recognized internationally as appropriate to combat trafficking in persons, and who are members of governments for which I have made a determination pursuant to section 110(d)(1)-(2) or (4) of the Act, in the current year and at least once in the preceding 3 years.

(b) The spouses of persons described in subsection (a) of this section.

Ssc. 2. Section 1 of this proclamation shall not apply with respect to any person otherwise covered by section 1 where entry of such person would not be contrary to the interest of the United States.

Ssc. 3. Persons covered by sections 1 or 2 of this proclamation shall be identified by the Secretary of State.
or the Secretary’s designee, in his or her sole discretion, pursuant to such procedures as the Secretary may establish under section 5 of this proclamation.

SEC. 4. Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

SEC. 5. The Secretary of State shall implement this proclamation pursuant to such procedures as the Secretary, in consultation with the Secretary of Homeland Security, may establish.

SEC. 6. This proclamation is effective immediately. It shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated, either in whole or in part. Any such determination by the Secretary of State shall be published in the Federal Register.

SEC. 7. This proclamation is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any person against the United States, as determined by the Secretary of State. In extraordinary circumstances, the Secretary of Homeland Security, may establish.

NOW, THEREFORE, I, BARACK OBAMA, by the authority vested in me as President of the United States of America, the two hundred and thirty-third.

GEORGE W. BUSH.

PROC. No. 8693. SUSPENSION OF ENTRY OF ALIENS SUBJECT TO UNITED NATIONS SECURITY COUNCIL TRAVEL BANS AND INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT SANCTIONS

PROC. No. 8693, July 24, 2011, 76 F.R. 44751, provided:

In light of the firm commitment of the United States to the preservation of international peace and security and our obligations under the United Nations Charter to carry out the decisions of the United Nations Security Council imposed under Chapter VII, I have determined that it is in the interests of the United States to suspend the entry into the United States, as immigrants or nonimmigrants, of aliens who are subject to United Nations Security Council travel bans as of the date of this proclamation. I have further determined that it is in the interests of the United States to suspend the entry into the United States, as immigrants or nonimmigrants, of aliens whose property and interests in property have been blocked by an Executive Order issued in whole or in part pursuant to the President’s authority under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

NOW, THEREFORE, I, BARACK OBAMA, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1152(f)), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would be detrimental to the interests of the United States. I therefore hereby proclaim that:

SECTION 1. The entry into the United States, as immigrants or nonimmigrants, of the following persons is hereby suspended:

(a) Any alien who meets one or more of the specific criteria for the imposition of a travel ban provided for in a United Nations Security Council resolution referenced in Annex A to this proclamation.

(b) Any alien who meets one or more of the specific criteria contained in an Executive Order referenced in Annex B to this proclamation.

SECRETARY. Persons covered by section 1 of this proclamation shall be identified by the Secretary of State or the Secretary’s designee, in his or her sole discretion, pursuant to such standards and procedures as the Secretary may establish.

Section 2 of this proclamation shall have responsibility for implementing this proclamation pursuant to such procedures as the Secretary, in consultation with the Secretary of the Treasury and Secretary of Homeland Security, may establish.

SEC. 4. Section 1 of this proclamation shall not apply with respect to any person otherwise covered by section 1 where entry of the person into the United States would not be contrary to the interests of the United States, as determined by the Secretary of State. In exercising the functions and authorities in the previous sentence, the Secretary of State shall consult the Secretary of Homeland Security on matters related to admissibility or inadmissibility within the authority of the Secretary of Homeland Security.

SEC. 5. Nothing in this proclamation shall be construed to require actions that would be inconsistent with the United States obligations under applicable international agreements.

SEC. 6. This proclamation is not intended to, and does not, create any right, benefit, substantive or procedural, enforceable at law or in equity by any person against the United States, as determined by the Secretary of State. In extraordinary circumstances, the Secretary of Homeland Security, may establish.

NOW, THEREFORE, I, BARACK OBAMA, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1152(f)), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would be detrimental to the interests of the United States. I therefore hereby proclaim that:

SECTION 1. The entry into the United States, as immigrants or nonimmigrants, of certain persons who have engaged in acts of or procedural, enforceable at law or in equity by any person against the United States, as determined by the Secretary of State. In extraordinary circumstances, the Secretary of Homeland Security, may establish.

NOW, THEREFORE, I, BARACK OBAMA, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1152(f)), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would be detrimental to the interests of the United States. I therefore hereby proclaim that:

(a) Any alien who planned, ordered, assisted, aided and abetted, committed or otherwise participated in, including through command responsibility, widespread or systematic violence against any civilian population based in whole or in part on race; color; descent; sex; disability; membership in an ethnic group or language; religion; political opinion; national origin; ethnicity; membership in a particular social group; birth;
or sexual orientation or gender identity, or who attempted or conspired to do so.

(b) Any alien who planned, ordered, assisted, aided and abetted, committed or otherwise participated in, including through command responsibility, war crimes, crimes against humanity or other serious violations of human rights, or who attempted or conspired to do so.

SIC. 2. Section 1 of this proclamation shall not apply with respect to any alien otherwise covered by section 1 where the entry of such person would not harm the foreign relations interests of the United States.

SIC. 3. The Secretary of State, or the Secretary’s designee, in his or her sole discretion, shall identify persons covered by section 1 of this proclamation, pursuant to such standards and procedures as the Secretary may establish.

SIC. 4. The Secretary of State shall have responsibility for implementing this proclamation pursuant to such procedures as the Secretary, in consultation with the Secretary of Homeland Security, may establish.

SIC. 5. For any person whose entry is otherwise suspended under this proclamation entry will be denied, unless the Secretary of State determines that the particular entry of such person would be in the interests of the United States. In exercising such authority, the Secretary of State shall consult the Secretary of Homeland Security on matters related to admissibility or inadmissibility within the authority of the Secretary of Homeland Security.

SIC. 6. Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements, or to suspend entry based solely on an alien’s ideology, political opinion, or belief, or based solely on expression that would be considered protected under U.S. interpretations of international agreements to which the United States is a party. Nothing in this proclamation shall be construed to limit the authority of the United States to admit or to suspend entry of particular individuals into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) or under any other provision of U.S. law.

SIC. 7. This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SIC. 8. This proclamation is effective immediately and shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated, either in whole or in part. Any such termination shall become effective upon publication in the Federal Register.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of August, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

Barack Obama.

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.
laws, or appropriate laws of a foreign country with which we have an arrangement to assist; provided, however, that the Secretary of Homeland Security, in his unchallengeable 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.

SNC. 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 Constitution or any applicable statute), legally enforceable by any party against the United States, its agencies or instrumentalities, officers, employees, or any other person. Nor shall this order authorize any procedures to determine whether a person is a refugee.

SNC. 4. Executive Order No. 12324 is hereby revoked and replaced by this order.

SNC. 5. This order shall be effective immediately.

**GEORGE BUSH.**

**EX. ORD. NO. 13276. DELEGATION OF RESPONSIBILITIES CONCERNING UNDOCUMENTED ALIENS INTERCEPTED OR INTERCEPTED IN THE CARIBBEAN REGION**


By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), and section 301 of title 3, United States Code, and in order to delegate appropriate responsibilities to Federal agencies for responding to migration of undocumented aliens in the Caribbean region, it is hereby ordered:

**SECTION 1. Duties and Authorities of Agency Heads.**

Consistent with applicable law,

(a) The Secretary of Homeland Security may maintain custody, at any location she deems appropriate, of any undocumented aliens he has reason to believe are seeking to enter the United States and who are intercepted or intercepted in the Caribbean region. In this regard, the Secretary of Homeland Security shall provide and operate a facility, or facilities, to house and provide for the needs of any such aliens. Such a facility may be located at Guantanamo Bay Naval Base or any other appropriate location.

(b) The Secretary of Homeland Security may conduct any screening of such aliens that he deems appropriate, including screening to determine whether such aliens should be returned to their country of origin or transit, or whether they are persons in need of protection who should not be returned without their consent. If the Secretary of Homeland Security institutes such screening, then until a determination is made, the Secretary of Homeland Security shall provide for the custody, care, safety, transportation, and other needs of the aliens. The Secretary of Homeland Security shall continue to provide for the custody, care, safety, transportation, and other needs of aliens who are determined not to be persons in need of protection until such time as they are returned to their country of origin or transit.

(b) The Secretary of State shall provide for the custody, care, safety, transportation, and other needs of undocumented aliens intercepted or intercepted in the Caribbean region whom the Secretary of Homeland Security has identified as persons in need of protection. The Secretary of State shall provide for and execute a process for resettling such persons in need of protection, as appropriate, in country other than their country of origin, and shall also undertake such diplomatic efforts as may be necessary to address the problem of illegal migration of aliens in the Caribbean region and to facilitate the return of those aliens who are determined not to be persons in need of protection.

(c)(i) The Secretary of Homeland Security and the Secretary of State, for the housing and care of any undocumented aliens interdicted or intercepted in the Caribbean region and taken into their custody, shall make available to the Secretary of Homeland Security and the Secretary of State, the housing, care, safety, transportation, and other needs of the aliens, and shall also undertake such diplomatic efforts as may be necessary to address the problem of illegal migration of aliens in the Caribbean region and to facilitate the return of those aliens who are determined not to be persons in need of protection.

(ii) The Secretary of Homeland Security shall be responsible for providing access to such facilities and perimeter security.

The Secretary of Homeland Security and the Secretary of State, respectively, shall be responsible for reimbursement for necessary supporting utilities.

(iii) The Secretary of Defense shall be responsible for providing support to the Secretary of Homeland Security and the Secretary of State in carrying out the duties described in paragraphs (a) and (b) of this section regarding the custody, care, safety, transportation, and other needs of the aliens, and shall assume primary responsibility for these duties on a nonreimbursable basis as necessary to contain the threat to national security posed by the migration. The Secretary of Defense shall also provide support to the Coast Guard in carrying out the duties described in Executive Order 12807 of May 24, 1992 [set out above], regarding interdiction of migrants.

SNC. 2. Definitions. For purposes of this order, the term “mass migration” means a migration of undocumented aliens that is of such magnitude and duration that it poses a threat to the national security of the United States, as determined by the President.


(a) Nothing in this order shall be construed to impair or otherwise affect the authorities and responsibilities set forth in Executive Order 12807 of May 24, 1992 [set out above], regarding interdiction of migrants.

(b) Nothing in this order shall be construed to make reviewable in any judicial or administrative proceeding, or otherwise, any action, omission, or matter that otherwise would not be reviewable.

(c) This order is intended only to improve the management of the executive branch. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity or otherwise against the United States, its departments, agencies, entities, instrumentalities, officers, employees, or any other person.

(d) Any agency assigned any duties by this order may use the provisions of the Economy Act, 31 U.S.C. 1535 and 1536, to carry out such duties, to the extent permitted by such Act.

(e) This order shall not be construed to require any agency to determine whether a person is a refugee or otherwise in need of protection.

**GEORGE W. BUSH.**

**DELEGATION OF AUTHORITY UNDER SECTIONS 1122(f) AND 1185(a)(1) OF THIS TITLE**

Memorandum of President of the United States, Sept. 24, 1999, 64 F.R. 58309, provided:

Memorandum for the Attorney General

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), and in light of Proclamation 4865 of September 29, 1981 [set out above], I hereby delegate to the Attorney General the authority to:

(a) Maintain custody, at any location she deems appropriate, and conduct any screening she deems appropriate in her review, of any undocumented person she has reason to believe is seeking to enter the United States and who is encountered in a vessel intercepted on the high seas through December 31, 2000, and

(b) Undertake any other appropriate actions with respect to such aliens permitted by law.
§§ 1182a to 1182c. TITLE 8—ALIENS AND NATIONALITY

With respect to the functions delegated by this order, all actions taken after April 16, 1999, for or on behalf of the President that would have been valid if taken pursuant to this memorandum are ratified.

This memorandum is not intended to create, and should not be construed to create, any right or benefit, substantive or procedural, legally enforceable by any party against the United States, its agencies or instrumentalities, officers, employees, or any other person, or to require any procedures to determine whether a person is a refugee.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.


Section 1182a, act Sept. 3, 1954, ch. 1254, § 4, 68 Stat. 1145, related to admission of aliens who were either convicted, or who admitted the commission, of a misdemeanor.

Section 1182b, Pub. L. 85–316, § 5, Sept. 11, 1957, 71 Stat. 640, permitted admission of an alien spouse, child or parent excludable for crime involving moral turpitude in cases of hardship, when not contrary to national welfare or security, and with Attorney General’s consent, and under conditions and procedures prescribed by him. See section 1182(h) of this title.


§ 1182d. Denial of visas to confiscators of American property

(a) Denial of visas

Except as otherwise provided in section 6091 of title 22, and subject to subsection (b) of this section, the Secretary of State may deny the issuance of a visa to any alien who—

(1) through the abuse of position, including a governmental or political party position, converts or has converted for personal gain real property that has been confiscated or expropriated, a claim to which is owned by a national of the United States, or who is complicit in such a conversion; or

(2) induces any of the actions or omissions described in paragraph (1) by any person.

(b) Exceptions

Subsection (a) of this section shall not apply to—

(1) any country established by international mandate through the United Nations; or

(2) any territory recognized by the United States Government to be in dispute.

(c) Reporting requirement

Not later than 6 months after October 21, 1998, and every 12 months thereafter, the Secretary of State shall submit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a report, including—

(1) a list of aliens who have been denied a visa under this subsection; and

(2) a list of aliens who could have been denied a visa under subsection (a) of this section but were issued a visa and an explanation as to why each such visa was issued.


§§ 1182f. Denial of entry into United States of foreign nationals engaged in establishment or enforcement of forced abortion or sterilization policy

(a) Denial of entry

Notwithstanding any other provision of law, the Secretary of State may not issue any visa to, and the Attorney General may not admit to the United States, any foreign national whom the Secretary finds, based on credible and specific information, to have been directly involved in the establishment or enforcement of population control policies forcing a woman to undergo an abortion against her free choice or forcing a man or woman to undergo sterilization against his or her free choice, unless the Secretary has substantial grounds for believing that the foreign national has discontinued his or her involvement with, and support for, such policies.

(b) Exceptions

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

(c) Waiver

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

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

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


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

(a) Denial of entry

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

(b) Exception

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

(c) Waiver

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

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

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

(2651 of Title 22, Foreign Relations and Intercourse.)

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

(a) Enforceability

(1) Terms of affidavit

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

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

(b) Definitions

For definitions of “Secretary” and “appropriate congressional committees” as used in this section, see section 1183a. Requirements for sponsor’s affidavit of support under the specified conditions, an alien excludable under section 1182(a)(4) 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 1996 Amendment

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

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 611 of Pub. L. 101–649, set out as a note under section 1101 of this title.

Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.
§ 1183a

(1) Request for reimbursement

(A) Requirement

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

(B) Regulations

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

(2) Actions to compel reimbursement

(A) In case of nonresponse

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

(B) In case of failure to pay

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

(C) Limitation on actions

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

(3) Use of collection agencies

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

(c) Remedies

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

(d) Notification of change of address

(1) General requirement

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

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1 See References in Text note below.
the period in which an affidavit of support is enforceable.

(2) **Penalty**

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

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

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

The Attorney General shall enforce this paragraph under appropriate regulations.

(e) **Jurisdiction**

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

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

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

(f) **“Sponsor” defined**

(1) **In general**

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

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

(B) is at least 18 years of age;

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

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

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

(2) **Income requirement case**

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

(3) **Active duty armed services case**

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

(4) **Certain employment-based immigrants case**

Such term also includes an individual—

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

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

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

(5) **Non-petitioning cases**

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

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

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

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

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

(6) **Demonstration of means to maintain income**

(A) **In general**

(i) **Method of demonstration**

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

(ii) **Flexibility**

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

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

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

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

(i) Sponsor’s social security account number required to be provided
(1) An affidavit of support shall include the social security account number of each sponsor.

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

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

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

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

(j) Sponsor’s social security account number to be provided in automated recordkeeping system
(1)(D) but who accepts joint and several liability with the alien for purposes of subparagraph (A) shall be deemed as if the alien were a sponsor.

(2) The Attorney General shall, not later than 90 days after the date the Attorney General formulates the form for such affidavits and the form for such affidavits is approved under paragraph (2) or relative of the alien, to the extent of the sponsor’s financial resources, shall be deemed as if the alien were a sponsor.

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

Effective Date of 2002 Amendment
Amendment by Pub. L. 107–150 applicable with respect to deaths occurring before, on, or after Mar. 13, 2002, except that, in case of death occurring before such date, such amendments shall apply only if (1) the sponsored alien requests Attorney General to reinstate the classification petition that was filed with respect to such death and demonstrates that he or she is able to satisfy requirement of section 1154(a)(4)(C)(ii) of this title by reason of such amendments; and (2) Attorney General reinstates such petition after making the determination described in subsec. (f)(5)(B)(i) of this section, see section 2(b) of Pub. L. 107–150, set out as a note under section 1162 of this title.

Effective Date of 1996 Amendments: Promulgation of Form
Section 551(c) of div. C of Pub. L. 104–208 provided that:

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

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

Section 423(c) of Pub. L. 104–193 provided that subsec. (a) of this section was applicable to affidavits of support executed on or after a date specified by Attorney General, which date was to be not earlier than 60 days (and not later than 90 days) after date Attorney General formulated form for such affidavits under subsection (b).

2 So in original. Section enacted without a subsec. (g).
ABOLITION OF IMMIGRATION AND NATURALIZATION
SERVICE AND TRANSFER OF FUNCTIONS

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

FEES RELATING TO AFFIDAVITS OF SUPPORT


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

“(b) LIMITATION.—Any fee established under subsection (a) shall be charged only once to a sponsor or joint sponsor who provides an affidavit of support under section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a] to ensure that such affidavit is properly completed before it is forwarded to a consular post for adjudication by a consular officer in connection with the adjudication of an immigrant visa. Such fee or surcharge shall be in addition to and separate from any fee imposed for immigrant visa application processing and issuance, and shall recover only the costs of such services not recovered by such fee.

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

PILOT PROGRAMS TO REQUIRE BONDING

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

“(a) IN GENERAL.—


“(1) Medical assistance described in section 1396a(a)(10) [42 U.S.C. 1396a(a)(10)] or assistance described in section 1396d(b)(1) [42 U.S.C. 1396d(b)(1)].

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

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

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

“(5) Public health assistance for immunizations (not including any assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]) with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

“(6) Payments for foster care and adoption assistance under parts B and E of title IV of the Social Security Act [42 U.S.C. 610 et seq., 670 et seq.] for a parent or a child, but only if the foster or adoptive parent (or parents) of such child is a qualified alien (as defined in section 431 [8 U.S.C. 1611]).

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


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


§1184. Admission of nonimmigrants

(a) Regulations

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

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

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

(b) Presumption of status; written waiver

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

(c) Petition of importing employer

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

(2) 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 admission of aliens covered under such a petition.

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

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

(D) The period of authorized admission for—

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

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

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

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

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

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

(3) The Attorney General shall approve a petition—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) The requirements of subclauses (I) and (II) of clause (i) 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.

The requirements of subclauses (I) and (II) of clause (i) shall not apply to alien circus personnel who perform as part of a circus or circus group or who constitute an integral and essential part of the performance of such circus or circus group, but only if such personnel are entering the United States to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time or as part of such a circus.
(C) A person may petition the Attorney General for classification of an alien as a nonimmigrant under section 1101(a)(15)(P) of this title.

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

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

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

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

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

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

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

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

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

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

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

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

(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 non-governmental 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 subsection as the Attorney General determines, in his sole discretion, to be appropriate.

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

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

(A) The number of such petitions which have been filed.
(B) The number of such petitions which have been approved and the number of workers (by occupation) included in such approved petitions.
(C) The number of such petitions which have been denied and the number of workers (by occupation) requested in such denied petitions.
(D) The number of such petitions which have been withdrawn.
(E) The number of such petitions which are awaiting final action.

(9)(A) The Attorney General shall impose a fee on an employer (excluding any employer that is a primary or secondary education institution, an institution of higher education, as defined in section 1001(a) of title 20, a nonprofit entity registered at any such institution, a nonprofit research organization, or a governmental research organization) filing before a petition under paragraph (1)—

(i) initially to grant an alien nonimmigrant status described in section 1101(a)(15)(H)(i)(b) of this title;
(ii) to extend the stay of an alien having such status (unless the employer previously has obtained an extension for such alien); or
(iii) to obtain authorization for an alien having such status to change employers.

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

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

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

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

(i) in order that an alien may be initially granted nonimmigrant status described in section 1101(a)(15)(H)(i)(b) of this title; or
(ii) in order to satisfy the requirement of the second sentence of subsection (g)(8)(C) of this section for an alien having such status to obtain certain extensions of stay.

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

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

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

(i) initially to grant an alien nonimmigrant status described in subparagraph (H)(1)(b) or (L) of section 1101(a)(15) of this title; or
(ii) to obtain authorization for an alien having such status to change employers.

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

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

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

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

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

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

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1 So in original. The word “before” probably should not appear.
(14)(A) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a substantial failure to meet any of the conditions of the petition to admit or otherwise provide status to a nonimmigrant worker under section 1101(a)(15)(F)(ii)(b) of this title or a willful misrepresentation of a material fact in such petition—
   (i) the Secretary of Homeland Security may, in addition to any other remedy authorized by law, impose such administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary of Homeland Security determines to be appropriate; and
   (ii) the Secretary of Homeland Security may deny petitions filed with respect to that employer under section 1154 of this title during a period of at least 1 year but not more than 5 years for aliens to be employed by the employer.

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

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

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

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

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

(2)(A) Subject to subparagraphs (B) and (C), a consular officer may not approve a petition under paragraph (1) unless the officer has verified that—
   (i) the petitioner has not, previous to the pending petition, petitioned under paragraph (1) with respect to two or more applying aliens; and
   (ii) if the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition.

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

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

(ii) A petitioner described in this clause is a petitioner who has been battered or subjected to extreme cruelty and who is or was not the primary perpetrator of violence in the relationship upon a determination that—
   (I) the petitioner was acting in self-defense;
   (II) the petitioner was found to have violated a protection order intended to protect the petitioner; or
   (III) the petitioner committed, was arrested for, or pled guilty to committing a crime that did not result in serious bodily injury and where there was a connection between the crime and the petitioner's having been battered or subjected to extreme cruelty.

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

(3) In this subsection:
   (A) The terms "domestic violence", "sexual assault", "child abuse and neglect", "dating violence", "elder abuse", and "stalking" have the meaning given such terms in section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005. See References in Text note below.

(B) The term "specified crime" means the following:
   (i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking.
   (ii) Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking,peonage, holding hostage, involuntary servitude, slavery trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes described in this clause.
   (iii) At least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act.

(e) Nonimmigrant professionals and annual numerical limit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Except as provided in paragraph (3), no alien shall be entitled to nonimmigrant status described in section 1101(a)(15)(D) of this title if the alien intends to land for the purpose of performing service on board a vessel of the United States (as defined in section 116 of title 46) or on an aircraft of an air carrier (as defined in section 40102(a)(2) of title 49) during a labor dispute where there is a strike or lockout in the bargaining unit of the employer in which the alien intends to perform such service.

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

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

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

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

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

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

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

(g) Temporary workers and trainees; limitation on numbers

(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)—
(A) under section 1101(a)(15)(H)(i)(b) of this title, may not exceed—
(i) 65,000 in each fiscal year before fiscal year 1999;
(ii) 115,000 in fiscal year 1999;
(iii) 115,000 in fiscal year 2000;
(iv) 195,000 in fiscal year 2001;
(v) 195,000 in fiscal year 2002;
(vi) 195,000 in fiscal year 2003; and
(vii) 65,000 in each succeeding fiscal year;
or
(B) under section 1101(a)(15)(H)(i)(b) of this title may not exceed 66,000.

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

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

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

(5) The numerical limitations contained in paragraph (1)(A) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 1101(a)(15)(H)(i)(b) of this title who—
(A) is employed (or has received an offer of employment) at an institution of higher education (as defined in section 1001(a) of title 20), or a related or affiliated nonprofit entity;
(B) is employed (or has received an offer of employment) at a nonprofit research organization or a governmental research organization; or
(C) has earned a master’s or higher degree from a United States institution of higher education (as defined in section 1001(a) of title 20), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000.

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

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

(8)(A) The agreements referred to in section 1101(a)(15)(H)(i)(b1) of this title are—
(i) the United States-Chile Free Trade Agreement; and
(ii) the United States-Singapore Free Trade Agreement.

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

(ii) The annual numerical limitations described in clause (i) shall not exceed—
(I) 1,400 for nationals of Chile (as defined in article 14.9 of the United States-Chile Free Trade Agreement) for any fiscal year; and
(II) 5,400 for nationals of Singapore (as defined in Annex 1A of the United States-Singapore Free Trade Agreement) for any fiscal year.

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

(iv) The annual numerical limitation described in paragraph (1)(A) is reduced by the amount of the annual numerical limitations established under clause (i). However, if a numerical limitation exists, but only in 1-year increments. After every second extension, the next following extension shall not be granted unless the Secretary of Labor had determined and certified to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestations of Secretary of Labor, and the numerical limitation in paragraph (1)(A) for that fiscal year by the amount remaining in the numerical limitation under clause (i).

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

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year 2007. Such an alien shall be considered a return-
ning worker.
(A) A petition to admit or otherwise provide status under section 1101(a)(15)(H)(ii)(b) of this title shall include, with respect to a returning worker—
(i) all information and evidence that the Secretary of Homeland Security determines is required to support a petition for status under section 1101(a)(15)(H)(ii)(b) of this title;
(ii) the full name of the alien; and
(iii) a certification to the Department of Homeland Security that the alien is a returning worker.
(B) An H–2B visa or grant of nonimmigrant status for a returning worker shall be approved only if the alien is confirmed to be a returning worker by—
(i) the Department of State; or
(ii) if the alien is visa exempt or seeking to change to status under section 1101(a)(15)(H)(ii)(b) of this title, the Department of Homeland Security.
(C) The applicable numerical limitation referred to in subparagraph (A) is 10,500 for each fiscal year.

(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 such subparagraph, if the alien had maintained the status of a nonimmigrant described in such subparagraph, if the alien had obtained a change of status under section 1258 of this title during the first 6 months of such fiscal year.

(i) “Specialty occupation” defined
(1) Except as provided in paragraph (3), for purposes of section 1101(a)(15)(H)(ii)(b) of this title, section 1101(a)(15)(E)(iii) of this title, and paragraph (2), the term “specialty occupation” means an occupation that requires—
(A) theoretical and practical application of a body of highly specialized knowledge, and
(B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.
(2) For purposes of section 1101(a)(15)(H)(ii)(b) of this title, the requirements of this paragraph, with respect to a specialty occupation, are—
(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation;
(B) completion of the degree described in paragraph (1)(B) for the occupation, or
(C) (i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.
(3) For purposes of section 1101(a)(15)(H)(ii)(b1) of this title, the term “specialty occupation” means an occupation that requires—
(A) theoretical and practical application of a body of specialized knowledge; and
(B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

(j) Labor disputes
(1) Notwithstanding any other provision of this chapter, an alien who is a citizen of Canada or Mexico who seeks to enter the United States under and pursuant to the provisions of Section B, Section C, or Section D of Annex 1603 of the North American Free Trade Agreement, shall not be classified as a nonimmigrant under such provisions if there is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment, unless such alien established, pursuant to regulations promulgated by the Attorney General, that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout. Notice of a determination under this paragraph shall be given as may be required by paragraph 3 of article 1603 of such Agreement. For purposes of this paragraph, the term “citizen of Mexico” means “citizen” as defined in Annex 1608 of such Agreement.
(2) Notwithstanding any other provision of this chapter except section 1182(t)(1) of this title, and subject to regulations promulgated by the Secretary of Homeland Security, an alien who seeks to enter the United States under and pursuant to the provisions of an agreement listed in subsection (g)(8)(A) of this section, and the spouse and children of such an alien if accompanying or following to join the alien, may be denied admission as a nonimmigrant under subparagraph (E), (L), or (H)(i)(b1) of section 1101(a)(15) of this title if there is in progress a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Secretary of Homeland Security after consultation with the Secretary of Labor, that the alien’s entry will not affect adversely the settlement of the labor dispute or the employment of any person who is involved in the labor dispute. Notice of a determination under this paragraph shall be given as may be required by such agreement.
(k) Numerical limitations; period of admission; conditions for admission and stay; annual report

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

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

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

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

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

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

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

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

(A) the number of such nonimmigrants admitted;

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

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

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

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

(l) Restrictions on waiver

(1) In the case of a request by an interested State agency, the grant of such waiver would not cause the number of waivers allotted for that State for that fiscal year to exceed 10

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

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

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

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

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

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

(iii) in the case of a request by an interested Federal agency or by an interested State agency for a waiver for an alien who agrees to practice specialty medicine in a facility located in a geographic area so designated by the Secretary of Health and Human Services, the request shall demonstrate, based on criteria established by such agency, that there is a shortage of health care professionals able to provide services in the appropriate medical specialty to the patients who will be served by the alien.
(2)(A) Notwithstanding section 1258(a)(2) of this title, the Attorney General may change the status of an alien who qualifies under this subsection and section 1182(e) of this title to that of an alien described in section 1101(a)(15)(H)(i)(b) of this title. The numerical limitations contained in subsection (g)(1)(A) of this section shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence requirement upon a request by an interested Federal agency or an interested State agency.

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

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

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

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

(m) Nonimmigrant elementary and secondary school students

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

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

(B) at a public secondary school unless—

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

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

(n) Increased portability of H–1B status

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

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

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

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

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

(o) Nonimmigrants guilty of trafficking in persons

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

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

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

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

(5) An alien described in clause (i) of section 1301(a)(15)(T) of this title shall continue to be treated as an alien described in clause (ii)(I) of such section if the alien attains 21 years of age after the alien’s application for status under such clause (i) is filed but while it is pending.

(6) In making a determination under section 1301(a)(15)(T)(i)(II)(aa) with respect to an alien, statements from State and local law enforcement officials that the alien has complied with any reasonable request for assistance in the investigation or prosecution of crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking in persons (as defined in section 7102 of title 22) appear to have been involved, shall be considered.

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

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

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

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

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

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

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

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

The petition filed by an alien under section 1101(a)(15)(U)(1) of this title shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 1101(a)(15)(U)(iii) of this title. This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 1101(a)(15)(U)(iii) of this title.

(2) Numerical limitations

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

(B) The numerical limitations in subparagraph (A) shall only apply to principal aliens described in section 1101(a)(15)(U)(1) of this title, and not to spouses, children, or, in the case of alien children, the alien parents of such children.

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

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

(A) the Attorney General and other government officials, where appropriate, shall provide those aliens with referrals to non-governmental organizations to advise the aliens regarding their options while in the

United States and the resources available to them; and

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

(4) Credible evidence considered

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

(5) Nonexclusive relief

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

(6) Duration of status

The authorized period of status of an alien as a nonimmigrant under section 1101(a)(15)(U) of this title shall be for a period of not more than 4 years, but shall be extended upon certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating or prosecuting criminal activity described in section 1101(a)(15)(U)(1) of this title if the Secretary determines that an extension of such period is warranted due to exceptional circumstances.

Such alien’s nonimmigrant status shall be extended beyond the 4-year period authorized under this section if the alien is eligible for relief under section 1255(m) of this title and is unable to obtain such relief because regulations have not been issued to implement such section and shall be extended during the pendency of an application for adjustment of status under section 1255(m) of this title. The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 1101(a)(15)(U) of this title.

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

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

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

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

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

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

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

(2) In determining whether an alien is eligible to be admitted to the United States as a nonimmigrant under section 1101(a)(15)(V) of this title, the grounds for inadmissibility specified in section 1182(a)(9)(B) of this title shall not apply. (3) The status of an alien physically present in the United States may be adjusted by the Attorney General, in the discretion of the Attorney General and under such regulations as the Attorney General may prescribe, to that of a nonimmigrant under section 1101(a)(15)(V) of this title, if the alien—

(A) applies for such adjustment;

(B) satisfies the requirements of such section; and

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

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

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

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

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

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

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

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

CODIFICATION


AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–228 substituted “Guam or the Commonwealth of the Northern Marianas Islands” for “Guam” wherever appearing and substituted “45 days” for “fifteen days”.


Subsec. (a)(7)(B). Pub. L. 110–457, § 201(b)(1), inserted dash after “if”, designated remaining of existing provisions as cl. (i), and added cl. (ii) and (iii).


Subsec. (p)(6). Pub. L. 110–457, § 201(c), inserted at end “The Secretary of Homeland Security may extend, beyond the 4-year period authorized under this section, the authorized period of status of an alien as a nonimmigrant under section 1101(a)(15)(U) of this title if the Secretary determines that an extension of such period is warranted due to exceptional circumstances. Such alien’s nonimmigrant status shall be extended beyond the 4-year period authorized under this section if the alien is eligible for relief under section 1255(b) of this title and is unable to obtain such relief because regulations have not been issued to implement such section and shall be extended during the pendency of an application for adjustment of status under section 1255(c) of this title. The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 1101(a)(15)(U) of this title.”

2006—Subsec. (c)(4)(A)(i), (ii). Pub. L. 109–463, § 2(a), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows: “(i) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, and “(ii) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.”

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

Subsec. (d). Pub. L. 109–162, § 823(a)(1), designated existing provisions as par. (1), inserted after second sentence “Such information shall include information on any criminal convictions of the petitioner for any specified crime.”, substituted “Secretary of Homeland Security” for “Attorney General” wherever appearing, and added pars. (2) and (3).

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

Subsec. (g)(9)(B). Pub. L. 109–364, § 1074(a)(2), substituted “to admit or otherwise provide status under Title 8—Aliens and Nationality
Section 1101(a)(15)(H)(i)(b) of this title” for “referred to in subparagraph (A)” in introductory provisions.


Subsec. (r)(1). Pub. L. 109–162, § 822(a)(2)/A, inserted “Subsection (iii) shall include information on any criminal convictions of the petitioner for any specified crime.”

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


2004—Subsec. (c)(2)(A). Pub. L. 108–147, § 413(a), struck out at end “In the case of an alien seeking admission under section 1101(a)(15)(L) of this title, the 1-year period of continuous employment required under such section is deemed to be reduced to a 6-month period if the importing employer has filed a blanket petition under this subparagraph and met the requirements for expedited processing of aliens covered under such petition.”


Subsec. (c)(9)(B). Pub. L. 108–147, § 422(b)(2), (3), substituted “$1,500” for “$1,000” and inserted before period at end “except that the fee shall be half the amount for each such petition by any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer)”.


Subsec. (g)(5). Pub. L. 108–147, § 425(a)(1), struck out “is employed (or has received an offer of employment) at” after “section 1101(a)(15)(H)(i)(b)” of this title who” in introductory provisions.

Subsec. (g)(5)(A). Pub. L. 108–147, § 425(a)(2), inserted “‘employed (or has received an offer of employment) at’ before ‘an institution’ and struck out ‘or’ at end.

Subsec. (g)(5)(B). Pub. L. 108–147, § 425(a)(3), inserted “is employed (or has received an offer of employment) at” before “a ‘nonprofit’ and substituted ‘or’ for period at end.


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

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

2003—Subsec. (b). Pub. L. 108–77, §§ 107(c), 404(1), temporarily substituted “subparagraph (H)” for “subparagraph (H)(i)” of this title, and other than a nonimmigrant described in any provision of section 1101(a)(15)(H)(i)(b) of this title except subclause (II) of such section for “subclause (I) of such section”.

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

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


2002—Subsec. (c)(2)(A). Pub. L. 107–125, § 2(a), inserted at end “In the case of an alien seeking admission under section 1101(a)(15)(L) of this title, the 1-year period of continuous employment required under such section is deemed to be reduced to a 6-month period if the importing employer has filed a blanket petition under this subparagraph and met the requirements for expedited processing of aliens covered under such petition.”
Subsec. (c)(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)" for "after consultation with labor organizations with expertise in the specific field of athletics or entertainment 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". 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 area of the alien's ability". Subsec. (c)(5). Pub. L. 102–232, § 207(c), redesignated subpar. (A) as (C), Former subpar. (C) redesignated (E). Subsec. (c)(6), Pub. L. 102–232, § 204(5), (6), added subpar. (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" as a comma after "subpar. (A)," and redesignated subpar. (A), subpar. (B), and subpar. (C) as (B), (C), and (D), respectively. Subsec. (g)(2), Pub. L. 101–619, § 205(b)(1), inserted "other than a nonimmigrant described in subparagraph (H)(i)(I) of section 1101(a)(15) of this title" after "Every alien". Subsec. (f), Pub. L. 101–619, § 205(b)(2), redesignated existing provisions as par. (1), substituted reference to section 1101(a)(15)(H)(i)(I) as a reference to subpar. (f)(1), and redesignated subpar. (f)(2) as (3). Subsec. (e), Pub. L. 101–619, § 205(b)(3), redesignated subpar. (e). Subsec. (d), Pub. L. 101–619, § 205(b)(4), redesignated subpar. (d) as (e), redesignated subpar. (e) as (f), redesignated subpar. (f) as (g), redesignated subpar. (g) as (h), and redesignated subpar. (h) as (i). Subsec. (c), Pub. L. 101–619, § 205(b)(5), redesignated subpar. (c) as (d), redesignated subpar. (d) as (e), redesignated subpar. (e) as (f), redesignated subpar. (f) as (g), redesignated subpar. (g) as (h), and redesignated subpar. (h) as (i). Subsec. (b), Pub. L. 101–619, § 205(b)(6), redesignated provisions relating to nonimmigrants described in section 1101(a)(15)(H)(ii)(A) of this title.


Subsec. (c). Pub. L. 99–603, § 301(b), as amended by Pub. L. 100–361, § 301(b), redesignated former subpars. (A) and (B) and redesignated former subpars. (A) and (B) as (C) and (D), respectively. Subsec. (c)(3)(A), Pub. L. 100–361, § 301(b), 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 "or", except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person". Pub. L. 99–603, § 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.


EFFECTIVE DATE OF 2008 AMENDMENT


Amendment by Pub. L. 110–229 effective on the transition program effective date described in section 1806 of Title 48, Territories and Insular Possessions, see section 705(b) of Pub. L. 110–229, set out as an Effective Date note under section 1806 of Title 48.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 110–364, div. A, title X, § 1074(c), Oct. 17, 2006, 120 Stat. 2403, provided that: "The amendments made by this section [amending this section and provisions set out as a note under this section] shall take effect on October 1, 2006. If this section is enacted after October 1, 2006, the amendments made by this section shall take effect as if enacted on such date."

Pub. L. 110–162, title VIII, § 832(a)(3), Jan. 5, 2006, 119 Stat. 3068, provided that: "The amendments made by this subsection [amending this section] shall take effect on the date that is 60 days after the date of enactment of this Act [Jan. 5, 2006]."

EFFECTIVE DATE OF 2005 AMENDMENT


(2) IMPLEMENTATION.—Not later than 14 days after the date of the enactment of this Act [May 11, 2005], the Secretary of Homeland Security shall begin accepting and processing petitions filed on behalf of aliens described in section 1101(a)(15)(H)(ii)(B) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(ii)(B)], in a manner consistent with this section [amending this section] and the amendments made by this section. Notwithstanding section 214(g)(9)(B) of such Act [8 U.S.C. 1184(g)(9)(B)], as added by subsection (a), the Secretary of Homeland Security shall allocate additional numbers for fiscal year 2006 based on statistical estimates and projections derived from Department of State data."

subsections (a) and (b) [amending this section and section 1356 of this title] shall take effect 14 days after the date of the enactment of this Act [May 11, 2005] and shall apply to filings for a fiscal year after fiscal year 2005."

Pub. L. 109–13, div. B, title IV, §404(b), May 11, 2005, 119 Stat. 332, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2005."

**Effective Date of 2004 Amendment**

Pub. L. 108–447, div. J, title IV, §412(b), Dec. 8, 2004, 118 Stat. 3353, provided that: "The amendment made by subsection (a) [amending this section] shall apply only to petitions filed on or after the effective date of this subtitle [subtitle A, effective 180 days after Dec. 8, 2004, see below], whether for initial, extended, or amended classification."


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

**Effective and Termination Dates of 2003 Amendments**

Amendment by Pub. L. 108–78 effective on the date the United States-Singapore Free Trade Agreement enters into force (Jan. 1, 2004), and ceases to be effective on the date the Agreement ceases to be in force, see section 102 of Title 19, Customs Duties.

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

**Effective Date of 2002 Amendment**


**Effective Date of 2000 Amendments**

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

Amendment by section 1(a)(2) [title XI, §1103(b), (c)(1)] of Pub. L. 106–553 effective Dec. 21, 2000, and applicable to alien who is beneficiary of classification petition filed under section 1154 of this title on or before Dec. 21, 2000, see section 1(a)(2) [title XI, §1102(e)] of Pub. L. 106–553, set out as a note under section 1101 of this title.

Pub. L. 106–313, title I, §105(b), Oct. 17, 2000, 114 Stat. 1253, provided that: "The amendment made by subsection (a) [amending this section] shall apply only to petitions that are filed on or after the date that is 2 months after the date of the enactment of this Act [Oct. 17, 2000]."

**Effective Date of 1998 Amendment**


**Effective Date of 1996 Amendment**

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

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


**Effective Date of 1994 Amendment**

Amendment by Pub. L. 103–416 applicable to aliens admitted to United States under section 1101(a)(15)(F) of this title, or acquiring such status after admission to United States, before, on, or after Oct. 25, 1994, and before June 1, 2008, see section 220(c) of Pub. L. 103–416, as amended, set out as an Effective and Termination Dates of 1994 Amendments note under section 1182 of this title.

**Effective Date of 1993 Amendment**

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

**Effective Date of 1991 Amendment**

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


**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

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 2121 of Title 19, Customs Duties.

Effective Date of 1986 Amendments

Section 3(d)(1), (3) of Pub. L. 99–693 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 amendments 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. 99–693 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. 99–693, as amended, set out as an Effective Date note under section 1188 of this title.

Transfer of Functions

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

Abolition of Immigration and Naturalization Service and Transfer of Functions

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

Limitation on Use of Certain Information

Pub. L. 109–162, title VIII, §832(b), Jan. 5, 2006, 119 Stat. 3068, provided that: “The fact that an alien described in clause (i) or (ii) of section 101(a)(15)(K) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(K)) is aware of any information disclosed under the amendments made by this section [amending this section] or under section 333 [enacting section 1375a of this title and repealing section 1375 of this title] shall not be used to deny the alien eligibility for relief under any other provision of law.”

Exemption From Administrative Procedure Act

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

L Visa Interagency Task Force and Inspector General Report


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


“SEC. 416. ESTABLISHMENT OF TASK FORCE.

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

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

Statistical Information on Country of Origin, Occupation, Educational Level and Compensation

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

Additional Visas for Fiscal Years 1999 and 2000

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

“(I) IN GENERAL.—(A) Notwithstanding section 214(g)(1)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(A)(ii)), the total number of aliens who may be issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) in fiscal year 1999 is increased by a number equal to the number of aliens who are issued such a visa or provided such status during the period beginning on the date on which the limi-
tion in such section 214(g)(4)(A)(iii) is reached and ending on September 30, 1999.

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

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

ONE-TIME PROTECTION UNDER PER COUNTRY CEILING


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

“(2) is eligible to be granted that status but for application of the per country limitations applicable to immigrants under those paragraphs, may apply for, and the Attorney General may grant, an extension of such nonimmigrant status until the alien’s application for adjustment of status has been processed and a decision made thereon.”

SPECIAL PROVISIONS IN CASES OF LENGTHY ADJUDICATIONS


“(a) Exemption from Limitation.—The limitation contained in section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(4)) with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act (8 U.S.C. 1110a(15)(H)(i)(b)), if 365 days or more have elapsed since the filing of any of the following:

“(1) Any application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. 1182(a)(5)(A)), in a case in which certification is required or used by the alien to obtain status under section 204(b) of such Act (8 U.S.C. 1153(b)).

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

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

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

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

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

EXCLUSION OF CERTAIN “J” NONIMMIGRANTS FROM NUMERICAL LIMITATIONS APPLICABLE TO “H–1B” NONIMMIGRANTS

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

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


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

“(b) Revision of Petition Forms.—The Secretary of Homeland Security shall take such steps as are necessary to revise the forms used for petitions for visas or nonimmigrant status under clause (1)(b) or (2)(b) of section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) so as to ensure that the forms provide the Secretary of Homeland Security with sufficient information to permit the Secretary of Homeland Security accurately to count the number of aliens subject to the numerical limitations of section 214(g)(1) of such Act (8 U.S.C. 1184(g)(1)) who are issued visas or otherwise provided nonimmigrant status.

“(c) Provision of Information.—

“(1) Quarterly Notification.—Beginning not later than 60 days after the first day of fiscal year 1999, the Secretary of Homeland Security shall notify, on a quarterly basis, the Committees on the Judiciary of the United States House of Representatives and the Senate, information on the countries of origin and occupations and the educational levels attained by, and compensation paid to, aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) during the preceding 3-month period.

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

“(3) Specification of Number of Petitions Filed by Certain Employers.—Each notification under paragraph (1), and each submission under paragraph (2), shall include the number of aliens who were issued visas or otherwise provided nonimmigrant status pursuant to petitions filed by institutions or organizations described in section 212(p)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(p)(1)) (as added by section 415 of this title).

“(d) Provision of Information.—

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

“(A) were issued visas or otherwise provided non-immigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(i)(b)]; or

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

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

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

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

“(C) the number of aliens who were provided non-immigrant status under such section during both such fiscal year and the preceding fiscal year.

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

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

Pub. L. 108–277, div. C, title IV, § 411(b), Oct. 21, 1998, 112 Stat. 2681–657, provided that: “The Chairman of the Board of Governors of the Federal Reserve System, the Director of the Office of Management and Budget, the Chair of the Council of Economic Advisers, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Labor, and any other member of the Cabinet, shall promptly report to the Congress the results of any reliable study that suggests, based on legitimate economic analysis, that the increase affected by section 411(a) of this title [amending this section] in the number of nonimmigrants admitted as nonimmigrant workers shall promptly report to the Congress the results of any reliable study that suggests, based on legitimate economic analysis, that the increase affected by section 411(a) of this title [amending this section] in the number of nonimmigrants admitted as nonimmigrant workers during the previous fiscal year has had an impact on national economic indicators, such as the level of inflation or unemployment, that warrants action by the Congress.”

DEADLINE FOR FIRST REPORT WITH RESPECT TO PETITIONS

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

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


WORK AUTHORIZATION DURING PENDING LABOR DISPUTES


“(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 student 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,

“(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 the barring of an 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.”
§ 1184a. Philippine Traders as nonimmigrants

Upon a basis of reciprocity secured by agreement entered into by the President of the United States and the President of the Philippines, a national of the Philippines, and the spouse and children of any such national if accompanying or following to join him, may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act [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.

§ 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 an- other 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.


REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (c), see section 3602(b) of Title 22, Foreign Relations and Interests. This chapter, referred to in subsecs. (d) and (f), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS


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

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

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

Authority of President under subsec. (a)(1) of this section to maintain custody and conduct screening of any undocumented person seeking to enter the United States who is encountered in a vessel interdicted on the high seas through Dec. 31, 2000, delegated to Attorney General by Memorandum of President of the United States, Sept. 23, 1994, 61 F.R. 53809, set out as a note under section 1182 of this title.

ASIA-PACIFIC ECONOMIC COOPERATION BUSINESS TRAVEL CARDS

Pub. L. 112–54, Nov. 12, 2011, 125 Stat. 550, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Asia-Pacific Economic Cooperation Business Travel Cards Act of 2011’.

“SEC. 2. ASIA-PACIFIC ECONOMIC COOPERATION BUSINESS TRAVEL CARDS.

“(a) IN GENERAL.—During the 7-year period ending on September 30, 2018, the Secretary of Homeland Security, in coordination with the Secretary of State, is authorized to issue Asia-Pacific Economic Cooperation Business Travel Cards (referred to in this section as ‘ABT Cards’) to any eligible person, including business leaders and United States Government officials who are actively engaged in Asia-Pacific Economic Cooperation business. An individual may not receive an ABT Card under this section unless the individual has been approved and is in good standing in an international trusted traveler program of the Department of Homeland Security.

“(b) INTEGRATION WITH EXISTING TRAVEL PROGRAMS.—

The Secretary of Homeland Security may integrate application procedures for, and issuance, suspension, and revocation of, ABT Cards with other appropriate international trusted traveler programs of the Department of Homeland Security.

“(c) COOPERATION WITH PRIVATE ENTITIES.—In carrying out this section, the Secretary of Homeland Security may consult with appropriate private sector entities.

“(d) RULEMAKING.—The Secretary of Homeland Security, in coordination with the Secretary of State, may prescribe such regulations as may be necessary to carry out this section, including regulations regarding conditions of or limitations on eligibility for an ABT Card.

“(e) FEES.—

“(1) IN GENERAL.—The Secretary of Homeland Security may—

“(A) prescribe and collect a fee for the issuance of ABT Cards; and

“(B) adjust such fee to the extent the Secretary determines to be necessary to comply with paragraph (2).

“(2) LIMITATION.—The Secretary of Homeland Security shall ensure that the total amount of the fees collected under paragraph (1) during any fiscal year is sufficient to offset the direct and indirect costs associated with carrying out this section during such fiscal year, including the costs associated with establishing the program.

“(f) ACCOUNT FOR COLLECTIONS.—There is established in the Treasury of the United States an ‘APEC Business Travel Card Account’ into which the fees collected under paragraph (1) shall be deposited as offsetting receipts.

“(g) USE OF FUNDS.—Amounts deposited into the APEC Business Travel Card Account—

“(1) shall be credited to the appropriate account of the Department of Homeland Security for expenses incurred in carrying out this section; and

“(2) shall remain available until expended.

“(h) TERMINATION OF PROGRAM.—The Secretary of Homeland Security, in coordination with the Secretary of State, may terminate activities under this section if the Secretary of Homeland Security determines such action to be in the interest of the United States.”

WESTERN HEMISPHERE TRAVEL INITIATIVE


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

“(2) the Secretary of State shall develop proposals for reducing the execution fee charged for the passport card, proposed at 71 Fed. Reg. 60926–32 (October
§ 1185

17, 2006), including the use of mobile application teams, during implementation of the land and sea phase of the Western Hemisphere Travel Initiative, in order to encourage United States citizens to apply for the passport card."


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

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

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

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

(b) Passports.—

(1) Development of Plan and Implementation.—

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

(B) The Secretary of Homeland Security and the Secretary of State shall jointly certify to the Committees on Appropriations of the Senate and the House of Representatives that the following criteria have been met prior to implementation of section 7209(d)(1)(A)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Technical and Conforming Amendments.—After the complete implementation of the plan described in subsection (b)—

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

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

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

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

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

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

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

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


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

Section 1–101. Delegation of Authority. The Secretary of State and the Attorney General are hereby designated and empowered to exercise in respect of Iranians the authority conferred upon the President by section 215(a)(1) of the Act of June 27, 1952 (8 USC 1185), to prescribe limitations and exceptions on the rules and regulations governing the entry of aliens into the United States. Section 1–102. Effective Date. This order is effective immediately.

JIMMY CARTER.

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


By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 215 of the Immigration and Nationality Act (INA), as amended (8 USC 1185), and section 301 of title 3, United States Code, to strengthen the national security of the United States through procedures and systems to manage and control the arrival and departure of persons from the United States, it is hereby ordered as follows:

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

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

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

GEORGE W. BUSH.

§ 1186a. Transferred

CODIFICATION


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

(a) In general

(1) Conditional basis for status

Notwithstanding any other provision of this chapter, an alien spouse (as defined in subsection (h)(1)) and an alien son or daughter (as defined in subsection (h)(2)) 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 Secretary of Homeland Security shall provide for notice to such a spouse, son, or daughter respecting the provisions of this section and the requirements of subsection (c)(1) to have the conditional basis of such status removed.

(B) At time of required petition

In addition, the Secretary of Homeland Security 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 the requirements of subsections (c)(1).

(C) Effect of failure to provide notice

The failure of the Secretary of Homeland Security 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), if the Secretary of Homeland Security determines, before the second anniversary of the alien’s obtaining the status of lawful admission for permanent residence, that—

(A) the qualifying marriage—

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

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

(B) a fee or other consideration was given (other than a fee or other consideration to

1So in original. Probably should be “subsection.”
an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) of this title or subsection (d) or (p) of section 1184 of this title with respect to the alien;

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

(2) Hearing in removal proceeding

Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Secretary of Homeland Security 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) 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 Secretary of Homeland Security, during the period described in subsection (d)(2), 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), and

(B) in accordance with subsection (d)(3), the alien spouse and the petitioning spouse (if not deceased) must appear for a personal interview before an officer or employee of the Department of Homeland Security respecting the facts and information described in subsection (d)(1).

(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), 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 Secretary of Homeland Security shall terminate the permanent resident status of the alien as of the second anniversary of the alien’s obtaining the status of lawful admission for permanent residence.

(B) Hearing in removal proceeding

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

(3) Determination after petition and interview

(A) In general

If—

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

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

the Secretary of Homeland Security 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) and alleged in the petition are true with respect to the qualifying marriage.

(B) Removal of conditional basis if favorable determination

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

(D) Hearing in removal proceeding

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

(4) Hardship waiver

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

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

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

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

In determining extreme hardship, the Secretary of Homeland Security 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 Secretary of Homeland Security shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Secretary of Homeland Security. The Secretary of Homeland Security 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) shall contain the following facts and information:

(A) Statement of proper marriage and petitioning process

The facts are that—

(i) the qualifying marriage—

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

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

(III) was not entered into for the purpose of procuring an alien’s admission as an immigrant; and

(ii) no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) of this title or subsection (d) or (p) of section 1184 of this title with respect to the alien 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), 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) 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 Secretary of Homeland Security good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) Filing of petitions during removal

In the case of an alien who is the subject of removal hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Secretary of Homeland Security may stay such removal proceedings against an alien pending the filing of the petition under subparagraph (B).

(3) Personal interview

The interview under subsection (c)(1)(B) shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) and at a local office of the Department of Homeland Security, designated by the Secretary of Homeland Security, which is convenient to the parties involved. The Secretary of Homeland Security, in the Secretary’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, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

(f) Treatment of certain waivers

In the case of an alien who has permanent residence status on a conditional basis under this section, if, in order to obtain such status, the alien obtained a waiver under subsection (h) or (i) of section 1182 of this title of certain grounds of inadmissibility, such waiver terminates upon the termination of such permanent residence status under this section.

(g) Service in Armed Forces

(1) Filing petition

The 90-day period described in subsection (d)(2)(A) shall be tolled during any period of time in which the alien spouse or petitioning spouse is a member of the Armed Forces of the United States and serving abroad in an active-duty status in the Armed Forces, except that, at the option of the petitioners, the petition may be filed during such active-duty service at any time after the commencement of such 90-day period.

(2) Personal interview

The 90-day period described in the first sentence of subsection (d)(3) shall be tolled during any period of time in which the alien spouse or petitioning spouse is a member of the Armed Forces of the United States and serving abroad in an active-duty status in the Armed Forces,
except that nothing in this paragraph shall be construed to prohibit the Secretary of Homeland Security from waiving the requirement for an interview under subsection (c)(1)(B) pursuant to the Secretary’s authority under the second sentence of subsection (d)(3).

(b) 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).

(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.

(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 “qualified marriage” means the marriage described to in paragraph (1).

(4) The term “qualified spouse” means the spouse of a qualified marriage, other than the alien.


REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original, “this Act,” meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Title Note set out under section 1101 of this title.


CODIFICATION

Another section 216 of act June 27, 1952, was renumbered section 218 and is classified to section 1188 of this title.

AMENDMENTS


Subsec. (a)(1). Pub. L. 112–58, §1(b)(1), substituted “(h)(1))” for “(g)(1))” and “(h)(2))” for “(g)(2))”.


Subsec. (d)(3). Pub. L. 112–58, §1(b)(2)(A), (C), substituted “Department of Homeland Security” for “Service” and “Secretary’s” for “Attorney General’s”.

Subsecs. (g), (h). Pub. L. 112–58, §1(a), added subsec. (g) and redesignated former subsec. (g) as (h).

2000—Subsecs. (b)(1)(B), (d)(1)(A)(ii). Pub. L. 106–553 substituted “section 1154(a) of this title or subsection (d) or (p) of section 1184 of this title” for “section 1184(a) or 1184(d) of this title”.


Subsec. (b)(2). Pub. L. 104–208, §308(e)(7), substituted “removal” for “deportation” in heading and “remove” for “deport” in text.


Subsec. (c)(4)(A). Pub. L. 104–208, §308(e)(7), substituted “inadmissibility” for “exclusion”.

1994—Subsec. (c)(4). Pub. L. 103–322 inserted after second sentence “in acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.”


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 “and” 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.”


Subsec. (c)(3)(A). Pub. L. 100–525, §7(a)(2), substituted “90 days” for “90–days”.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 108–553 effective Dec. 21, 2000, and applicable to alien who is beneficiary of classification petition filed under section 1151 of this title before, on, or after Dec. 21, 2000, see section 1(a)(2) [title XI, §1163(b)] of Pub. L. 106–553, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 369 of Pub. L. 104–208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 4072(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.”
§ 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 subsection (a) of this section, the Attorney General shall provide notice to such an entrepreneur, spouse, or child respecting the provisions of this section and the requirements of subsection (c)(1) of this section to have the conditional basis of such status removed.

(B) At time of required petition

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

(C) Effect of failure to provide notice

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

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

(1) In general

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

(A) the investment in the commercial enterprise was intended solely as a means of evading the immigration laws of the United States,

(B)(i) the alien did not invest, or was not actively in the process of investing, the requisite capital; or

(ii) the alien was not sustaining the actions described in clause (i) throughout the period of the alien’s residence in the United States; or

(C) the alien was otherwise not conforming to the requirements of section 1153(b)(5) of this title, then the Attorney General shall so notify the alien involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (and the alien spouse and alien child) involved as of the date of the determination.

(2) Hearing in removal proceeding

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

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

(1) In general

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

(A) the alien entrepreneur must submit to the Attorney General, during the period described in subsection (d)(2) of this section, a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1) of this section, and

(B) in accordance with subsection (d)(3) of this section, the alien entrepreneur must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1) of this section.

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

(A) In general

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

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

(ii) unless there is good cause shown, the alien entrepreneur fails to appear at the interview described in paragraph (1)(B) (if
required under subsection (d)(3) of this section),
the Attorney General shall terminate the
permanent resident status of the alien (and
the alien’s spouse and children if it was ob-
tained on a conditional basis under this sec-
tion or section 1186a of this title) as of the
second anniversary of the alien’s lawful ad-
mission for permanent residence.

(B) Hearing in removal proceeding

In any removal proceeding with respect to
an alien whose permanent resident status is
terminated under subparagraph (A), the bur-
den of proof shall be on the alien to establish
compliance with the conditions of para-
graphs (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 deter-
mination, within 90 days of the date of the
such filing\(^1\) or interview (whichever is
later), as to whether the facts and informa-
tion described in subsection (d)(1) of this sec-
tion and alleged in the petition are true with
respect to the qualifying commercial enter-
prise.

(B) Removal of conditional basis if favorable
determination

If the Attorney General determines that
such facts and information are true, the At-
torney General shall so notify the alien in-
volved and shall remove the conditional
basis of the alien’s status effective as of the
second anniversary of the alien’s lawful ad-
mission 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 in-
volved 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 deter-
mination.

(D) Hearing in removal proceeding

Any alien whose permanent resident
status is terminated under subparagraph (C)
may request a review of such determination
in a proceeding to remove the alien. In such
proceeding, the burden of proof shall be on
the Attorney General to establish, by a pre-
ponderance of the evidence, that the facts
and information described in subsection
(d)(1) of this section and alleged in the peti-
tion are not true with respect to the qualify-
ing 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 informa-
tion demonstrating that the alien—

(A)(i) invested, or is actively in the process
of investing, the requisite capital; and
(B) sustained the actions described in
clause (i) throughout the period of the
alien’s residence in the United States; and

(B) is otherwise conforming to the require-
ments of section 1133(b)(5) of this title.

(2) Period for filing petition

(A) 90-day period before second anniversary

Except as provided in subparagraph (B),
the petition under subsection (c)(1)(A) of
this section must be filed during the 90-day
period before the second anniversary of the
alien’s lawful admission for permanent resi-
dence.

(B) Date petitions for good cause

Such a petition may be considered if filed
after such date, but only if the alien estab-
lishes to the satisfaction of the Attorney
General good cause and extenuating circum-
stances for failure to file the petition during
the period described in subparagraph (A).

(C) Filing of petitions during remova

In the case of an alien who is the subject
of removal hearings as a result of failure to
file a petition on a timely basis in accord-
ance with subparagraph (A), the Attorney
General may stay such removal proceedings
against an alien pending the filing of the pe-
tition 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 require-
ment for such an interview in such cases as
may be appropriate.

(e) Treatment of period for purposes of nu-
tralization

For purposes of subchapter III, 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 admit-
ted 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 law-
fully 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

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\(^1\)So in original.
status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the spouse or child, respectively, of an alien entrepreneur.

(3) The term “commercial enterprise” includes a limited partnership.


REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS


Subsec. (b)(1)(B). Pub. L. 107-273, §11036(b)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “(B) a commercial enterprise was not established by the alien,

“(ii) the alien did not invest or was not actively in the process of investing the requisite capital; or

“(iii) the alien was not sustaining the actions described in clause (i) or (ii) throughout the period of the alien’s residence in the United States, or”.

Subsec. (d)(1). Pub. L. 107-273, §11036(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Each petition under subsection (c)(1)(A) of this section shall contain facts and information demonstrating that—

“(A) a commercial enterprise was established by the alien;

“(B) the alien invested or was actively in the process of investing the requisite capital; and

“(C) the alien sustained the actions described in subparagraphs (A) and (B) throughout the period of the alien’s residence in the United States.”


EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective Nov. 2, 2002 and applicable to aliens having certain petitions pending under this section or section 1153 of this title on or after Nov. 2, 2002, see section 11038(c) of Pub. L. 107-273, set out as a note under section 1153 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1991 AMENDMENT


EFFECTIVE DATE

Section effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101-649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

IMMIGRATION BENEFITS


“SEC. 11031. REMOVAL OF CONDITIONAL BASIS OF PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.

“(a) IN GENERAL.—In lieu of the provisions of section 216A(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)), subsection (c) shall apply in the case of an eligible alien described in subsection (b)(1).

“(b) ELIGIBLE ALIENS DESCRIBED.—

“(1) IN GENERAL.—An alien is an eligible alien described in this subsection if the alien—

“(A) filed, under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), a petition to accord the alien a status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) that was approved by the Attorney General after January 1, 1995, and before August 31, 1998;

“(B) pursuant to such approval, obtained the status of an alien entrepreneur with permanent resident status on a conditional basis described in section 216A of such Act (8 U.S.C. 1186b); and

“(C) timely filed, in accordance with section 216A(c)(1)(A) of such Act (8 U.S.C. 1186b(c)(1)(A)) and before the date of the enactment of this Act [Nov. 2, 2002], a petition requesting the removal of such conditional basis.

“(2) REOPENING PETITIONS PREVIOUSLY DENIED.—

“(A) IN GENERAL.—In the case of a petition described in paragraph (1)(C) that was denied under section 216A(c)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)(C)) before the date of the enactment of this Act, upon a motion to reopen such petition filed by the eligible alien not later than 60 days after such date, the Attorney General shall make determinations on such petition pursuant to subsection (c).

“(B) PETITIONERS ABROAD.—In the case of such an eligible alien who is no longer physically present in the United States, the Attorney General shall establish a process under which the alien may be paroled into the United States if necessary in order to obtain the determinations under subsection (c), unless the Attorney General finds that—

“(i) the alien is inadmissible or deportable on any ground; or

“(ii) the petition described in paragraph (1)(C) was denied on the ground that it contains a material misrepresentation in the facts and information described in section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) and alleged in the petition with respect to a commercial enterprise.
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“(C) Deportation or Removal Proceedings.—In the case of such an eligible alien who was placed in deportation or removal proceedings by reason of the denial of the petition described in paragraph (1)(C), a motion to reopen filed under subparagraph (A) shall be treated as a motion to reopen such proceedings. The Attorney General shall grant such motion notwithstanding any time and number limitations imposed by law on motions to reopen such proceedings, except that the scope of any proceeding reopened on this basis shall be limited to whether any order of deportation or removal should be vacated, and the alien granted the status of an alien lawfully admitted for permanent residence (unconditionally or on a conditional basis), by reason of the determinations made under subsection (c). An alien who is inadmissible or deportable on any ground shall not be granted such status, except that this prohibition shall not apply to an alien who has been paroled into the United States under subparagraph (B).

“(c) Determinations on Petitions.—

“(1) Initial Determination.—

“(A) In General.—With respect to each eligible alien described in subsection (b)(1), the Attorney General shall make a determination, not later than 180 days after the date of the enactment of this Act [Nov. 2, 2002], whether—

“(i) the petition described in subsection (b)(1)(C) contains any material misrepresentation in the facts and information described in section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) and alleged in the petition with respect to a commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation);

“(ii) subject to subparagraphs (B) and (C), such enterprise created full-time jobs for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the eligible alien and the alien’s spouse, sons, or daughters), and those jobs exist or existed on any of the dates described in subparagraph (D); and

“(iii) on any of the dates described in subparagraph (D), the alien is in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b)(d)(1)(B).

“(B) Investment under Pilot Immigration Program.—For purposes of subparagraph (A)(ii), an investment that satisfies the requirements of section 601(c) of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note), as in effect on the date of the enactment of this Act [Nov. 2, 2002], shall be deemed to satisfy the requirements of such subparagraph.

“(C) Exception for Troubled Businesses.—In the case of an eligible alien who has made a capital investment in a troubled business (as defined in 8 CFR 204.6(e), as in effect on the date of the enactment of this Act), in lieu of the determination under subparagraph (A)(ii), the Attorney General shall determine whether the number of employees of the business, as measured on any of the dates described in subparagraph (D), is at no less than the pre-investment level.

“(D) Dates.—The dates described in this subparagraph are the following:

“(i) The date on which the petition described in subsection (b)(1)(C) is filed;

“(ii) 6 months after the date described in clause (1);

“(iii) The date on which the determination under subparagraph (A) or (C) is made.

“(E) Removal of Conditional Basis if Favorable Determination.—If the Attorney General renders an affirmative determination with respect to clauses (i) and (ii) of subparagraph (A), and if the Attorney General renders a negative determination with respect to clause (i) of subparagraph (A), the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien’s status (and that of the alien’s spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the alien’s lawful admission for permanent residence.

“(F) Requirements Relating to Adverse Determinations.—

“(i) Notice.—If the Attorney General renders an adverse determination with respect to clause (i), (ii), or (iii) of subparagraph (A), the Attorney General shall so notify the alien involved. The notice shall be in writing and shall state the factual basis for any adverse determination. If the Attorney General reverses all adverse determinations pursuant to such rebuttal, the Attorney General shall so notify the alien with an opportunity to submit evidence to rebut any adverse determination. If the Attorney General revokes all adverse determinations pursuant to such rebuttal, the Attorney General shall so notify the alien with an opportunity to submit evidence to rebut any adverse determination. If the Attorney General revokes any ground shall not be granted such status, except that this prohibition shall not apply to an alien who has been paroled into the United States under subparagraph (B).

“(ii) Continuation of Conditional Basis If Certain Adverse Determinations.—If the Attorney General renders an adverse determination with respect to clause (ii) or (iii) of subparagraph (A), and the eligible alien’s rebuttal does not cause the Attorney General to reverse such determination, the Attorney General shall continue the conditional basis of the alien’s permanent resident status (and that of the alien’s spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) for a 2-year period.

“(iii) Termination if Adverse Determination.—If the Attorney General renders an adverse determination with respect to subparagraph (A)(ii), and the eligible alien’s rebuttal does not cause the Attorney General to reverse such determination, the Attorney General shall so notify the alien involved and, subject to subsection (d), shall terminate the conditional resident status (and that of the alien’s spouse and children if it was obtained on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b))

“(F) Administrative and Judicial Review.—An alien may seek administrative review of an adverse determination made under this paragraph by filing a petition for such review with the Board of Immigration Appeals. If the Board of Immigration Appeals denies the petition, the alien may seek judicial review. The procedures for judicial review under this clause shall be the same as the procedures for judicial review of a final order of removal under section 244(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(1)). During the period in which an administrative or judicial appeal under this clause is pending, the Attorney General shall continue the conditional basis of the alien’s permanent resident status (and that of the alien’s spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)).

“(G) Second Determination.—

“(A) Authorization to Consider Investments in Other Commercial Enterprises.—In determining under this paragraph whether to remove a conditional basis continued under paragraph (F)(iii) with respect to an alien, the Attorney General shall consider any capital investment made by the alien
in a commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation), in the United States, regardless of whether that investment was made before or after the determinations under paragraph (1) and regardless of whether the commercial enterprise is the same as that considered in the determinations under such paragraph, if facts and information with respect to the investment and the enterprise are included in the petition submitted under subparagraph (B).

(B) Petition.—In order for a conditional basis continued under paragraph (1)(F)(ii) for an eligible alien (and the alien's spouse and children) to be removed, the alien must submit to the Attorney General, during the period described in subparagraph (C), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subparagraphs (A) and (B) of section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) with respect to any commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation) which the alien desires to have considered under this paragraph, regardless of whether such enterprise was created before or after the determinations made under paragraph (1).

(C) Period for Filing Petition.—

(i) 90-Day Period Before Second Anniversary.—Except as provided in clause (ii), the petition under subparagraph (B) must be filed during the 90-day period before the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

(E) Determination for Good Cause.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in clause (i).

(D) Termination of Permanent Resident Status for Failure to File Petition.—

(i) In General.—In the case of an alien with permanent resident status on a conditional basis under paragraph (1)(F)(ii), if no petition is filed with respect to the alien in accordance with subparagraph (B), the Attorney General shall terminate the permanent resident status of the alien (and the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1168b)) as of the second anniversary of the conditional basis of the alien's lawful admission for permanent residence.

(ii) Hearing in Removal Proceeding.—In any removal proceeding with respect to an alien whose permanent resident status is terminated under clause (i), the burden of proof shall be on the alien to establish compliance with subparagraph (B).

(iii) Determinations After Petition.—If a petition is filed by an eligible alien in accordance with subparagraph (B), the Attorney General shall make a determination, within 90 days of the date of such filing, whether—

(i) the petition contains any material misrepresentation in the facts and information alleged in the petition with respect to the commercial enterprises included in such petition;

(ii) all such enterprises, considered together, created full-time jobs for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the eligible alien and the alien's spouse, sons, or daughters), and those jobs exist on the date on which the determination is made, except that—

(I) this clause shall apply only if the Attorney General made an adverse determination with respect to the eligible alien under paragraph (1)(A)(ii);

(II) the provisions of subparagraphs (B) and (C) of paragraph (1) shall apply to a determination under this clause in the same manner as they apply to a determination under paragraph (1)(A)(ii) and

(III) if the Attorney General determined under paragraph (1)(A)(ii) that any jobs satisfying the requirement of such paragraph were created, the number of those jobs shall be subtracted from the number of jobs otherwise needed to satisfy the requirement of this clause and

(iv) considering all such enterprises together, on the date on which the determination is made, the eligible alien is in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)), except that—

(I) this clause shall apply only if the Attorney General made an adverse determination with respect to the eligible alien under paragraph (1)(A)(ii) and

(II) the Attorney General determined under paragraph (1)(A)(ii) that any capital amount was invested that could be credited towards compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)), such amount shall be subtracted from the amount of capital otherwise needed to satisfy the requirement of this clause.

(F) Removal of Conditional Basis if Favorable Determination.—If the Attorney General renders an affirmative determination with respect to clauses (ii) and (iii) of subparagraph (E), and the Attorney General renders a negative determination with respect to clause (i) of such subparagraph, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

(G) Requirements Relating to Adverse Determinations.—

(i) Notice.—If the Attorney General renders an adverse determination under subparagraph (E), the Attorney General shall so notify the alien involved. The notice shall be in writing and shall state the factual basis for any adverse determination. The Attorney General shall provide the alien with an opportunity to submit evidence to rebut any adverse determination. If the Attorney General reverses all adverse determinations pursuant to such rebuttal, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

(ii) Termination if Adverse Determination.—If the eligible alien's rebuttal does not cause the Attorney General to reverse each adverse determination under such subparagraph (E), the Attorney General shall so notify the alien involved and, subject to subsection (d), shall terminate the per-
permanent resident status of the alien (and that of the alien's spouse and children if it was obtained on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)).

“(d) HARING IN REMOVAL PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1)(F)(ii) or (2)(G)(ii) of subsection (c) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General.

“(e) REMOVAL WITH RESPECT TO CHILDREN.—In the case of an alien who obtained the status of an alien lawfully admitted for permanent residence on a conditional basis before the date of the enactment of this Act [Nov. 2, 2002] by virtue of being the child of an eligible alien described in subsection (b)(1), the alien shall be considered to be a child for purposes of this section regardless of any change in age or marital status after obtaining such status.

“(1) DEFINITION OF FULL-TIME.—For purposes of this section, the term ‘full-time’ means a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.

“SEC. 11032. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.

“(a) IN GENERAL.—With respect to each eligible alien described in subsection (b), the Attorney General or the Secretary of State shall approve the application described in subsection (b)(2) and grant the alien (and any spouse or child of the alien, if the spouse or child is eligible to receive a visa under section 203(d) of the Immigration and Nationality Act (8 U.S.C. 1153(d))) the status of an alien lawfully admitted for permanent residence on a conditional basis under section 216A of such Act (8 U.S.C. 1186b). Such application shall be approved not later than 180 days after the date of the enactment of this Act [Nov. 2, 2002].

“(b) ELIGIBLE ALIENS DESCRIBED.—An alien is an eligible alien described in subsection (b) if the alien—

“(1) filed, under section 203(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), a petition to accord the alien a status under section 203(d) of such Act (8 U.S.C. 1153(b)(5)) that was approved by the Attorney General after January 1, 1995, and before August 31, 1998;

“(2) pursuant to such approval, timely filed before the date of the enactment of this Act [Nov. 2, 2002] an application for adjustment of status under section 245 of such Act (8 U.S.C. 1255) or an application for an immigrant visa under section 204(b) of such Act (8 U.S.C. 1153(b)(5)); and

“(3) is not inadmissible or deportable on any ground.

“(c) TREATMENT OF CERTAIN APPLICATIONS.—

“(1) REVOCATION OF APPROVAL OF PETITIONS.—If the Attorney General revokes the approval of a petition described in subsection (b)(1), such revocation shall be disregarded for purposes of this section if it was based on a determination that the alien failed to satisfy section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)).

“(2) APPLICATION NO LONGER PENDING.—

“(A) IN GENERAL.—If an application described in subsection (b)(2) is not pending on the date of the enactment of this Act [Nov. 2, 2002], the Attorney General shall disregard the circumstances leading to such lack of pendency and treat it as reopened, if such lack of pendency is due to a determination that the alien—

“(i) failed to satisfy section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)); or

“(ii) departed the United States without advance notice.

“(B) APPLICANTS AHOARD.—In the case of an eligible alien who filed an application for adjustment of status described in subsection (b)(2), but who is no longer physically present in the United States, the Attorney General shall establish a process under which the alien may be paroled into the United States if necessary in order to obtain adjustment of status under this section.

“(d) RECORDATION OF DATE; REDUCTION OF NUMBERS.—Upon the approval of any application under subsection (a), the Attorney General shall record the alien’s lawful admission for permanent residence on a conditional basis as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under subsections 201(d) and 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1151(d) and 1153(b)(5)) for the fiscal year then current.

“(e) REMOVAL OF CONDITIONAL BASIS.—

“(1) PETITION.—In order for a conditional basis established under this section for an alien (and the alien’s spouse and children) to be removed, the alien must satisfy the requirements of section 216A(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(1)), including the submission of a petition in accordance with subparagraph (A) of such section. Such petition may include the facts and information described in subparagraphs (A) and (B) of section 218A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) with respect to any commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation) in the United States in which the alien has made a capital investment at any time.

“(2) DETERMINATION.—In carrying out section 216A(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)) with respect to an alien described in paragraph (1), the Attorney General, in lieu of the determination described in such section 216A(c)(3), shall make a determination, within 90 days of the date of such filing, whether—

“(A) the petition described in paragraph (1) contains any material misrepresentation in the facts and information alleged in the petition with respect to the commercial enterprises included in the petition;

“(B) subject to subparagraphs (B) and (C) of section 1163(b)(3), all such enterprises, considered together, created full-time jobs for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the alien and the alien’s spouse, sons, or daughters), and those jobs exist or expanded on either of the dates described in paragraph (3); and

“(C) considering the alien’s investments in such enterprises on either of the dates described in paragraph (3), or on both such dates, the alien is or was in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)).

“(3) DATES.—The dates described in this paragraph are the following:

“(A) The date on which the application described in subsection (b)(2) was filed.

“(B) The date on which the determination under paragraph (2) is made.

“(f) CLARIFICATION WITH RESPECT TO CHILDREN.—In the case of an alien who was a child on the date on which the application described in subsection (b)(2) was filed, the alien shall be considered to be a child for purposes of this section regardless of any change in age or marital status after such date.

“SEC. 11033. REGULATIONS.

“The Immigration and Naturalization Service shall promulgate regulations to implement this chapter (chapter 1 (§§11031–11051) of div. C of Pub. L. 107–273, enacting this note) not later than 120 days after the date of enactment of this Act [Nov.
§ 1187. Visa waiver program for certain visitors

(a) Establishment of program

The Attorney General and the Secretary of State are authorized to establish a program (hereinafter in this section referred to as the "program") under which the requirement of paragraph (B) of section 1182(a) of this title may be waived by the Attorney General, in consultation with the Secretary of State and in accordance with this section, in the case of an alien who meets the following requirements:

(1) Seeking entry as tourist for 90 days or less

The alien is applying for admission during the program as a nonimmigrant visitor (described in section 1101(a)(15)(B) of this title) for a period not exceeding 90 days.

(2) National of program country

The alien is a national of, and presents a passport issued by, a country which—
(A) extends (or agrees to extend), either on its own or in conjunction with one or more other countries that are described in subparagraph (B) and that have established with it a common area for immigration admissions, reciprocal privileges to citizens and nationals of the United States, and (B) is designated as a pilot program country under subsection (c) of this section.

(3) Machine readable passport

(A) In general

Except as provided in subparagraph (B), on or after October 1, 2003, the alien at the time of application for admission is in possession of a valid unexpired machine-readable passport that satisfies the internationally accepted standard for machine readability.

(B) Limited waiver authority

For the period beginning October 1, 2003, and ending September 30, 2007, the Secretary of State may waive the requirement of subparagraph (A) with respect to nationals of a program country (as designated under subsection (c) of this section), if the Secretary of State finds that the program country—
(i) is making progress toward ensuring that passports meeting the requirement of subparagraph (A) are generally available to its nationals; and
(ii) has taken appropriate measures to protect against misuse of passports the country has issued that do not meet the requirement of subparagraph (A).

(4) Executes immigration forms

The alien before the time of such admission executes such immigration form as the Attorney General shall establish.

(5) Entry into the United States

If arriving by sea or air, the alien arrives at the port of entry into the United States on a carrier, including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, or a domestic corporation conducting operations under part 91 of that title, to give suitable and proper bond, in such reasonable amount and containing such conditions as the Attorney General may deem sufficient to ensure compliance with the indemnification requirements of this section, as a term of such an agreement.

(6) Not a safety threat

The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

(7) No previous violation

If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

(8) Round-trip ticket

The alien is in possession of a round-trip transportation ticket (unless this requirement is waived by the Attorney General under regulations or the alien is arriving at the port of entry on an aircraft operated under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations).

(9) Automated system check

The identity of the alien has been checked using an automated electronic database containing information about the inadmissibility of aliens to uncover any grounds on which the alien may be inadmissible to the United States, and no such ground has been found.

(10) Electronic transmission of identification information

Operators of aircraft under part 135 of title 14, Code of Federal Regulations, or operators of noncommercial aircraft that are owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, carrying any alien pas-
senger who will apply for admission under this section shall furnish such information as the Attorney General by regulation shall prescribe as necessary for the identification of any alien passenger being transported and for the enforcement of the immigration laws. Such information shall be electronically transmitted not less than one hour prior to arrival at the port of entry for purposes of checking for inadmissibility using the automated electronic database.

(11) Eligibility determination under the electronic travel authorization system

Beginning on the date on which the electronic travel authorization system developed under subsection (h)(3) is fully operational, each alien traveling under the program shall, before applying for admission to the United States, electronically provide to the system biographical information and such other information as the Secretary of Homeland Security shall determine necessary to determine the eligibility of, and whether there exists a law enforcement or security risk in permitting, the alien to travel to the United States. Upon review of such biographical information, the Secretary of Homeland Security shall determine whether the alien is eligible to travel to the United States under the program.

(b) Waiver of rights

An alien may not be provided a waiver under the program unless the alien has waived any right—

(1) to review or appeal under this chapter of an immigration officer’s determination as to the admissibility of the alien at the port of entry into the United States, or
(2) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

c) Designation of program countries

(1) In general

The Attorney General, in consultation with the Secretary of State, may designate any country as a program country if it meets the requirements of paragraph (2).

(2) Qualifications

Except as provided in subsection (f) of this section, a country may not be designated as a program country unless the following requirements are met:

(A) Low nonimmigrant visa refusal rate

Either—

(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during—
(1) the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years; and
(II) either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year; or
(ii) such refusal rate for nationals of that country during the previous full fiscal year was less than 3.0 percent.

(B) Machine readable passport program

(i) In general

Subject to clause (ii), the government of the country certifies that it issues to its citizens machine-readable passports that satisfy the internationally accepted standard for machine readability.

(ii) Deadline for compliance for certain countries

In the case of a country designated as a program country under this subsection prior to May 1, 2000, as a condition on the continuation of that designation, the country—

(I) shall certify, not later than October 1, 2000, that it has a program to issue machine-readable passports to its citizens not later than October 1, 2003; and
(II) shall satisfy the requirement of clause (i) not later than October 1, 2003.

(C) Law enforcement and security interests

The Attorney General, in consultation with the Secretary of State—

(i) evaluates the effect that the country’s designation would have on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law); and
(ii) determines that such interests would not be compromised by the designation of the country; and
(iii) submits a written report to the Committee on the Judiciary and the Committee on Foreign Relations of the Senate regarding the country’s qualification for designation that includes an explanation of such determination.

(D) Reporting lost and stolen passports

The government of the country enters into an agreement with the United States to report, or make available through Interpol or other means as designated by the Secretary of Homeland Security, to the United States Government information about the theft or loss of passports within a strict time limit and in a manner specified in the agreement.

(E) Repatriation of aliens

The government of the country accepts for repatriation any citizen, former citizen, or national of the country against whom a final order of removal is issued not later than three weeks after the issuance of the final order of removal. Nothing in this subparagraph creates any duty for the United States or any right for any alien with
respect to removal or release. Nothing in this subparagraph gives rise to any cause of action or claim under this paragraph or any other law against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

(F) Passenger information exchange

The government of the country enters into an agreement with the United States to share information regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States or its citizens.

(3) Continuing and subsequent qualifications

For each fiscal year after the initial period—

(A) Continuing qualification

In the case of a country which was a program country in the previous fiscal year, a country may not be designated as a program country unless the sum of:

(i) the total of the number of nationals of that country who were denied admission at the time of arrival or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor; and

(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

(B) New countries

In the case of another country, the country may not be designated as a program country unless the following requirements are met:

(i) Low nonimmigrant visa refusal rate in previous 2-year period

The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

(ii) Low nonimmigrant visa refusal rate in each of the 2 previous years

The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

(4) Initial period

For purposes of paragraphs (2) and (3), the term “initial period” means the period beginning at the end of the 30-day period described in subsection (b)(1) of this section and ending on the last day of the first fiscal year which begins after such 30-day period.

(5) Written reports on continuing qualification; designation terminations

(A) Periodic evaluations

(i) In general

The Secretary of Homeland Security, in consultation with the Secretary of State, periodically (but not less than once every 2 years)—

(I) shall evaluate the effect of each program country’s continued designation on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

(II) shall determine, based upon the evaluation in subclause (I), whether any such designation ought to be continued or terminated under subsection (d) of this section;

(III) shall submit a written report to the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Homeland Security and Governmental Affairs of the Senate regarding the continuation or termination of the country’s designation that includes an explanation of such determination and the effects described in subclause (I); and

(IV) shall submit to Congress a report regarding the implementation of the electronic travel authorization system under subsection (h)(3) and the participation of new countries in the program through a waiver under paragraph (8).

(ii) Effective date

A termination of the designation of a country under this subparagraph shall take effect on the date determined by the Secretary of Homeland Security, in consultation with the Secretary of State.

(iii) Redesignation

In the case of a termination under this subparagraph, the Secretary of Homeland Security shall redesignate the country as a program country, without regard to subsection (f) of this section or paragraph (2) or (3), when the Secretary of Homeland Security, in consultation with the Secretary of State, determines that all causes of the termination have been eliminated.

(B) Emergency termination

(i) In general

In the case of a program country in which an emergency occurs that the Secretary of Homeland Security, in consulta-
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The Secretary of Homeland Security shall immediately terminate the designation of the country as a program country.

(ii) Definition

For purposes of clause (i), the term “emergency” means—

(I) the overthrow of a democratically elected government;

(II) war (including undeclared war, civil war, or other military activity) on the territory of the program country;

(III) a severe breakdown in law and order affecting a significant portion of the program country’s territory;

(IV) a severe economic collapse in the program country; or

(V) any other extraordinary event in the program country that threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States) and where the country’s participation in the program could contribute to that threat.

(iii) Redesignation

The Secretary of Homeland Security may redesignate the country as a program country, without regard to subsection (f) of this section or paragraph (2) or (3), when the Secretary of Homeland Security, in consultation with the Secretary of State, determines that—

(I) at least 6 months have elapsed since the effective date of the termination;

(II) the emergency that caused the termination has ended; and

(III) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the period of termination under this subparagraph was less than 3.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during such period.

(iv) Program suspension authority

The Director of National Intelligence shall immediately inform the Secretary of Homeland Security of any current and originates from a country participating in the visa waiver program. Upon receiving such notification, the Secretary, in consultation with the Secretary of State—

(I) may suspend a country from the visa waiver program without prior notice;

(II) shall notify any country suspended under subclause (I) and, to the extent practicable without disclosing sensitive intelligence sources and methods, provide justification for the suspension; and

(III) shall restore the suspended country’s participation in the visa waiver program upon a determination that the threat no longer poses an imminent danger to the United States or its citizens.

(C) Treatment of nationals after termination

For purposes of this paragraph—

(i) nationals of a country whose designation is terminated under subparagraph (A) or (B) shall remain eligible for a waiver under subsection (a) of this section until the effective date of such termination; and

(ii) a waiver under this section that is provided to such a national for a period described in subsection (a)(1) of this section shall not, by such termination, be deemed to have been rescinded or otherwise rendered invalid, if the waiver is granted prior to such termination.

(6) Computation of visa refusal rates

For purposes of determining the eligibility of a country to be designated as a program country, the calculation of visa refusal rates shall not include any visa refusals which incorporate any procedures based on, or are otherwise based on, race, sex, or disability, unless otherwise specifically authorized by law or regulation. No court shall have jurisdiction under this paragraph to review any visa refusal, the denial of admission to the United States of any alien by the Attorney General, the Secretary’s computation of the visa refusal rate, or the designation or nondesignation of any country.

(7) Visa waiver information

(A) In general

In refusing the application of nationals of a program country for United States visas, or the applications of nationals of a country seeking entry into the visa waiver program, a consular officer shall not knowingly or intentionally classify the refusal of the visa under a category that is not included in the calculation of the visa refusal rate only so that the percentage of that country’s visa refusals is less than the percentage limitation applicable to qualification for participation in the visa waiver program.

(B) Reporting requirement

On May 1 of each year, for each country under consideration for inclusion in the visa waiver program, the Secretary of State shall provide to the appropriate congressional committees—

(i) the total number of nationals of that country that applied for United States visas in that country during the previous calendar year;

(ii) the total number of such nationals who received United States visas during the previous calendar year;

(iii) the total number of such nationals who were refused United States visas during the previous calendar year;

(iv) the total number of such nationals who were refused United States visas during the previous calendar year under each provision of this chapter under which the visas were refused; and

(v) the number of such nationals that were refused under section 1184(b) of this
title as a percentage of the visas that were issued to such nationals.

(C) Certification

Not later than May 1 of each year, the United States chief of mission, acting or permanent, to each country under consideration for inclusion in the visa waiver program shall certify to the appropriate congressional committees that the information described in subparagraph (B) is accurate and provide a copy of that certification to those committees.

(D) Consideration of countries in the visa waiver program

Upon notification to the Attorney General that a country is under consideration for inclusion in the visa waiver program, the Secretary of State shall provide all of the information described in subparagraph (B) to the Attorney General.

(E) Definition

In this paragraph, the term “appropriate congressional committees” means the Committee on the Judiciary and the Committee on Foreign Relations of the Senate and the Committee on the Judiciary and the Committee on International Relations of the House of Representatives.

(8) Nonimmigrant visa refusal rate flexibility

(A) Certification

(i) In general

On the date on which an air exit system is in place that can verify the departure of not less than 97 percent of foreign nationals who exit through airports of the United States and the electronic travel authorization system required under subsection (b)(3) is fully operational, the Secretary of Homeland Security shall certify to Congress that such air exit system and electronic travel authorization system are in place.

(ii) Notification to Congress

The Secretary shall notify Congress in writing of the date on which the air exit system under clause (i) fully satisfies the biometric requirements specified in subsection (i).

(iii) Temporary suspension of waiver authority

Notwithstanding any certification made under clause (i), if the Secretary has not notified Congress in accordance with clause (ii) by June 30, 2009, the Secretary’s waiver authority under subparagraph (B) shall be suspended beginning on July 1, 2009, until such time as the Secretary makes such notification.

(iv) Rule of construction

Nothing in this paragraph shall be construed as in any way abrogating the reporting requirements under subsection (i)(3).

(B) Waiver

After certification by the Secretary under subparagraph (A), the Secretary, in consultation with the Secretary of State, may waive the application of paragraph (2)(A) for a country if—

(i) the country meets all security requirements of this section;

(ii) the Secretary of Homeland Security determines that the totality of the country’s security risk mitigation measures provide assurance that the country’s participation in the program would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States;

(iii) there has been a sustained reduction in the rate of refusals for nonimmigrant visas for nationals of the country and conditions exist to continue such reduction;

(iv) the country cooperated with the Government of the United States on counterterrorism initiatives, information sharing, and preventing terrorist travel before the date of its designation as a program country, and the Secretary of Homeland Security and the Secretary of State determine that such cooperation will continue; and

(v) (I) the rate of refusals for nonimmigrant visitor visas for nationals of the country during the previous full fiscal year was not more than ten percent; or

(II) the visa overstay rate for the country for the previous full fiscal year does not exceed the maximum visa overstay rate, once such rate is established under subparagraph (C).

(C) Maximum visa overstay rate

(i) Requirement to establish

After certification by the Secretary under subparagraph (A), the Secretary and the Secretary of State jointly shall use information from the air exit system referred to in such subparagraph to establish a maximum visa overstay rate for countries participating in the program pursuant to a waiver under subparagraph (B).

The Secretary of Homeland Security shall certify to Congress that such rate would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States.

(ii) Visa overstay rate defined

In this paragraph the term “visa overstay rate” means, with respect to a country, the ratio of—

(I) the total number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa whose periods of authorized stays ended during a fiscal year but who remained unlawfully in the United States beyond such periods; to

(II) the total number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa during that fiscal year.

(iii) Report and publication

The Secretary of Homeland Security shall on the same date submit to Congress and publish in the Federal Register infor-
mation relating to the maximum visa overstay rate established under clause (i). Not later than 60 days after such date, the Secretary shall issue a final maximum visa overstay rate above which a country may not participate in the program.

(9) Discretionary security-related considerations
In determining whether to waive the application of paragraph (2)(A) for a country, pursuant to paragraph (8), the Secretary of Homeland Security, in consultation with the Secretary of State, shall take into consideration other factors affecting the security of the United States, including—
(A) airport security standards in the country;
(B) whether the country assists in the operation of an effective air marshal program;
(C) the standards of passports and travel documents issued by the country; and
(D) other security-related factors, including the country’s cooperation with the United States’ initiatives toward combating terrorism and the country’s cooperation with the United States intelligence community in sharing information regarding terrorist threats.

(10) Technical assistance
The Secretary of Homeland Security, in consultation with the Secretary of State, shall provide technical assistance to program countries to assist those countries in meeting the requirements under this section. The Secretary of Homeland Security shall ensure that the program office within the Department of Homeland Security is adequately staffed and has resources to be able to provide such technical assistance, in addition to its duties to effectively monitor compliance of the countries participating in the program with all the requirements of the program.

(11) Independent review
(A) In general
Prior to the admission of a new country into the program under this section, and in conjunction with the periodic evaluations required under subsection (c)(5)(A), the Director of National Intelligence shall conduct an independent intelligence assessment of a nominated country and member of the program.

(B) Reporting requirement
The Director shall provide to the Secretary of Homeland Security, the Secretary of State, and the Attorney General the independent intelligence assessment required under subparagraph (A).

(C) Contents
The independent intelligence assessment conducted by the Director shall include—
(i) a review of all current, credible terrorist threats of the subject country;
(ii) an evaluation of the subject country’s counterterrorism efforts;
(iii) an evaluation as to the extent of the country’s sharing of information beneficial to suppressing terrorist movements, financing, or actions;
(iv) an assessment of the risks associated with including the subject country in the program; and
(v) recommendations to mitigate the risks identified in clause (iv).

(d) Authority
Notwithstanding any other provision of this section, the Secretary of Homeland Security, in consultation with the Secretary of State, may for any reason (including national security) refrain from waiving the visa requirement in respect to nationals of any country which may otherwise qualify for designation or may, at any time, rescind any waiver or designation previously granted under this section. The Secretary of Homeland Security may not waive any eligibility requirement under this section unless the Secretary notifies, with respect to the House of Representatives, the Committee on Homeland Security, the Committee on the Judiciary, the Committee on Appropriations, and the Committee on Foreign Relations, and the Committee on Appropriations not later than 30 days before the effective date of such waiver.

(e) Carrier agreements
(1) In general
The agreement referred to in subsection (a)(4) of this section is an agreement between a carrier (including any carrier conducting operations under part 91 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title and the Attorney General under which the carrier (including any carrier conducting operations under part 91 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the program—
(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the 90-day period described in subsection (a)(1)(A) of this section,
(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under the program,
(C) to be subject to the imposition of fines resulting from the transporting into the United States of a national of a designated country without a passport pursuant to regulations promulgated by the Attorney General, and
(D) to collect, provide, and share passenger data as required under subsection (h)(1)(B) of this section.

(2) Termination of agreements
The Attorney General may terminate an agreement under paragraph (1) with five days'
notice to the carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title for the failure by a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title to meet the terms of such agreement.

(3) Business aircraft requirements

(A) In general

For purposes of this section, a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations that owns or operates a noncommercial aircraft is a corporation that is organized under the laws of any of the States of the United States or the District of Columbia and is accredited by or a member of a national organization that sets business aviation standards. The Attorney General shall prescribe by regulation the provision of such information as the Attorney General deems necessary to identify the domestic corporation, its officers, employees, shareholders, its place of business, and its business activities.

(B) Collections

In addition to any other fee authorized by law, the Attorney General is authorized to charge and collect, on a periodic basis, an amount from each domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, for nonimmigrant visa waiver admissions on noncommercial aircraft owned or operated by such domestic corporation equal to the total amount of fees assessed for issuance of nonimmigrant visa waiver arrival/departure forms at land border ports of entry. All fees collected under this paragraph shall be deposited into the Immigration User Fee Account established under section 1556(h) of this title.

(f) Duration and termination of designation

(1) In general

(A) Determination and notification of disqualification rate

Upon determination by the Attorney General that a program country’s disqualification rate is 2 percent or more, the Attorney General shall notify the Secretary of State.

(B) Probationary status

If the program country’s disqualification rate is greater than 2 percent but less than 3.5 percent, the Attorney General shall place the program country in probationary status for a period not to exceed 2 full fiscal years following the year in which the determination under subparagraph (A) is made.

(C) Termination of designation

Subject to paragraph (3), if the program country’s disqualification rate is 3.5 percent or more, the Attorney General shall terminate the country’s designation as a program country effective at the beginning of the second fiscal year following the fiscal year in which the determination under subparagraph (A) is made.

(2) Termination of probationary status

(A) In general

If the Attorney General determines at the end of the probationary period described in paragraph (1)(B) that the program country placed in probationary status under such paragraph has failed to develop a machine-readable passport program as required by section 3(c)(2)(C) of this section, or has a disqualification rate of 2 percent or more, the Attorney General shall terminate the designation of the country as a program country. If the Attorney General determines that the program country has developed a machine-readable passport program and has a disqualification rate of less than 2 percent, the Attorney General shall redesignate the country as a program country.

(B) Effective date

A termination of the designation of a country under subparagraph (A) shall take effect on the first day of the first fiscal year following the fiscal year in which the determination under such subparagraph is made. Until such date, nationals of the country shall remain eligible for a waiver under subsection (a) of this section.

(3) Nonapplicability of certain provisions

Paragraph (1)(C) shall not apply unless the total number of nationals of a program country described in paragraph (4)(A) exceeds 100.

(4) “Disqualification rate” defined

For purposes of this subsection, the term “disqualification rate” means the percentage which—

(A) the total number of nationals of the program country who were—

(i) denied admission at the time of arrival or withdrew their application for admission during the most recent fiscal year for which data are available; and

(ii) admitted as nonimmigrant visitors during such fiscal year and who violated the terms of such admission; bears to

(B) the total number of nationals of such country who applied for admission as nonimmigrant visitors during such fiscal year.

(5) Failure to report passport thefts

If the Secretary of Homeland Security and the Secretary of State jointly determine that the program country is not reporting the theft or loss of passports, as required by subsection (c)(2)(D) of this section, the Secretary of Homeland Security shall terminate the designation of the country as a program country.

(g) Visa application sole method to dispute denial of waiver based on a ground of inadmissibility

In the case of an alien denied a waiver under the program by reason of a ground of inadmissibility—

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2So in original. Probably should be followed by a comma.

3So in original. Probably should be “subsection”.

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sibility described in section 1182(a) of this title that is discovered at the time of the alien’s application for the waiver or through the use of an automated electronic database required under subsection (a)(9) of this section, the alien may apply for a visa at an appropriate consular office outside the United States. There shall be no other means of administrative or judicial review of such a denial, and no court or person otherwise shall have jurisdiction to consider any claim attacking the validity of such a denial.

(h) Use of information technology systems

(1) Automated entry-exit control system

(A) System

Not later than October 1, 2001, the Attorney General shall develop and implement a fully automated entry and exit control system that will collect a record of arrival and departure for every alien who arrives and departs by sea or air at a port of entry into the United States and is provided a waiver under the program.

(B) Requirements

The system under subparagraph (A) shall satisfy the following requirements:

(i) Data collection by carriers

Not later than October 1, 2001, the records of arrival and departure described in subparagraph (A) shall be based, to the maximum extent practicable, on passenger data collected and electronically transmitted to the automated entry and exit control system by each carrier that has an agreement under subsection (a)(9) of this section.

(ii) Data provision by carriers

Not later than October 1, 2002, no waiver may be provided under this section to an alien arriving by sea or air at a port of entry into the United States on a carrier unless the carrier is electronically transmitting to the automated entry and exit control system passenger data determined by the Attorney General to be sufficient to permit the Attorney General to carry out this paragraph.

(iii) Calculation

The system shall contain sufficient data to permit the Attorney General to calculate, for each program country and each fiscal year, the portion of nationals of that country who are described in subparagraph (A) and for whom no record of departure exists, expressed as a percentage of the total number of such nationals who are so described.

(C) Reporting

(i) Percentage of nationals lacking departure record

As part of the annual report required to be submitted under section 1365a(e)(1) of this title, the Attorney General shall include a section containing the calculation described in subparagraph (B)(iii) for each program country for the previous fiscal year, together with an analysis of that information.

(ii) System effectiveness

Not later than December 31, 2004, the Attorney General shall submit a written report to the Committee on the Judiciary of the United States Senate containing the following:

(I) The conclusions of the Attorney General regarding the effectiveness of the automated entry and exit control system to be developed and implemented under this paragraph.

(II) The recommendations of the Attorney General regarding the use of the calculation described in subparagraph (B)(iii) as a basis for evaluating whether to terminate or continue the designation of a country as a program country.

The report required by this clause may be combined with the annual report required to be submitted on that date under section 1365a(e)(1) of this title.

(2) Automated data sharing system

(A) System

The Attorney General and the Secretary of State shall develop and implement an automated data sharing system that will permit them to share data in electronic form from their respective records systems regarding the admissibility of aliens who are nationals of a program country.

(B) Requirements

The system under subparagraph (A) shall satisfy the following requirements:

(i) Supplying information to immigration officers conducting inspections at ports of entry

Not later than October 1, 2002, the system shall enable immigration officers conducting inspections at ports of entry under section 1225 of this title to obtain from the system, with respect to aliens seeking a waiver under the program—

(I) any photograph of the alien that may be contained in the records of the Department of State or the Service; and

(II) information on whether the alien has ever been determined to be ineligible to receive a visa or ineligible to be admitted to the United States.

(ii) Supplying photographs of inadmissible aliens

The system shall permit the Attorney General electronically to obtain any photograph contained in the records of the Secretary of State pertaining to an alien who is a national of a program country and has been determined to be ineligible to receive a visa.

(iii) Maintaining records on applications for admission

The system shall maintain, for a minimum of 10 years, information about each application for admission made by an alien seeking a waiver under the program, including the following:

(I) The name or Service identification number of each immigration officer con-
ducting the inspection of the alien at the port of entry.

(II) Any information described in clause (i) that is obtained from the system by any such officer.

(III) The results of the application.

(3) Electronic travel authorization system

(A) System

The Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a fully automated electronic travel authorization system (referred to in this paragraph as the “System”) to collect such biographical and other information as the Secretary of Homeland Security determines necessary to determine, in advance of travel, the eligibility of, and whether there exists a law enforcement or security risk in permitting, the alien to travel to the United States.

(B) Fees

(i) In general

No later than 6 months after March 4, 2010, the Secretary of Homeland Security shall establish a fee for the use of the System and begin assessment and collection of that fee. The initial fee shall be the sum of—

(I) $10 per travel authorization; and

(II) an amount that will at least ensure recovery of the full costs of providing and administering the System, as determined by the Secretary.

(ii) Disposition of amounts collected

Amounts collected under clause (i)(I) shall be credited to the Travel Promotion Fund established by subsection (d) of section 2131 of title 22. Amounts collected under clause (i)(II) shall be transferred to the general fund of the Treasury and made available to pay the costs incurred to administer the System.

(iii) Sunset of Travel Promotion Fund fee

The Secretary may not collect the fee authorized by clause (i)(I) for fiscal years beginning after September 30, 2015.

(C) Validity

(i) Period

The Secretary of Homeland Security, in consultation with the Secretary of State, shall prescribe regulations that provide for a period, not to exceed three years, during which a determination of eligibility to travel under the program will be valid. Notwithstanding any other provision under this section, the Secretary of Homeland Security may revoke any such determination at any time and for any reason.

(ii) Limitation

A determination by the Secretary of Homeland Security that an alien is eligible to travel to the United States under the program is not a determination that the alien is admissible to the United States.

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(iii) Not a determination of visa eligibility

A determination by the Secretary of Homeland Security that an alien who applied for authorization to travel to the United States through the System is not eligible to travel under the program is not a determination of eligibility for a visa to travel to the United States and shall not preclude the alien from applying for a visa.

(iv) Judicial review

Notwithstanding any other provision of law, no court shall have jurisdiction to review an eligibility determination under the System.

(D) Report

Not later than 60 days before publishing notice regarding the implementation of the System in the Federal Register, the Secretary of Homeland Security shall submit a report regarding the implementation of the system to—

(i) the Committee on Homeland Security of the House of Representatives;

(ii) the Committee on the Judiciary of the House of Representatives;

(iii) the Committee on Foreign Affairs of the House of Representatives;

(iv) the Permanent Select Committee on Intelligence of the House of Representatives;

(v) the Committee on Appropriations of the House of Representatives;

(vi) the Committee on Homeland Security and Governmental Affairs of the Senate;

(vii) the Committee on the Judiciary of the Senate;

(viii) the Committee on Foreign Relations of the Senate;

(ix) the Select Committee on Intelligence of the Senate; and

(x) the Committee on Appropriations of the Senate.

(i) Exit system

(1) In general

Not later than one year after August 3, 2007, the Secretary of Homeland Security shall establish an exit system that records the departure on a flight leaving the United States of every alien participating in the visa waiver program established under this section.

(2) System requirements

The system established under paragraph (1) shall—

(A) match biometric information of the alien against relevant watch lists and immigration information; and

(B) compare such biometric information against manifest information collected by air carriers on passengers departing the United States to confirm such aliens have departed the United States.

(3) Report

Not later than 180 days after August 3, 2007, the Secretary shall submit to Congress a report that describes—

(A) the progress made in developing and deploying the exit system established under this subsection; and

4 So in original. Probably should be “an”.

[93x748]Page 219 TITLE 8—ALIENS AND NATIONALITY
(B) the procedures by which the Secretary shall improve the method of calculating the rates of nonimmigrants who overstay their authorized period of stay in the United States.


REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(1) and (c)(2)(D), in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS

2019—Subsec. (b)(3)(B). Pub. L. 111–145 amended subpar. (B) generally. Prior to amendment, text read as follows: “The Secretary of Homeland Security may charge a fee for the use of the System, which shall be—

(i) set at a level that will ensure recovery of the full costs of providing and administering the System; and

(ii) available to pay the costs incurred to administer the System.”


Subsec. (c)(8), (9). Pub. L. 110–53, §711(c), added pars. (8) and (9).


Subsec. (d). Pub. L. 110–53, §711(d)(1)(C), substituted “Secretary of Homeland Security” for “Attorney General” in first sentence and inserted at end “The Secretary of Homeland Security may not waive any eligibility requirement under this section unless the Secretary notifies, with respect to the House of Representatives, the Committee on Homeland Security, the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Appropriations, and with respect to the Senate, the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Appropriations not later than 30 days before the effective date of such waiver.”


2001—Subsec. (a)(3). Pub. L. 106–396, §417(d), directed the substitution of “(A) IN GENERAL.—Except as provided in subparagraph (B), on or after “On or after” and the addition of subpar. (B), was executed making the substitution for “On and after” and adding subpar. (B) to reflect the probable intent of Congress. Pub. L. 107–56, §417(c), substituted “2003,” for “2007.”


Subsec. (a)(1). Pub. L. 106–396, §101(a)(2)(C), substituted “program” for “pilot program period (as defined in subsection (e) of this section)”.


Subsec. (a)(2)(A). Pub. L. 106–396, §201, inserted “, either on its own or in conjunction with one or more other countries that are described in subparagraph (B) and that have established with it a common area for immigration admissions,” after “to extend”.

Subsec. (a)(3), (4). Pub. L. 106–396, §202(a), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 106–396, §403(a), substituted “, including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations which has entered into an agreement with the Attorney General pursuant to subsection (e) of this section. The Attorney General is authorized to require a carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a domestic corporation conducting op-
erations under part 91 of that title, to give suitable and proper bond, in such reasonable amount and containing such conditions as the Attorney General may deem sufficient to ensure compliance with the indemnification requirements of this section, as a term of such an agreement for "which has entered into an agreement with the Service to guarantee transport of the alien out of the United States if the alien is found inadmissible or deportable by an immigration officer".

Pub. L. 106–396, §202(a)(1), redesignated par. (4) as (5).

Former par. (5) redesignated (6).

Subsec. (a)(6), (7). Pub. L. 106–396, §202(a)(1), designated pars. (5) and (6) as (6) and (7), respectively.

Former par. (7) redesignated (8).
Subsec. (a)(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. (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. (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".


Subsec. (a). Pub. L. 100–525, §2(p)(2), substituted "hereinafter" for "hereafter".

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2007 AMENDMENT


(A) enhancing program security requirements; and

(B) extending visa-free travel privileges to nationals of foreign countries that are partners in the war on terrorism—

(I) that are actively cooperating with the United States to prevent terrorist travel, including sharing counterterrorism and law enforcement information; and

(II) whose nationals have demonstrated their compliance with the provisions of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] regarding the purpose and duration of their admission to the United States; and

(2) the modernization described in paragraph (1) will—

(A) enhance bilateral cooperation on critical counterterrorism and information sharing initiatives;

(B) support and expand tourism and business opportunities to enhance long-term economic competitiveness; and

(C) strengthen bilateral relationships."

MACHINE READABLE PASSPORTS


"(a) AUDITS.—The Secretary of State shall, each fiscal year until September 30, 2007—

(1) perform annual audits of the implementation of section 217(c)(2)(B) of the Immigration and Nationality Act [8 U.S.C. 1187(c)(2)(B)];

(2) check for the implementation of precautionary measures to prevent the counterfeiting and theft of passports; and

(3) ascertain that countries designated under the visa waiver program have established a program to develop tamper-resistant passports; and

"(b) PERIODIC REPORTS.—Beginning one year after the date of enactment of this Act [Oct. 26, 2001], and every year thereafter until 2007, the Secretary of State shall submit a report to Congress setting forth the findings of the most recent audit conducted under subsection (a)(1)."

Section 307(f) of Pub. L. 192–232 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


ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

MODERNIZING AND STRENGTHENING OF SECURITY OF VISA WAIVER PROGRAM


(A) enhancing program security requirements; and

(B) extending visa-free travel privileges to nationals of foreign countries that are partners in the war on terrorism—

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"(b) PERIODIC REPORTS.—Beginning one year after the date of enactment of this Act [Oct. 26, 2001], and every year thereafter until 2007, the Secretary of State shall submit a report to Congress setting forth the findings of the most recent audit conducted under subsection (a)(1)."
§ 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 filing and consideration of an application for a labor certification under this section:

(1) Deadline for filing applications

The Secretary of Labor may not require that the application be filed more than 45 days before the first date the employer requires the labor or services of the H–2A worker.

(2) Notice within seven days of deficiencies

(A) The employer shall be notified in writing within seven days of the date of filing if the
application does not meet the standards (other than that described in subsection (a)(1)(A) of this section) for approval.

(B) If the application does not meet such standards, the notice shall include the reasons therefor and the Secretary shall provide an opportunity for the prompt resubmission of a modified application.

(3) Issuance of certification

(A) The Secretary of Labor shall make, not later than 30 days before the date such labor or services are first required to be performed, the certification described in subsection (a)(1) of this section if—

(i) the employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

(ii) the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

In considering the question of whether a specific qualification is appropriate in a job offer, the Secretary shall apply the normal and accepted qualifications required by non-H–2A employers in the same or comparable occupations and crops.

(B)(i) For a period of 3 years subsequent to the effective date of this section, labor certifications shall remain effective only if, from the time the foreign worker departs for the employer’s place of employment, the employer will provide employment to any qualified eligible 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 30 days after the date such labor or services are first required to be performed.

(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 for purposes of this section an association acting as an agent for its members shall not be considered a joint employer merely because of such referral or transfer.

(v) United States workers referred or transferred pursuant to clause (iv) of this subparagraph shall not be treated disparately.

(vi) An employer shall not be liable for payments under section 655.202(b)(6) of title 20, Code of Federal Regulations (or any successor regulation) with respect to an H–2A worker who is displaced due to compliance with the requirement of this subparagraph, if the Secretary of Labor certifies that the H–2A worker was displaced because of the employer’s compliance with clause (i) of this subparagraph.

(vii)(I) No person or entity shall willfully and knowingly withhold domestic workers prior to the arrival of H–2A workers in order to force the hiring of domestic workers under clause (i).

(II) Upon the receipt of a complaint by an employer that a violation of subclause (I) has occurred, the Secretary shall immediately investigate. He shall within 36 hours of the receipt of the complaint issue findings concerning the alleged violation. Where the Secretary finds that a violation has occurred, he shall immediately suspend the application of clause (i) of this subparagraph with respect to that certification for that date of need.

(4) Housing

Employers shall furnish housing in accordance with regulations. The employer shall be permitted at the employer’s option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing which meets the local standards for rental and/or public accommodations or other substantially similar class of habitation; Provided, That in the absence of applicable local standards, State standards for rental and/or public accommodations or other substantially similar class of habitation shall be met: Pro-
vided further, That in the absence of applicable local or State standards, Federal temporary labor camp standards shall apply: Provided further, That the Secretary of Labor shall issue regulations which address the specific requirements of housing for employees principally engaged in the range production of livestock: Provided further, That when it is the prevailing practice in the area and occupation of intended employment to provide family housing, family housing shall be provided to workers with families who request it: And provided further, That nothing in this paragraph shall require an employer to provide or secure housing for workers who are not entitled to it under the temporary labor certification regulations in effect on June 1, 1986. The determination as to whether the housing furnished by an employer for an H–2A worker meets the requirements imposed by this paragraph must be made prior to the date specified in paragraph (3)(A) by which the Secretary of Labor is required to make a certification described in subsection (a)(1) of this section with respect to a petition for the importation of such workers.

(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 workers. 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 by the association 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.

(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 by the association 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)(i)(i) 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.

(j) Extension of suspension of entry

The determination as to whether the housing furnished by an employer for an H–2A worker meets the requirements imposed by this paragraph must be made prior to its renumbering by Pub. L. 100–525. Subsec. (i)(1), Pub. L. 102–232, §309(b)(8), as amended by Pub. L. 103–116, 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. 103–116, substituted "1324a(h)" for "1324a(h)(3)".


Subsec. (c)(4), Pub. L. 100–525, §2(b)(3), substituted "accommodations" for "accommodations" wherever appearing.

Effectives Date of 1994 Amendment

Section 219(g) of Pub. L. 103–416 provided that the amendment made by subsec. (g)(3) of that section is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232.

Effectives 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. 101–618.

Effective Date of 1988 Amendment


Effective Date: Regulations


"(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 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. 1184(c), 1188] notwithstanding any other provision of law, final regulations to implement such sections shall first be issued, on an interim or other basis, not later than the effective date.’"

Abolition of Immigration and Naturalization Service and Transfer of Functions

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

Sense of Congress Respecting Consultation With Mexico

Section 301(f) of Pub. L. 99–603, as amended by Pub. L. 100–525, §2(b)(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 United States workers 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.

"(c) Effect of designation

(i) To congressional leaders

Seven days before making a designation under this subsection, the Secretary shall, by classified communication, notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate an organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor.

(ii) Publication in Federal Register

The Secretary shall publish the designation in the Federal Register seven days after providing the notification under clause (i).

(B) Effect of designation

(i) For purposes of section 2399B of title 18, a designation under this subsection shall take effect upon publication under subparagraph (A)(ii).

(ii) Any designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

(C) Freezing of assets

Upon notification under paragraph (2)(A)(i), the Secretary of the Treasury may require United States financial institutions possessing or controlling any assets of any foreign organization included in the notification to block all financial transactions involving those assets until further directive from either the Secretary of the Treasury, Act of Congress, or order of court.

(3) Record

(A) In general

In making a designation under this subsection, the Secretary shall create an administrative record.

(B) Classified information

The Secretary may consider classified information in making a designation under this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c) of this section.

(4) Period of designation

(A) In general

A designation under this subsection shall be effective for all purposes until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c) of this section.

(B) Review of designation upon petition

(i) In general

The Secretary shall review the designation of a foreign terrorist organization
§ 1189

Other review of designation

The Secretary shall review the designation of the foreign terrorist organization in order to determine whether such designation should be revoked pursuant to paragraph (1).

(ii) Petition period

For purposes of clause (i)—

(I) if the designated organization has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date on which the designation was made; or

(II) if the designated organization has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.

(iii) Procedures

Any foreign terrorist organization that submits a petition for revocation under this subparagraph must provide evidence in that petition that the relevant circumstances described in paragraph (1) are sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to the organization is warranted.

(iv) Determination

(I) In general

Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Secretary shall make a determination as to such revocation.

(II) Classified information

The Secretary may consider classified information in making a determination in response to a petition for revocation. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c) of this section.

(III) Publication of determination

A determination made by the Secretary under this clause shall be published in the Federal Register.

(IV) Procedures

Any revocation by the Secretary shall be made in accordance with paragraph (6).

(C) Other review of designation

(i) In general

If in a 5-year period no review has taken place under subparagraph (B), the Secretary shall review the designation of the foreign terrorist organization in order to determine whether such designation should be revoked pursuant to paragraph (6).

(ii) Procedures

If a review does not take place pursuant to subparagraph (B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the review shall be conducted pursuant to procedures established by the Secretary. The results of such review and the applicable procedures shall not be reviewable in any court.

(iii) Publication of results of review

The Secretary shall publish any determination made pursuant to this subparagraph in the Federal Register.

(5) Revocation by Act of Congress

The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

(6) Revocation based on change in circumstances

(A) In general

The Secretary may revoke a designation made under paragraph (1) at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4) if the Secretary finds that—

(i) the circumstances that were the basis for the designation have changed in such a manner as to warrant revocation; or

(ii) the national security of the United States warrants a revocation.

(B) Procedure

The procedural requirements of paragraphs (2) and (3) shall apply to a revocation under this paragraph. Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.

(7) Effect of revocation

The revocation of a designation under paragraph (5) or (6) shall not affect any action or proceeding based on conduct committed prior to the effective date of such revocation.

(8) Use of designation in trial or hearing

If a designation under this subsection has become effective under paragraph (2)(B) a defendant in a criminal action or an alien in a removal proceeding shall not be permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection at any trial or hearing.

(b) Amendments to a designation

(1) In general

The Secretary may amend a designation under this subsection if the Secretary finds that the organization has changed its name, adopted a new alias, dissolved and then reconstituted itself under a different name or names, or merged with another organization.

(2) Procedure

Amendments made to a designation in accordance with paragraph (1) shall be effective upon publication in the Federal Register. Subparagraphs (B) and (C) of subsection (a)(2) of this section shall apply to an amended designation upon such publication. Paragraphs (2)(A)(1), (4), (5), (6), (7), and (8) of subsection
(a) of this section shall also apply to an amended designation.

(3) Administrative record

The administrative record shall be corrected to include the amendments as well as any additional relevant information that supports those amendments.

(4) Classified information

The Secretary may consider classified information in amending a designation in accordance with this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c) of this section.

(c) Judicial review of designation

(1) In general

Not later than 30 days after publication in the Federal Register of a designation, an amended designation, or a determination in response to a petition for revocation, the designated organization may seek judicial review in the United States Court of Appeals for the District of Columbia Circuit.

(2) Basis of review

Review under this subsection shall be based solely upon the administrative record, except that the Government may submit, for ex parte and in camera review, classified information used in making the designation, amended designation, or determination in response to a petition for revocation.

(3) Scope of review

The Court shall hold unlawful and set aside a designation, amended designation, or determination in response to a petition for revocation the court finds to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(D) lacking substantial support in the administrative record taken as a whole or in classified information submitted to the court under paragraph (2), or

(E) not in accord with the procedures required by law.

(4) Judicial review invoked

The pendency of an action for judicial review of a designation, amended designation, or determination in response to a petition for revocation shall not affect the application of this section, unless the court issues a final order setting aside the designation, amended designation, or determination in response to a petition for revocation.

(d) Definitions

As used in this section—

(1) the term “classified information” has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

(2) the term “national security” means the national defense, foreign relations, or economic interests of the United States;

(3) the term “relevant committees” means the Committees on the Judiciary, Intelligence, and Foreign Relations of the Senate and the Committees on the Judiciary, Intelligence, and International Relations of the House of Representatives; and

(4) the term “Secretary” means the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General.


REFERENCES IN TEXT

Section 1(a) of the Classified Information Procedures Act, referred to in subsec. (d)(1), is section 1(a) of Pub. L. 96–456, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS


Subsec. (a)(4)(A). Pub. L. 108–458, §7119(a)(1), substituted “‘A designation’ for “Subject to paragraphs (5) and (6), a designation’ and “until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c) of this section” for “‘for a period of 2 years beginning on the effective date of the designation under paragraph (2)(B)’”.

Subsec. (a)(4)(B). Pub. L. 108–458, §7119(a)(2), added subpar. (B) and struck out former subpar. (B) which contained provisions authorizing Secretary to redesignate a foreign organization as a foreign terrorist organization for an additional 2-year period at the end of the 2-year period referred to in subpar. (A) or at the end of any 2-year redesignation period.


Subsec. (a)(6)(A). Pub. L. 108–458, §7119(c)(1)(B)(i), substituted “at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4)” for “or a redesignation made under paragraph (4)(B)” in introductory provisions.


Subsec. (a)(7). Pub. L. 108–458, §7119(c)(1)(C), struck out “, or the revocation of a redesignation under paragraph (6)”, before “shall not affect”.

Subsec. (a)(9). Pub. L. 108–458, §7119(c)(1)(D), struck out “, or if a redesignation under this subsection has become effective under paragraph (4)(B)”, before “a defendant in a criminal action” and “or redesignation” after “such designation”.


Subsec. (c). Pub. L. 108–458, §7119(b)(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

amended designation, or a determination in response to a petition for revocation, the designated organization may seek judicial review for "of the designation in the Federal Register, an organization designated as a foreign terrorist organization may seek judicial review of the designation".

Subsec. (c)(2) to (4). Pub. L. 108–458, § 7119(c)(2)(B)–(D), inserted "or terrorism as defined in section 2656d(d)(2) of title 22), or retains the capability and intent to engage in terrorist activity or terrorism" after "section 1182(a)(3)(B) of this title".

Subsec. (a)(1)(C), Pub. L. 107–56, § 411(c)(2), inserted "‘or terrorism’ after ‘the terrorist activity’.

Subsec. (a)(2)(A). Pub. L. 107–56, § 411(c)(3), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Seven days after making a designation under this subsection, the Secretary shall, by classified communication—

‘(i) notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees, in writing, of the intent to designate a foreign organization under this subsection, together with the findings made under paragraph (1) with respect to that organization and the factual basis therefor; and

‘(ii) seven days after such notification, publish the designation in the Federal Register.”


Subsec. (a)(3)(B). Pub. L. 107–56, § 411(c)(6), substituted "subsection (b) of this section” for “subsection (c) of this section”.

Subsec. (a)(4)(B). Pub. L. 107–56, § 411(c)(7), inserted after first sentence “The Secretary also may redesignate such organization at the end of any 2-year redesignation period not sooner than 60 days prior to the termination of such period) for an additional 2-year period upon a finding that the relevant circumstances described in paragraph (1) still exist. Any redesignation shall be effective immediately following the end of the prior 2-year designation or redesignation period unless a different effective date is provided in such redesignation.”


Subsec. (a)(6)(B). Pub. L. 107–56, § 411(c)(9), substituted “and (3)” for “through (4)” and inserted “Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.” at end.

Subsec. (a)(7). Pub. L. 107–56, § 411(c)(10), inserted “‘or the revocation of a redesignation under paragraph (6),’’ after “paragraph (5) or (6)”.

Subsec. (a)(8). Pub. L. 107–56, § 411(c)(11), substituted “paragraph (2)(B), or if a redesignation under this subsection has become effective under paragraph (4)(B),” for “paragraph (1)(B)” and inserted “or an alien in a removal proceeding” after “criminal action” and “or redesignation” before “as a defense”.


Subsec. (b)(3)(D), (E). Pub. L. 104–208, § 356, added subpars. (D) and (E).
(2) The Secretary of State shall provide to the Service an electronic version of the visa file of each alien who has been issued a visa to ensure that the data in that visa file is available to immigration inspectors at the United States ports of entry before the arrival of the alien at such a port of entry.

(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 periods 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 adopting 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. Prior to the issuance of a nonimmigrant visa to any alien, the consular officer shall have the right to deny admission to any alien crewman from the crew list 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 of arrival, 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 deny admission to 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 of aliens or 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 Attorney 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 in 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.
(2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

1996—Subsec. (c). Pub. L. 104–208, § 308(d)(4)(G), substituted “six months” for “four months” and inserted “; except that in the case of aliens who are nationals of a foreign country and who either are granted refugee status and firmly resettled in another foreign country or are granted permanent residence and residing in another foreign country, the Secretary of State may prescribe the period of validity of such a visa based upon the treatment granted by that other foreign country to alien refugees and permanent residents, respectively, in the United States” after “within a similar class.”


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”.


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”.

1984—Subsec. (a). Pub. L. 97–116 substituted a comma for the period after “alien is charged.”

1965—Subsec. (a). Pub. L. 89–226, § 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.


1952—Subsec. (g). Pub. L. 89–226, § 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 2004 AMENDMENT

Amendment by Pub. L. 108–458 effective Dec. 17, 2004, and applicable to revocations under sections 1155 and 1201(i) of this title made before, on, or after such date, see section 5304(d) of Pub. L. 104–458, set out as a note under section 1155 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(d)(4)(G), (f)(2)(B) of Pub. L. 104–208 effective, with certain transitional provisions,
on the first day of the first month beginning more than 180 days after Sept. 30, 1999, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

**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. 99–663, as added by Pub. L. 100–525, §8(f), 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.**

**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 1551 of this title.

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

**Processing of Visa Applications.**

‘‘(a) In General.—It shall be the policy of the Department (of State) to process each visa application from an alien classified as an immediate relative or as a K–1 nonimmigrant within 30 days of the receipt of all necessary documents from the applicant and the Immigration and Naturalization Service. In the case of an immigrant visa application where the petitioner is a relative other than an immediate relative, it should be the policy of the Department of State to process such an application within 60 days of the receipt of all necessary documents from the applicant and the Immigration and Naturalization Service.

‘‘(b) Definitions.—In this section:

‘‘(1) IMMEDIATE RELATIVE.—The term ‘immediate relative’ has the meaning given the term in section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(2)(A)(i)).


**Prevention of Consulate Shopping.**

‘‘(a) Review.—The Secretary of State shall review how consular officers issue visas to determine if consular shopping is a problem.

‘‘(b) Actions to Be Taken.—If the Secretary of State determines under subsection (a) that consular shopping is a problem, the Secretary shall take steps to address the problem and shall submit a report to Congress describing what action was taken.’’


‘‘(a) Policy.—It shall be the policy of the Department of State to process immigrant visa applications of immediate relatives of United States citizens and nonimmigrant K–1 visa applications of fiancées of United States citizens within 30 days of the receipt of all necessary documents from the applicant and the Immigration and Naturalization Service. In the case of an immigrant visa application where the sponsor of such applicant is a relative other than an immediate relative, it should be the policy of the Department of State to process such an application within 60 days of the receipt of all necessary documents from the applicant and the Immigration and Naturalization Service.

‘‘(b) Reports.—Not later than 180 days after the date of enactment of this Act [Nov. 29, 1999], and not later than 1 year thereafter, the Secretary of State shall submit to the appropriate congressional committees [Committee on Foreign Affairs of the House of Representatives and Committee on Foreign Relations of the Senate] a report on the extent to which the Department of State is meeting the policy standards under subsection (a). Each report shall be based on a survey of the 22 consular posts which account for approximately 72 percent of immigrant visas issued and, in addition, the consular posts in Guatemala City, Nicosia, Caracas, Naples, and Jakarta. Each report should include data on the average time for processing each category of visa application under subsection (a), a list of the embassies and consular posts which do not meet the policy standards under subsection (a), the amount of funds collected worldwide for processing of visa applications during the most recent fiscal year, the estimated costs of processing such visa applications (based on the Department of State’s most recent fee study), the steps being taken by the Department of State to achieve such policy standards, and results achieved by the interagency working group charged with the goal of reducing the overall processing time for visa applications.’’

**Permitting Extension of Period of Validity of Immigrant Visas for Certain Residents of Hong Kong.**

‘‘(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. 1211(c)) shall not apply in the case of an immigrant visa issued on or after the date of 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 initial issuance of the visas and not at the time of admission of such aliens.’’
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"(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;

(B) 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 subsection 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 provisions 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.


"(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 issue 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


"(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 with 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 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.

"(b) Processing of immigrant visa applications of Cuban nationals in third countries.—Notwithstanding section 212(f) and section 243(d) of the Immigration and Nationality Act (8 U.S.C. 1182(f), 1253(d)), 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))."


"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 the 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 from 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.

(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))."


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 1988 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. All immigrant visa applications shall be reviewed and adjudicated by a consular officer.

(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; his marital status; and such additional information necessary to the identification of the applicant, the determination of his eligibility for a nonimmigrant visa, and the enforcement of the immigration and nationality laws as may be by regulations prescribed. The alien shall provide complete and accurate information in response to any request for information contained in the application. At the discretion of the Secretary of State, application forms for the various classes of nonimmigrant admissions described in section 1101(a)(15) of this title may vary according to the class of visa being requested.

(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. All nonimmigrant visa applications shall be reviewed and adjudicated by a consular officer.

(e) Signing and verification of application

Except as may be otherwise prescribed by regulations, each application for an immigrant visa 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, or other \( ^1 \) placed 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—

(1) 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;\(^2\)

(2) the Secretary of State, in the Secretary’s discretion and on the basis of reciprocity, may provide to a foreign government information in the Department of State’s computerized visa lookout database and, when necessary and appropriate, other records covered by this section related to information in the database—

(A) with regard to individual aliens, at any time on a case-by-case basis for the purpose of preventing, investigating, or punishing acts that would constitute a crime in the United States, including, but not limited to, terrorism or trafficking in controlled substances, persons, or illicit weapons; or

(B) with regard to any or all aliens in the database, pursuant to such conditions as the Secretary of State shall establish in an agreement with the foreign government in which that government agrees to use such information and records for the purposes described in subparagraph (A) or to deny visas to persons who would be inadmissible to the United States.

(g) Nonimmigrant visa void at conclusion of authorized period of stay

(1) In the case of an alien who has been admitted on the basis of a nonimmigrant visa and remained in the United States beyond the period of stay authorized by the Attorney General, such visa shall be void beginning after the conclusion of such period of stay.

(2) An alien described in paragraph (1) shall be ineligible to be readmitted to the United States as a nonimmigrant, except—

\(^1\) So in original.

\(^2\) So in original. The period probably should be “the”; and”.

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(A) on the basis of a visa (other than the visa described in paragraph (1)) issued in a consular office located in the country of the alien’s nationality (or, if there is no office in such country, in such other consular office as the Secretary of State shall specify); or
(B) where extraordinary circumstances are found by the Secretary of State to exist.

(h) In person interview with consular officer

Notwithstanding any other provision of this chapter, the Secretary of State shall require every alien applying for a nonimmigrant visa—

(1) who is at least 14 years of age and not more than 79 years of age to submit to an in person interview with a consular officer unless the requirement for such interview is waived—

(A) by a consular official and such alien is—

(i) within that class of nonimmigrants enumerated in subparagraph (A) or (G) of section 1101(a)(15) of this title;

(ii) within the NATO visa category;

(iii) within that class of nonimmigrants enumerated in section 1101(a)(15)(C)(iii) of this title (referred to as the “C–3 visa” category); or

(iv) granted a diplomatic or official visa on a diplomatic or official passport or on the equivalent thereof;

(B) by a consular official and such alien is applying for a visa—

(i) not more than 12 months after the date on which such alien’s prior visa expired;

(ii) for the visa classification for which such prior visa was issued;

(iii) from the consular post located in the country of such alien’s usual residence, unless otherwise prescribed in regulations that require an applicant to apply for a visa in the country of which such applicant is a national; and

(iv) the consular officer has no indication that such alien has not complied with the immigration laws and regulations of the United States; or

(C) by the Secretary of State if the Secretary determines that such waiver is—

(i) in the national interest of the United States; or

(ii) necessary as a result of unusual or emergent circumstances; and

(2) notwithstanding paragraph (1), to submit to an in person interview with a consular officer if such alien—

(A) is not a national or resident of the country in which such alien is applying for a visa;

(B) was previously refused a visa, unless such refusal was overcome or a waiver of eligibility has been obtained;

(C) is listed in the Consular Lookout and Support System (or successor system at the Department of State);

(D) is a national of a country officially designated by the Secretary of State as a

*So in original. Subpar. (C) of section 1101(a)(15) does not contain clauses.
ious classes of nonimmigrant admissions described in section 1101(a)(15) of this title may vary according to the class of visa being requested.

Subsec. (e). Pub. L. 104–208, §1634(b), in first sentence, substituted “for an immigrant visa” for “required by this section”, and in fourth sentence, substituted “and other” for “for” and struck out “by the controller of the alien’s passport” before “in the controller’s passport number”. Pub. L. 104–208, §1632(a), added subsec. (g).

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 address 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 he intends”.


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 each application”. The application 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”. Pub. L. 104–208, §1634(b), in first sentence, substituted “for an immigrant visa” for “required by this section”, and in fourth sentence, substituted “and other” for “for” and struck out “by the controller of the alien’s passport” before “in the controller’s passport number”.

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 address 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”.

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Effective Date of 2004 Amendment


Pub. L. 108–458, title VII, §7219, Dec. 17, 2004, 118 Stat. 3835, provided that: “Notwithstanding any other provision of this Act [see Tables for classification], this sub-

$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.


REFERENCES IN TEXT

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

AMENDMENTS

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

Effective Date of 1965 Amendment

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


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

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

(a) Arrival manifests

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

(b) Departure manifests

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

(c) Contents of manifest

The information to be provided with respect to each person listed on a manifest required to be provided under subsection (a) or (b) of this section shall include—
(1) complete name;
(2) date of birth;
(3) citizenship;
(4) sex;
(5) passport number and country of issuance;
(6) country of residence;
(7) United States visa number, date, and place of issuance, where applicable;
(8) alien registration number, where applicable;
(9) United States address while in the United States; and
(10) such other information the Attorney General, in consultation with the Secretary of State, and the Secretary of Treasury determines as being necessary for the identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security.

(d) Appropriate officials specified

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

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

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

(f) Prohibition

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

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

If it shall appear to the satisfaction of the Attorney General that an appropriate official specified in subsection (d) of this section, any public or private carrier, or the agent of any transportation line, as the case may be, has refused or failed to provide manifest information required by subsection (a) or (b) of this section, or that the manifest information provided is not accurate and full based on information provided to the carrier, such official, carrier, or agent, as the case may be, shall pay to the Commissioner the sum of $1,000 for each person with respect to whom such accurate and full manifest information is not provided, or with respect to whom the manifest information is not prepared as prescribed by this section or by regulations issued pursuant thereto. No commercial vessel or aircraft shall be granted clearance pending determination of the question of the liability to the payment of such penalty, or while it remains unpaid, and no such penalty shall be remitted or refunded, except that clearance may be granted prior to the determination of such question upon the deposit with the Commissioner of a bond or undertaking approved by the Attorney General or a sum sufficient to cover such penalty.

(h) Waiver

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

(i) United States border officer defined

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

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

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

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

2001—Subsec. (a), Pub. L. 107–77, §115(a), amended subsec. (a) generally. Prior to amendment subsec. (a) read as follows: “Upon the arrival of any person by water or by air at any port within the United States from any place outside the United States, it shall be the duty of the master or commanding officer, or authorized agent, owner, or consignee of the vessel or aircraft, having any such person on board to deliver to the immigration officers at the port of arrival typewritten or printed lists or manifests of the persons on board such vessel or aircraft. Such lists or manifests shall be prepared at such time, be in such form and shall contain such information as the Attorney General shall prescribe by 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 1224 of this title.”

Subsec. (b). Pub. L. 107–77, §115(b), amended subsec. (b) generally. Prior to amendment subsec. (b) read as follows: “It shall be the duty of the master or commanding officer or authorized agent of every vessel or aircraft taking passengers on board at any port of the United States, who are destined to any place outside the United States, to file with the immigration officers before departure from such port a list of all such persons taken on board. Such list shall be in such form, contain such information, and be accompanied by such documents, as the Attorney General shall prescribe by regulation as necessary for the identification of the persons so transported and for the enforcement of the immigration laws. No master or commanding officer of any such vessel or aircraft shall be required by regulations issued pursuant to section 1222 of this title.”

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

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

1991—Subsec. (d), Pub. L. 102–232 substituted “Commissioner” for “collector of customs” after “depository 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 $300”.

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

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

Effective Date of 1996 Amendment
Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 339 of Pub. L. 104–208, set out as a note under section 1101 of this title.

Effective Date of 1991 Amendment

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, 1262, 1281 to 1287, 1321 to 1323, and 1325 to 1326 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

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

Extension to Land Carriers
Pub. L. 107–173, title IV, §402(b), May 14, 2002, 116 Stat. 559, provided that: “(1) STUDY.—The President shall conduct a study regarding the feasibility of extending the requirements of subsections (a) and (b) of section 231 of the Immigration and Nationality Act (8 U.S.C. 1221), as amended by subsection (a), to any commercial carrier transporting persons by land to or from the United States. The study shall focus on the manner in which such requirement would be implemented to enhance the national security of the United States and the efficient cross-border flow of commerce and persons.

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

§1222. Detention of aliens for physical and mental examination

(a) Detention of aliens

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

The physical and mental examination of arriving aliens (including alien crewmen) shall be made by medical officers of the United States Public Health Service, who shall conduct all medical examinations and shall certify, for the information of the immigration officers and the immigration judges, any physical and mental defect or disease observed by such medical officers in any such alien. If medical officers of the United States Public Health Service are not available, civil surgeons of not less than four years' professional experience may be employed for such service upon such terms as may be prescribed by the Attorney General. Aliens (including alien crewmen) arriving at ports of the United States shall be examined by at least one such medical officer or civil surgeon under such administrative regulations as the Attorney General may prescribe, and under medical regulations prepared by the Secretary of Health and Human Services. Medical officers of the United States Public Health Service who have had special training in the diagnosis of insanity and mental defects shall be detailed for duty or employed at such ports of entry as the Attorney General may designate, and such medical officers shall be provided with suitable facilities for the detention and examination of all arriving aliens who it is suspected may be inadmissible under paragraph (1) of section 1182(a) of this title, and the services of interpreters shall be provided for such examination. Any alien certified under paragraph (1) of section 1182(a) of this title, may appeal to a board of medical officers of the United States Public Health Service, which shall be convened by the Secretary of Health and Human Services, and any such alien may introduce before such board one expert medical witness at his own cost and expense.

(c) Certification of certain helpless aliens

If an examining medical officer determines that an alien arriving in the United States is inadmissible, is helpless from sickness, mental or physical disability, or infancy, and is accompanied by another alien whose protection or guardianship may be required, the officer may certify such fact for purposes of applying section 1101(c) of this title, and the services of interpreters shall be provided with suitable facilities for the detention and examination of such aliens who it is suspected may be inadmissible 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.

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

(a) Necessity of transportation contract

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

(b) Landing stations

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

(c) Landing agreements

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

(d) Definitions

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


REFERENCES IN TEXT

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

CODIFICATION

Section was formerly classified to section 1228 of this title prior to renumbering by Pub. L. 104-208.

PRIOR PROVISIONS


AMENDMENTS


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

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

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

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

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

The Attorney General is authorized (1) by regulation to direct 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.


REFERENCES IN TEXT

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

CODIFICATION

Section was formerly classified to section 1229 of this title prior to renumbering by Pub. L. 104–208.

PRIOR PROVISIONS


AMENDMENTS


EFFECTIVE DATE OF 1991 AMENDMENT


EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 548(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

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

(a) Inspection

(1) Aliens treated as applicants for admission

An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

(2) Stowaways

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

(3) Inspection

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

(4) Withdrawal of application for admission

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

(5) Statements

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

(b) Inspection of applicants for admission

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

(A) Screening

(i) In general

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

(ii) Claims for asylum

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (ii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

(iii) Application to certain other aliens

(I) In general

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

(II) Aliens described

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

(B) Asylum interviews

(i) Conduct by asylum officers

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

(ii) Referral of certain aliens

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

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

(I) In general

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

(II) Record of determination

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

(III) Review of determination

The Attorney General shall provide by regulation and upon the alien’s request for prompt review by an immigration judge of a determination under subclause (I) that the alien does not have a credible fear of persecution. Such review shall conclude as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I).

(iv) Information about interviews

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

(v) “Credible fear of persecution” defined

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

(C) Limitation on administrative review

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

(D) Limit on collateral attacks

In any action brought against an alien under section 1322(a) of this title or section 1326 of this title, the court shall not have jurisdiction to hear any claim attacking the validity of an order of removal entered under subparagraph (A)(i) or (B)(iii).

(E) “Asylum officer” defined

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

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

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

(F) Exception

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

(G) Commonwealth of the Northern Mariana Islands

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

(2) Inspection of other aliens

(A) In general

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

(B) Exception

Subparagraph (A) shall not apply to an alien—

(i) who is a crewman,

(ii) to whom paragraph (1) applies, or

(iii) who is a stowaway.

(C) Treatment of aliens arriving from contiguous territory

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

(3) Challenge of decision

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

(e) Removal of aliens inadmissible on security and related grounds

(1) Removal without further hearing

If an immigration officer or an immigration judge suspects that an arriving alien may be inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, the officer or judge shall—

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

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

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

(2) Review of order

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

(B) If the Attorney General—

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

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

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

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

(3) Submission of statement and information

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

(d) Authority relating to inspections

(1) Authority to search conveyances

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

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

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

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

(B) to deliver the alien to an immigration officer for inspection or to a medical officer for examination.
(3) Administration of oath and consideration of evidence

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

(4) Subpoena authority

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

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


References in Text

This chapter, referred to in subsecs. (a)(1) and (d)(3), (4)(A), was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Amendments

1996—Pub. L. 104–208, § 302(a), amended section generally, revising and restating former subsec. (a) to (d) relating to inspection of aliens arriving in the United States, powers of immigration officers, detention of aliens for further inquiry, temporary and permanent exclusion of aliens, and collateral attacks on orders of exclusion and deportation.
Pub. L. 104–208, § 371(b)(4), substituted "an immigration judge" for "a special inquiry officer", "immigration judge" for "special inquiry officer", and "immigration judges" for "special inquiry officers", wherever appearing in subsecs. (a) to (c).
Subsec. (b). Pub. L. 104–132, § 422(a), which directed the general amendment of subsec. (b) by substituting pars. (1) to (3) relating to asylum interviews and hearings, detention for further inquiry, and challenges of favorable decisions, for former subsec. (b) consisting of single par., was repealed by Pub. L. 104–208, § 308(d)(5). See Construction of 1996 Amendment note below.
Subsec. (d). Pub. L. 104–132, § 423(b), added subsec. (d) which read as follows: "In any action brought for the assessment of penalties for improper entry or re-entry of an alien under section 1325 or section 1326 of this title, no court shall have jurisdiction to hear claims collaterally attacking the validity of orders of exclusion, special exclusion, or deportation entered under this section or sections 1226 and 1252 of this title."
1990—Subsec. (c). Pub. L. 101–619 substituted "paragraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title" for "paragraph (A) of section 1182(a)(3) of this title".

Effective Date of 2008 Amendment

Amendment by Pub. L. 110–229 effective on the transition program effective date described in section 705(b) of Pub. L. 110–229, set out as an Effective Date note under section 1101 of Title 48.

Effective Date of 1996 Amendments

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

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


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

Effective Date of 1990 Amendment

Amendment by Pub. L. 101–619 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101–619, set out as a note under section 1101 of this title.

Construction of 1996 Amendment

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

Abolition of Immigration and Naturalization Service and Transfer of Functions

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

GAO Study on Operation of Expedited Removal Procedures

Section 302(b) of div. C of Pub. L. 104–208 provided that: "(1) STUDY.—The Comptroller General shall conduct a study on the implementation of the expedited removal procedures under section 235(b)(1) of the Immigration
§ 1225a. Preinspection at foreign airports

(a) Establishment of preinspection stations

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

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

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

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

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

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

(4) Subject to paragraph (5), not later than January 1, 2006, the Secretary of Homeland Security, in consultation with the Secretary of State, shall establish preinspection stations in at least 25 additional foreign airports, which the Secretary of Homeland Security, in consultation with the Secretary of State, determines, based on the data compiled under paragraph (3) and such other information as may be available, would most effectively facilitate the travel of admissible aliens and reduce the number of inadmissible aliens, especially aliens who are potential terrorists, who arrive from abroad by air at points of entry within the United States. Such preinspection stations shall be in addition to those established before September 30, 1996, or pursuant to paragraph (1).

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

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

CODIFICATION

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

AMENDMENTS

2004—Subsec. (a)(4). Pub. L. 108–458, §7210(d)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “(4) ADDITIONAL STATIONS.—Subject to paragraph (5), not later than October 31, 2006, the Attorney General, in consultation with the Secretary of State, shall establish preinspection stations in at least 25 additional foreign airports which the Attorney General, in consultation with the Secretary of State, determines, based on the data compiled under paragraph (3) and such other information as may be available, would most effectively reduce the number of aliens who arrive from abroad by air at points of entry within the United States who are inadmissible to the United States. Such
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APPREHENSION AND DETENTION OF ALIENS

(a) Arrest, detention, and release

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

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

(2) may release the alien on—

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

(B) conditional parole; but

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

(b) Revocation of bond or parole

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

(c) Detention of criminal aliens

(1) Custody

The Attorney General shall take into custody any alien who—

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

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

(C) is deportable under section 1227(a)(2)(A)(1) of this title on the basis of an offense for which the alien has been sentenced to a term of imprisonment of at least 1 year, or

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

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

(2) Release

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

(d) Identification of criminal aliens

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

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

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

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

ABOLITION OF IMMIGRATION AND NATIONALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

EXCHANGE OF TERRORIST INFORMATION AND INCREASED PREINSPECTION AT FOREIGN AIRPORTS


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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Upon the request of the governor or chief executive officer of any State, the Service shall provide assistance to State courts in the identification of aliens unlawfully present in the United States pending criminal prosecution.

(e) Judicial review

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

(3) The record under section 1226(c)(1) shall be made available—

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

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

Amendments

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


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, § 608(a)(12), substituted “has a disease, illness, or addiction which would make the alien excludable under paragraph (1) of 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)(6) 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."


Effective Date of 1996 Amendment

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

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

“(2) notification regarding custody.—If the Attorney General, not later than 10 days after the date of the enactment of this Act [Sept. 30, 1996], notifies in writing the Committees on the Judiciary of the House of Representatives and the Senate that there is insufficient detention space and Immigration and Naturalization Service personnel available to carry out section 236(c) of the Immigration and Nationality Act [§ 1226(c)], as amended by subsection (a), or the amendments made by section 440(c) of Public Law 104–132 [amending section 1232 of this title], the provisions in paragraph (3) shall be in effect for a 1-year period beginning on the date of such notification, instead of such section or such amendments. [The Attorney General so notified the committees on Oct. 9, 1996.] The Attorney General may extend such 1-year period for an additional year if the Attorney General provides the same notice not later than 10 days before the end of the first 1-year period. After the end of such 1-year or 2-year periods, the provisions of such section 236(c) shall apply to individuals released after such periods.

“(3) transition period custody rules.—

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

“(i) has been convicted of an aggravated felony (as defined under section 101(a)(43) of the Immigration and Nationality Act [§ 1101(a)(43)], as amended by section 321 of this division),

“(ii) is inadmissible by reason of having committed any offense covered in section 212(a)(2) of such Act (§ 1182(a)(2)),

“(iii) is deportable by reason of having committed any offense covered in section 212(a)(3)(B) of such Act or deportable under section 214(a)(4)(B) of such Act (before redesignation under this subtitle), or

“(iv) is inadmissible under section 237(a)(3)(B) of such Act or deportable under section 214(a)(4)(B) of such Act (before redesignation under this subtitle), when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense."

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

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

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


Effective Date of 1991 Amendment


Effective Date of 1990 Amendment

Amendment by section 608(a)(12) of Pub. L. 101–649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.
ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

IDENTIFICATION OF CERTAIN DEPORTABLE ALIENS AWAITING ARRRAIGNMENT


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

"(a) Establishment of Program.—Not later than 6 months after the date of the enactment of this Act [Dec. 5, 1997], and subject to such amounts as are provided in appropriations Acts, the Attorney General shall establish and implement a program to identify, from among the individuals who are incarcerated in local governmental incarceration facilities prior to arraignment on criminal charges, those individuals who are within 1 or more of the following classes of deportable aliens:

"(1) Aliens unlawfully present in the United States.

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

"(b) Description of Program.—The program authorized by subsection (a) shall include—

"(1) the detail, to each incarceration facility selected under subsection (c), of at least one employee of the Immigration and Naturalization Service who has expertise in the identification of aliens described in subsection (a); and

"(2) provision of funds sufficient to provide for—

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

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

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

"(c) Selection of Facilities.—

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

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

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

"(C) The facility is located—

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

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

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

"(2) Number of Qualifying Subdivisions.—For any fiscal year, the total number of local political subdivisions determined under clauses (1) and (ii) of paragraph (1)(C) to meet the standard in such clauses shall be the following:

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

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

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

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

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

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

"(4) Treatment of Certain Facilities.—All of the incarceration facilities within the county of Orange, California, and the county of Ventura, California, that are owned by the government of a local political subdivision, and satisfy the requirements of paragraph (1)(D), shall be selected for participation in the program.

"SEC. 2. STUDY AND REPORT.

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

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

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

CRIMINAL ALIEN TRACKING CENTER


"(a) Operation and Purpose.—The Commissioner of Immigration and Naturalization shall, under the authority of section 236(d) of the Immigration and Nationality Act [8 U.S.C. 1226(d)] operate a criminal alien identification system. The criminal alien identification system shall be used to assist Federal, State, and local law enforcement agencies in identifying and locating aliens who may be subject to removal by reason of their conviction of aggravated felonies, subject to prosecution under section 275 of such Act [8 U.S.C. 1325], not previously arrested and removed into appropriate automated fingerprint identification systems,

"(b) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section—

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

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

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

(a) Detention of terrorist aliens

(1) Custody

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

(2) Release

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

3) Certification

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

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

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

4) Nondelegation

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

5) Commencement of proceedings

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

6) Limitation on indefinite detention

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

7) Review of certification

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

b) Habeas corpus and judicial review

1) In general

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

2) Application

(A) In general

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

(i) the Supreme Court;

(ii) any justice of the Supreme Court;

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

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

(B) Application transfer

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

3) Appeals

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

4) Rule of decision

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

(c) Statutory construction

The provisions of this section shall not be applicable to any other provision of this chapter.


References in Text

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

Abolition of Immigration and Naturalization Service and Transfer of Functions

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

Reports

Pub. L. 107–56, title IV, § 412(c), Oct. 26, 2001, 115 Stat. 352, provided that: ‘‘Not later than 6 months after the date of the enactment of this Act [Oct. 26, 2001], and every 6 months thereafter, the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, with respect to the reporting period, on—"
§ 1227. Deportable aliens

(a) Classes of deportable aliens

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

1. Inadmissible at time of entry or of adjustment of status or violates status

(A) Inadmissible aliens

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

(B) Present in violation of law

Any alien who is present in the United States in violation of this chapter or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked or denied, 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 1255 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 of this title is deportable.

(D) Termination of conditional permanent residence

(i) In general

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

(ii) Exception

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

(E) Smuggling

(i) In general

Any alien who (prior to the date of entry, at the time of any entry, or within 5 years of the date of any entry) knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is deportable.

(ii) Special rule in the case of family reunification

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

(iii) Waiver authorized

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


(G) Marriage fraud

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

(i) the alien obtains any admission into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than 2 years prior to such admission of the alien and which, within 2 years subsequent to any admission of the alien in the United States, shall be judicially annulled or terminated, unless the alien establishes to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws, or
(ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's marital agreement which in the opinion of the Attorney General was made for the purpose of procuring the alien's admission as an immigrant.

(H) Waiver authorized for certain misrepresentations

The provisions of this paragraph relating to the removal of aliens within the United States on the ground that they were inadmissible at the time of admission as aliens described in section 1182(a)(6)(C)(i) of this title, whether willful or innocent, may, in the discretion of the Attorney General, be waived for any alien (other than an alien described in paragraph (4)(D)) who—

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

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

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

(2) Criminal offenses

(A) General crimes

(i) Crimes of moral turpitude

Any alien who—

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

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

(ii) Multiple criminal convictions

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

(iii) Aggravated felony

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

(iv) High speed flight

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

(v) Failure to register as a sex offender

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

(vi) Waiver authorized

Clauses (i), (ii), (iii), and (iv) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.

(B) Controlled substances

(i) Conviction

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

(ii) Drug abusers and addicts

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

(C) Certain firearm offenses

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

(D) Miscellaneous crimes

Any alien who at any time after admission 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 1238 of this title, is deportable.

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

(i) Domestic violence, stalking, and child abuse

Any alien who at any time after admission is convicted of a crime of domestic
violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term “crime of domestic violence” means any crime of violence (as defined in section 16 of title 18) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual’s acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.

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

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

(3) Failure to register and falsification of documents

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

(B) Failure to register or falsification of documents
Any alien who at any time has been convicted—

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

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

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

(C) Document fraud
(i) In general
An alien who is the subject of a final order for violation of section 1324c of this title is deportable.

(ii) Waiver authorized
The Attorney General may waive clause (i) in the case of an alien lawfully admitted for permanent residence if no previous civil money penalty was imposed against the alien under section 1324c of this title and the offense was incurred solely to assist, aid, or support the alien’s spouse or child (and no other individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this clause.

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

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

(4) Security and related grounds

(A) In general
Any alien who has engaged, is engaged, or at any time after admission engages in—

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

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

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

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

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

(ii) Exceptions

The exceptions described in clauses (ii) and (iii) of section 1182(a)(3)(C) of this title shall apply to deportability under clause (i) in the same manner as they apply to inadmissibility under section 1182(a)(3)(C)(i) of this title.

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

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

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

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

(F) Recruitment or use of child soldiers

Any alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18 is deportable.

(5) Public charge

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

(6) Unlawful voters

(A) In general

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

(B) Exception

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

(7) Waiver for victims of domestic violence

(A) In general

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

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

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

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

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

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

(B) Credible evidence considered

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

(b) Deportation of certain nonimmigrants

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

(c) Waiver of grounds for deportation

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

(d) Administrative stay

(1) If the Secretary of Homeland Security determines that an application for nonimmigrant status under subparagraph (T) or (U) of section 1101(a)(15) of this title filed for an alien in the United States sets forth a prima facie case for approval, the Secretary may grant the alien an administrative stay of a final order of removal under section 1227(c)(2) of this title until—

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

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

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

(3) During any period in which the administrative stay of removal is in effect, the alien shall not be removed.
(4) Nothing in this subsection may be construed to limit the authority of the Secretary of Homeland Security or the Attorney General to grant a stay of removal or deportation in any case not described in this subsection.


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

PRIOR PROVISIONS


AMENDMENTS


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


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

Subsec. (a)(4)(D). Pub. L. 108–458, § 505(b), substituted “United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1251(b) of this title, is” for “United States is”.

Subsec. (a)(4)(E). Pub. L. 108–458, § 505(b), substituted “Participated in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing” for “Assisted in Nazi persecution or engaged in genocide” in heading and “clause (i), (ii), or (iii)” for “clause (i) or (ii)” in text.


REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1)(B), (G), (3)(B)(I), was in the original, “this Act,” meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see 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 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 of 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 45(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 (§ 161 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.
Pub. L. 108–458, § 5402, which added subpar. (E) relating to recipient of military-type training, was repealed by Pub. L. 109–13, § 105(b). See Effective Date of 2005 Amendment note below.


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

Subsec. (a)(3)(D). Pub. L. 106–386, § 201(c)(2), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: “Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable.”


Pub. L. 104–208, § 301(d)(3), § 308(d)(3)(A), amended subpar. (A) identically, substituting “inadmissible” for “excludable”.


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


Subsec. (c). Pub. L. 104–208, § 308(d)(2)(C), substituted “inadmissibility” for “exclusion”.

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

Pub. L. 104–132, § 141(a), added subsec. (d).

1994—Subsec. (a)(2)(A)(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 I”.


Subsec. (c). Pub. L. 103–416, § 203(b)(3), substituted “(3)(A) of subsection (a)” for “(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)(H). Pub. L. 102–232, § 307(h)(6), substituted “paragraph (4)(D)” for “paragraph (6) or (7)”.


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

Pub. L. 101–649, § 1227

Subsec. (c). Pub. L. 102–232, § 307(k)(2), redesignated subsec. (b) 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 subsec. (a) of this section.


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, § 506(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, § 506(a), struck out “(1)” after “crimes shall not apply” and “(2) 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.


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 section 1101(a)(27)(A) of this title and an alien described in section 1101(a)(27)(A) of this title and aliens born in the Western Hemisphere)” after “subsection (a)(11)” of this section in second sentence.


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, § 583(m), substituted “amendment, thereof, known as the Trading With the Enemy Act” for “amendment thereof, the Trading With the Enemy Act”.


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. 99–643 inserted 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 nonnegotiable 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 de-

scribed 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 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, or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isoimipacaine or any addiction-forming or addiction-sustaining opiate”.


1981—Subsec. (f). Pub. L. 97–116 designated existing provisions as pars. (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 the 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).


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 aliens described in section 1101(a)(27)(B) of this title’”.


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

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

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

EFFECTIVE DATE OF 2005 AMENDMENT
Pub. L. 109–13, div. B, title I, § 105(a)(2), May 11, 2005, 119 Stat. 309, provided that: “The amendment made by paragraph (1) of this section shall take effect on the date of the enactment of this division [May 11, 2005], and the amendment, and section 237(a)(4)(B) of
the Immigration and Nationality Act (8 U.S.C. 1277(a)(4)(B)), as amended by such paragraph, shall apply to—

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

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

Pub. L. 109–13, div. B, title I, §105(b), May 11, 2005, 119 Stat. 310, provided that: "The amendment made by this section shall be effective as if included in the enactment of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall be applied as if such section had not been enacted."

**Effective Date of 2004 Amendment**

Amendment by section 530(b)(b) of Pub. L. 108–458 effective Dec. 17, 2004, and applicable to revocations under sections 1155 and 1201(i) of this title made before, on, or after such date, see section 5501(c) of Pub. L. 108–458, set out as a note under section 1122 of this title.

Amendment by section 5501(b)(b) of Pub. L. 108–458 applicable to offenses committed before, on, or after Dec. 17, 2004, see section 5501(c) of Pub. L. 108–458, set out as a note under section 1122 of this title.

**Effective Date of 2001 Amendment**

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

**Effective Date of 2000 Amendment**

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

**Effective Date of 1996 Amendments**

Amendment by sections 301(b), 305(a)(5), and 308(d)(2)(A)–(C), (3)(A), (e)(1)(E), (2)(C), (1)(1)(L)–(N), (5)(B) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1102 of this title.

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

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

Amendment by section 347(b)(c) of Pub. L. 104–208, set out as a note under section 1182 of this title.

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

Amendment by section 351(b)(b) of Pub. L. 104–208 applicable to applications for waivers filed before, on, or after Sept. 30, 1996, but not applicable to such an application for which a final determination has been made as of Sept. 30, 1996, see section 351(c) of Pub. L. 104–208, set out as a note under section 1182 of this title.


Section 454(b) of Pub. L. 104–132 provided that: "The amendment made by subsection (a) [amending this section] shall apply to aliens against whom deportation proceedings are initiated after the date of the enactment of this Act [Apr. 24, 1996]."

**Effective Date of 1994 Amendment**

Amendment by section 203(b)(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 Amendment note under section 1182 of this title.


**Effective Date of 1991 Amendment**


Section 307(k)(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)(b) of Pub. L. 100–699 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b)(b) of Pub. L. 100–699, set out as a note under section 1101 of this title.

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

Section 505(b)(b) of Pub. L. 101–649 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act [Apr. 24, 1996]."

Section 544(d) 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 1323c 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]."
§ 1228. Expedited removal of aliens convicted of committing aggravated felonies

(a) Removal of criminal aliens

(1) In general

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

(2) Implementation

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

(3) Expedited proceedings

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

(B) Nothing in this section shall be construed as requiring the Attorney General to effect the removal of any alien sentenced to actual incarceration, before release from the penitentiary or correctional institution where such alien is confined.
(4) Review
   (A) The Attorney General shall review and evaluate removal proceedings conducted under this section.
   (B) The Comptroller General shall monitor, review, and evaluate removal proceedings conducted under this section. Within 18 months after the effective date of this section, the Comptroller General shall submit a report to such Committees concerning the extent to which removal proceedings conducted under this section may adversely affect the ability of such aliens to contest removal effectively.

(b) Removal of aliens who are not permanent residents

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

(2) An alien is described in this paragraph if—
   (A) was not lawfully admitted for permanent residence at the time at which proceedings under this section commenced; or
   (B) had permanent resident status on a conditional basis (as described in section 1186a of this title) at the time that proceedings under this section commenced.

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

(4) Proceedings before the Attorney General under this subsection shall be in accordance with such regulations as the Attorney General shall prescribe. The Attorney General shall provide that—
   (A) the alien is given reasonable notice of the charges and of the opportunity described in subparagraph (C);
   (B) the alien shall have the privilege of being represented (at no expense to the Government) by counsel, authorized to practice in such proceedings, as the alien shall choose;
   (C) the alien has a reasonable opportunity to inspect the evidence and rebut the charges;
   (D) a determination is made for the record that the individual upon whom the notice for the proceeding under this section is served (either in person or by mail) is, in fact, the alien named in such notice;
   (E) a record is maintained for judicial review; and
   (F) the final order of removal is not adjudicated by the same person who issues the charges.

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

(c) Presumption of deportability

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

(c) Judicial removal

(1) Authority

Notwithstanding any other provision of this chapter, a United States district court shall have jurisdiction to enter a judicial order of removal at the time of sentencing against an alien who is deportable, if such an order has been requested by the United States Attorney with the concurrence of the Commissioner and if the court chooses to exercise such jurisdiction.

(2) Procedure

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

(B) Notwithstanding section 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 1227(a)(2)(A) of this title.

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

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

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

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

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

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

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

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

1 So in original. Two subsecs. (c) have been enacted.
2 See References in Text note below.
(iii) Upon execution by the defendant of a valid waiver of the right to appeal the conviction on which the order of removal is based, the expiration of the period described in section 1225(b)(1) of this title, or the final dismissal of an appeal from such conviction, the order of removal shall become final and shall be executed at the end of the prison term in accordance with the terms of the order. If the conviction is reversed on direct appeal, the order entered pursuant to this section shall be void.

(B) As soon as is practicable after entry of a judicial order of removal, the Commissioner shall provide the defendant with written notice of the order of removal, which shall designate the defendant’s country of choice for removal and any alternate country pursuant to section 1231(a)(9) of this title.

(4) Denial of judicial order

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

(5) Stipulated judicial order of removal

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


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This chapter, referred to in subsec. (a)(4)(B), see Effective Date note below.

References in Text

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

This chapter, referred to in subsec. (c)(1), (2)(C), (D)(IV), (5), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.


Section 1231 of this title, referred to in subsec. (c)(3)(B), was amended generally by Pub. L. 104–208, div. C, title III, §307(a), Sept. 30, 1996, 110 Stat. 3009–612, and, as so amended, subsec. (a) no longer contains provisions relating to alternate countries. Provisions similar to those contained in former subsec. (a) of section 1235 are now contained in section 1229(b) of this title.

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

Amendments


Pub. L. 104–208, §308(c)(1)(A), inserted at end “Nothing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.”

Pub. L. 104–208, §308(c)(1)(A), substituted “section 1229a” for “section 1232”.

Pub. L. 104–132, §440(g)(1)(B), struck out ‘‘, where warranted,’’ after “assures expeditious deportation.”

Pub. L. 104–132, §440(g)(1)(A), as amended by Pub. L. 104–208, §§306(d), 308(g)(10)(H), 671(c)(6), substituted “any criminal offense covered in section 1251(a)(2)(A)(i)-(iv), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 1227(a)(2)(A)(i) of this title.” for “aggravated felony” and all that follows through “before any scheduled hearings,” was repealed by Pub. L. 104–208, §671(c)(6).


Subsec. (b)(1). Pub. L. 104–208, §308(g)(5)(C), substituted “section 1229a” for “section 1232(b)”.

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

§ 1229  TITLE 8—ALIENS AND NATIONALITY

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


Amendment by section 671(c)(5), (6) of Pub. L. 104–208 effective as if included in the enactment of title IV of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132, see section 671(c)(7) of Pub. L. 104–208, set out as a note under section 1105a of this title.

Section 442(d) of Pub. L. 104–132 provided that: "The amendments made by this section [amending this section and section 1105a of this title] shall apply to all aliens against whom deportation proceedings are initiated after the date of enactment of this Act [Sept. 13, 1996]."

**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 1232 of this title.

Section 13004(d) of Pub. L. 103–322 provided that: "The amendments made by this section [amending this section and section 1105a of this title] shall apply to all aliens against whom deportation proceedings are initiated after the date of enactment of this Act [Sept. 13, 1994]."

**Effective Date of 1990 Amendment**

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

**Notice to appear**

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

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

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

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

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

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

(F) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of any change of the alien’s address or telephone number as required under section 1229a of this title.

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

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

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

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

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

(A) In general

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

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

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

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

(b) Securing of counsel

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

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

(3) Rule of construction
Nothing in this subsection may be construed to prevent the Attorney General from proceeding against an alien pursuant to section 1229a of this title if the time period described in paragraph (2), the Notice to Appear shall include a statement that the provisions of section 1367 of this title have been complied with.

(e) Certification of compliance with restrictions on disclosure

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

(2) Locations
The locations specified in this paragraph are as follows:

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

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


Prior provisions
A prior section 1229, act June 27, 1952, ch. 477, title ii, ch. 4, §239, 66 stat. 203, as amended, which related to designation of ports of entry for aliens arriving by aircraft, was renumbered section 224 of act June 27, 1952, by pub. l. 104–208, div. c, title iii, §304(a)(1), sept. 30, 1996, 110 stat. 3009–587, and was transferred to section 1224 of this title.

Amendments
Subsec. (e)(2)(B). pub. l. 109–271 substituted “(U)” for “(V)”.

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

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

Abolition of immigration and naturalization service and transfer of functions
For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.
§ 1229a. Removal proceedings

(a) Proceeding

(1) In general

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

(2) Charges

An alien placed in proceedings under this section may be charged with any applicable ground of inadmissibility under section 1182(a) of this title or any applicable ground of deportability under section 1227(a) of this title.

(3) Exclusive procedures

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

(b) Conduct of proceeding

(1) Authority of immigration judge

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

(2) Form of proceeding

(A) In general

The proceeding may take place—

(i) in person,

(ii) where agreed to by the parties, in the absence of the alien,

(iii) through video conference, or

(iv) subject to subparagraph (B), through telephone conference.

(B) Consent required in certain cases

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

(3) Presence of alien

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

(4) Alien’s rights in proceeding

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

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

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

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

(5) Consequences of failure to appear

(A) In general

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

(B) No notice if failure to provide address information

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

(C) Rescission of order

Such an order may be rescinded only—

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

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

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

(D) Effect on judicial review

Any petition for review under section 1252 of this title of an order entered in absentia under this paragraph shall (except in cases described in section 1229(b)(5)(A) of this title) be confined to (i) the validity of the notice provided to the alien, (ii) the reasons for the alien’s not attending the proceeding, and (iii) whether or not the alien is removable.
(E) Additional application to certain aliens in contiguous territory

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

(6) Treatment of frivolous behavior

The Attorney General shall, by regulation—

(A) define in a proceeding before an immigration judge or before an appellate administrative body under this subchapter, frivolous behavior for which attorneys may be sanctioned,

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

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

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

(7) Limitation on discretionary relief for failure to appear

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

(c) Decision and burden of proof

(1) Decision

(A) In general

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

(B) Certain medical decisions

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

(2) Burden on alien

In the proceeding the alien has the burden of establishing—

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

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

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

(3) Burden on service in cases of deportable aliens

(A) In general

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

(B) Proof of convictions

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

(i) An official record of judgment and conviction.

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

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

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

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

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

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

(C) Electronic records

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

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

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

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

(4) Applications for relief from removal

(A) In general

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

(i) satisfies the applicable eligibility requirements; and

(ii) with respect to any form of relief that is granted in the exercise of discretion, that the alien merits a favorable exercise of discretion.

(B) Sustaining burden

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

(C) Credibility determination

Considering the totality of the circumstances, and all relevant factors, the immigration judge may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant’s or witness’s account, the consistency between the applicant’s or witness’s written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim, or any other relevant factor.

There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

(5) Notice

If the immigration judge decides that the alien is removable and orders the alien to be removed, the judge shall inform the alien of the right to appeal that decision and of the consequences for failure to depart under the order of removal, including civil and criminal penalties.

(6) Motions to reconsider

(A) In general

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

(B) Deadline

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

(C) Contents

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

(7) Motions to reopen

(A) In general

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

(B) Contents

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

(C) Deadline

(i) In general

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

(ii) Asylum

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

(iii) Failure to appear

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

1 So in original.
(iv) Special rule for battered spouses, children, and parents

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

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

(II) if the motion is accompanied by a self-copy of the petition that has been or will be filed with the Attorney General or by a copy of the self-copy petition, except that the Attorney General’s discretion, waive this time limitation in the case of an alien who demonstrates extraordinary circumstances or extreme hardship to the alien’s child; and

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

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

(d) Stipulated removal

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

(e) Definitions

In this section and section 1229b of this title:

(1) Exceptional circumstances

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

(2) Removable

The term “removable” means—

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

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

So in original. A closing parenthesis probably should appear.
§ 1229b. Cancellation of removal; adjustment of status

(a) Cancellation of removal for certain permanent residents

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

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

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

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

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

(1) In general

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

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

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

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

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

(2) Special rule for battered spouse or child

(A) Authority

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

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

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

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

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

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

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

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

(B) Physical presence

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

(C) Good moral character

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

(D) Credible evidence considered

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

(3) Recordation of date

With respect to aliens who the Attorney General adjusts to the status of an alien lawfully admitted for permanent residence under section 1182(d)(5) of this title, the Attorney General shall record the alien’s lawful admission for permanent residence as of the date of the Attorney General’s cancellation of removal under paragraph (1) or (2).

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

(A) In general

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

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

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

(B) Duration of parole

The grant of parole shall extend from the time of the grant of relief under subsection (b)(2) of this section or section 1254(a)(3) of this title (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to the time the application for adjustment of status filed by aliens covered under this paragraph has been finally adjudicated. Applications for adjustment of status filed by aliens covered under this paragraph shall be treated as if the applicants were VAWA self-petitioners. Failure by the alien granted relief under subsection (b)(2) of this section or section 1254(a)(3) of this title (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to exercise due diligence in filing a visa petition on behalf of an alien described in clause (i) or (ii) may result in revocation of parole.
§ 1229b

(5) Application of domestic violence waiver authority

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

(6) Relatives of trafficking victims

(A) In general

Upon written request by a law enforcement official, the Secretary of Homeland Security may parole under section 1182(d)(3) of this title any alien who is a relative of an alien granted continued presence under section 101(c)(3)(A) of title 22, if the relative—

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

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

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

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

(B) Duration of parole

(i) In general

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

(ii) Other limits on duration

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

(I) the date on which the principal alien’s authority to remain in the United States under section 1101(c)(3)(A) of title 22 is terminated; or

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

(iii) Due diligence

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

(C) Other limitations

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

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

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

(e) Aliens ineligible for relief

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

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

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

(3) An alien who—

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

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

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

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

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

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

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

(1) Termination of continuous period

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

(2) Treatment of certain breaks in presence

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

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

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

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

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

(e) Annual limitation

(1) Aggregate limitation

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

(2) Fiscal year 1997

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

(3) Exception for certain aliens

Paragraph (1) shall not apply to the following:

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

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

able under paragraph (1)(G) or (2) through (4) of section 1227(a) of this title, and has not been convicted of an aggravated felony; and

‘‘(B) the removal would result in extreme hardship to the alien, the alien’s child, or (in the case of an alien who is a child) to the alien’s parent.

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


Subsec. (d)(1). Pub. L. 106–386, §1506(b)(1), substituted ‘‘(A) except in the case of an alien who applies for cancellation of removal under subsection (b)(2) of this section, when the alien is served a notice to appear under section 1229(a) of this title, or (B)’’ for ‘‘when the alien is served a notice to appear under section 1229(a) of this title or’’.

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

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

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

**Effective Date of 2000 Amendment**

Pub. L. 106–386, div. B, title V, §1504(c), Oct. 28, 2000, 114 Stat. 1324, provided that: ‘‘Any individual who becomes eligible for relief by reason of the enactment of the amendments made by subsections (a) and (b) [amending this section], shall be eligible to file a motion to reopen pursuant to section 240(c)(6)(C)(iv) [now 8 U.S.C. 1229a(c)(7)(C)(iv)]. The amendments made by subsections (a) and (b) shall take effect as if included in the enactment of section 394 of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3087) [now 8 U.S.C. 1231(g)(3)]. The amendments made by subsections (a) and (b) shall take effect as if included in the enactment of section 394 of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3087) [now 8 U.S.C. 1231(g)(3)].’’

**Definitions**

For definition of the term ‘‘removable’’ used in subsec. (d)(1), see section 227a(e) of this title.

§ 1229c. Voluntary departure

(a) Certain conditions

(1) In general

The Attorney General may permit an alien voluntarily to depart the United States at the alien’s own expense under this subsection, in lieu of being subject to proceedings under section 1229a of this title or prior to the completion of such proceedings, if the alien is not deportable under section 1227(a)(1)(A) or (B) or section 1227(a)(4)(B) or (C) of this title.

(2) Period

(A) In general

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

(B) Three-year pilot program waiver

During the period October 1, 2000, through September 30, 2003, and subject to subparagraphs (C) and (D)(ii), the Attorney General

**Effective Date of 1997 Amendment**

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

**Effective Date**

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

**Abolition of Immigration and Naturalization Service and Transfer of Functions**

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

**Discretion to Consent to an Alien’s Reretraction for Admission**

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

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

‘‘(2) SENSE OF CONGRESS.—It is the sense of Congress that the officials described in paragraph (1) should particularly consider exercising this authority in cases involving nonimmigrants described in subparagraph (T) or (U) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), and relief under section 240A(b)(2) (8 U.S.C. 1225b(b)(2)) or 244(a)(3) (8 U.S.C. 1254a(a)(3)) of such Act (as in effect on March 31, 1997) pursuant to regulations under section 212.2 of title 8, Code of Federal Regulations.’’

**Definitions**

For definition of the term ‘‘removable’’ used in subsec. (d)(1), see section 227a(e) of this title.
may, in the discretion of the Attorney General for humanitarian purposes, waive application of subparagraph (A) in the case of an alien—

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

(I) a detailed diagnosis statement from the physician, which includes the treatment being sought and the expected time period the alien will be required to remain in the United States;

(II) a statement from the health care facility containing an assurance that the alien’s treatment is not being paid through any Federal or State public health assistance, that the alien’s account has no outstanding balance, and that such facility will notify the Service when the alien is released or treatment is terminated; and

(III) evidence of financial ability to support the alien’s day-to-day expenses while in the United States (including the expenses of any family member described in clause (ii)) and evidence that any such alien or family member is not receiving any form of public assistance; or

(ii) who—

(I) is a spouse, parent, brother, sister, son, daughter, or other family member of a principal alien described in clause (i); and

(II) entered the United States accompanying, and with the same status as, such principal alien.

(C) Waiver limitations

(i) Waivers under subparagraph (B) may be granted only upon a request submitted by a Service district office to Service headquarters.

(ii) Not more than 300 waivers may be granted for any fiscal year for a principal alien under subparagraph (B)(i).

(iii)(I) Except as provided in subclause (II), in the case of each principal alien described in subparagraph (B)(i) not more than one adult may be granted a waiver under subparagraph (B)(ii).

(II) Not more than two adults may be granted a waiver under subparagraph (B)(ii) in a case in which—

(aa) the principal alien described in subparagraph (B)(i) is a dependent under the age of 18; or

(bb) one such adult is age 55 or older or is physically handicapped.

(D) Report to Congress; suspension of waiver authority

(i) Not later than March 30 of each year, the Commissioner shall submit to the Congress an annual report regarding all waivers granted under subparagraph (B) during the preceding fiscal year.

(ii) Notwithstanding any other provision of law, the authority of the Attorney General under subparagraph (B) shall be suspended during any period in which an annual report under clause (i) is past due and has not been submitted.

(3) Bond

The Attorney General may require an alien permitted to depart voluntarily under this subsection to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.

(4) Treatment of aliens arriving in the United States

In the case of an alien who is arriving in the United States and with respect to whom proceedings under section 1229a of this title are (or would otherwise be) initiated at the time of such alien’s arrival, paragraph (1) shall not apply. Nothing in this paragraph shall be construed as preventing such an alien from withdrawing the application for admission in accordance with section 1225(a)(4) of this title.

(b) At conclusion of proceedings

(1) In general

The Attorney General may permit an alien voluntarily to depart the United States at the alien’s own expense if, at the conclusion of a proceeding under section 1229a of this title, the immigration judge enters an order granting voluntary departure in lieu of removal and finds that—

(A) the alien has been physically present in the United States for a period of at least one year immediately preceding the date the notice to appear was served under section 1229(a) of this title;

(B) the alien is, and has been, a person of good moral character for at least 5 years immediately preceding the alien’s application for voluntary departure;

(C) the alien is not deportable under section 1227(a)(2)(A)(iii) or section 1227(a)(4) of this title; and

(D) the alien has established by clear and convincing evidence that the alien has the means to depart the United States and intends to do so.

(2) Period

Permission to depart voluntarily under this subsection shall not be valid for a period exceeding 60 days.

(3) Bond

An alien permitted to depart voluntarily under this subsection shall be required to post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified.

(c) Aliens not eligible

The Attorney General shall not permit an alien to depart voluntarily under this section if
the alien was previously permitted to so depart after having been found inadmissible under section 1182(a)(6)(A) of this title.

(d) Civil penalty for failure to depart

(1) In general

Subject to paragraph (2), if an alien is permitted to depart voluntarily under this section and voluntarily fails to depart the United States within the time period specified, the alien—

(A) shall be subject to a civil penalty of not less than $1,000 and not more than $5,000; and

(B) shall be ineligible, for a period of 10 years, to receive any further relief under this section and sections 1229b, 1255, 1256, and 1259 of this title.

(2) Application of VAWA protections

The restrictions on relief under paragraph (1) shall not apply to relief under section 1229b or 1255 of this title on the basis of a petition filed by a VAWA self-petitioner, or a petition filed under section 1229b(b)(2) of this title, or under section 1254(a)(3) of this title (as in effect prior to March 31, 1997), if the extreme cruelty or battery was at least one central reason for the alien’s overstaying the grant of voluntary departure.

(3) Notice of penalties

The order permitting an alien to depart voluntarily shall inform the alien of the penalties under this subsection.

(e) Additional conditions

The Attorney General may by regulation limit eligibility for voluntary departure under this section for any class or classes of aliens. No court may review any regulation issued under this subsection.

(f) Judicial review

No court shall have jurisdiction over an appeal from denial of a request for an order of voluntary departure under subsection (b) of this section, nor shall any court order a stay of an alien’s removal pending consideration of any claim with respect to voluntary departure.


REFERENCES IN TEXT


AMENDMENTS

2006—Subsec. (d). Pub. L. 109–162 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “If an alien is permitted to depart voluntarily under this section and fails voluntarily to depart the United States within the time period specified, the alien shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and be ineligible for a period of 10 years for any further relief under this section and sections 1229b, 1255, 1256, and 1259 of this title. The order permitting the alien to depart voluntarily shall inform the alien of the penalties under this subsection.”

2000—Subsec. (a)(2). Pub. L. 106–406 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “Permission to depart voluntarily under this subsection shall not be valid for a period exceeding 120 days.”

EFFECTIVE DATE

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

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

§ 1230. Records of admission

(a) The Attorney General shall cause to be filed, as a record of admission of each immigrant, the immigrant visa required by section 1201(e) of this title to be surrendered at the port of entry by the arriving alien to an immigration officer.

(b) The Attorney General shall cause to be filed such record of the admission into the United States of each immigrant admitted under section 1181(b)(2) of this title and of each nonimmigrant as the Attorney General deems necessary for the enforcement of the immigration laws.


AMENDMENTS


EFFECTIVE DATE OF 1996 AMENDMENT

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

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

§ 1231. Detention and removal of aliens ordered removed

(a) Detention, release, and removal of aliens ordered removed

(1) Removal period

(A) In general

Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the “removal period”).
(B) Beginning of period

The removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.
(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order.
(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

(C) Suspension of period

The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure or conspires or acts to prevent the alien’s removal subject to an order of removal.

(2) Detention

During the removal period, the Attorney General shall detain the alien. Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.

(3) Supervision after 90-day period

If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien—

(A) to appear before an immigration officer periodically for identification;
(B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;
(C) to give information under oath about the alien’s nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and
(D) to obey reasonable written restrictions on the alien’s conduct or activities that the Attorney General prescribes for the alien.

(4) Aliens imprisoned, arrested, or on parole, supervised release, or probation

(A) In general

Except as provided in section 259(a) of title 42 and paragraph (2), the Attorney General may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment. Parole, supervised release, probation, or possibility of arrest or further imprisonment is not a reason to defer removal.

(B) Exception for removal of nonviolent offenders prior to completion of sentence of imprisonment

The Attorney General is authorized to remove an alien in accordance with applicable procedures under this chapter before the alien has completed a sentence of imprisonment—

(i) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense related to smuggling or harboring of aliens or an offense described in section 1101(a)(43)(B), (C), (E), (I), or (L) of this title) and (II) the removal of the alien is appropriate and in the best interest of the United States; or
(ii) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense related to smuggling or harboring of aliens or an offense described in section 1101(a)(43)(C) or (E) of this title), (II) the removal is appropriate and in the best interest of the State, and (III) submits a written request to the Attorney General that such alien be so removed.

(C) Notice

Any alien removed pursuant to this paragraph shall be notified of the penalties under the laws of the United States relating to the reentry of deported aliens, particularly the expanded penalties for aliens removed under subparagraph (B).

(D) No private right

No cause or claim may be asserted under this paragraph against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

(5) Reinstatement of removal orders against aliens illegally reentering

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

(6) Inadmissible or criminal aliens

An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the

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1 See References in Text note below.
2 So in original. Probably should be “subparagraph (B),”.
3 So in original. Probably should be followed by a closing parenthesis.
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(b) Countries to which aliens may be removed

(1) Aliens arriving at the United States

Subject to paragraph (3)—

(A) In general

Except as provided by subparagraphs (B) and (C), an alien who arrives at the United States and with respect to whom proceedings under section 1229a of this title were initiated at the time of such alien’s arrival shall be removed to the country in which the alien boarded the vessel or aircraft on which the alien arrived in the United States.

(B) Travel from contiguous territory

If the alien boarded the vessel or aircraft on which the alien arrived in the United States in a foreign territory contiguous to the United States, an island adjacent to the United States, or an island adjacent to a foreign territory contiguous to the United States, and the alien is not a native, citizen, subject, or national of, or does not reside in, the territory or island, removal shall be to the country in which the alien boarded the vessel that transported the alien to the territory or island.

(C) Alternative countries

If the government of the country designated in subparagraph (A) or (B) is unwilling to accept the alien into that country’s territory, removal shall be to any of the following countries, as directed by the Attorney General:

(i) The country of which the alien is a citizen, subject, or national.
(ii) The country in which the alien was born.
(iii) The country in which the alien has a residence.
(iv) A country with a government that will accept the alien into the country’s territory if removal to each country described in a previous clause of this subparagraph is impracticable, inadvisable, or impossible.

(2) Other aliens

Subject to paragraph (3)—

(A) Selection of country by alien

Except as otherwise provided in this paragraph—

(i) any alien not described in paragraph (1) who has been ordered removed may designate one country to which the alien wants to be removed, and
(ii) the Attorney General shall remove the alien to the country the alien so designates.

(B) Limitation on designation

An alien may designate under subparagraph (A)(i) a foreign territory contiguous to the United States, an adjacent island, or an island adjacent to a foreign territory contiguous to the United States as the place to which the alien is to be removed only if the alien is a native, citizen, subject, or national of, or has resided in, that designated territory or island.

(C) Disregarding designation

The Attorney General may disregard a designation under subparagraph (A)(i) if—

(i) the alien fails to designate a country promptly;
(ii) the government of the country does not inform the Attorney General finally, within 30 days after the date the Attorney General first inquires, whether the government will accept the alien into the country;
(iii) the government of the country is not willing to accept the alien into the country; or
(iv) the Attorney General decides that removing the alien to the country is prejudicial to the United States.

(D) Alternative country

If an alien is not removed to a country designated under subparagraph (A)(i), the Attorney General shall remove the alien to a country of which the alien is a subject, national, or citizen unless the government of the country—

(i) does not inform the Attorney General of the alien finally, within 30 days after the date the Attorney General first inquires or within another period of time the Attorney General decides is reasonable, whether the government will accept the alien into the country; or
(ii) is not willing to accept the alien into the country.

(E) Additional removal countries

If an alien is not removed to a country under the previous subparagraphs of this paragraph, the Attorney General shall remove the alien to any of the following countries:

(i) The country from which the alien was admitted to the United States.
(ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.
(iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
(iv) The country in which the alien was born.
(v) The country that had sovereignty over the alien’s birthplace when the alien was born.
(vi) The country in which the alien’s birthplace is located when the alien is ordered removed.

(vii) If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country whose government will accept the alien into that country.

(F) Removal country when United States is at war

When the United States is at war and the Attorney General decides that it is impracticable, inadvisable, inconvenient, or impossible to remove an alien under this subsection because of the war, the Attorney General may remove the alien—

(i) to the country that is host to a government in exile of the country of which the alien is a citizen or subject if the government of the host country will permit the alien’s entry; or

(ii) if the recognized government of the country of which the alien is a citizen or subject is not in exile, to a country, or a political or territorial subdivision of a country, that is very near the country of which the alien is a citizen or subject, or, with the consent of the government of the country of which the alien is a citizen or subject, to another country.

(3) Restriction on removal to a country where alien’s life or freedom would be threatened

(A) In general

Notwithstanding paragraphs (1) and (2), the Attorney General may not remove an alien to a country if the Attorney General decides that the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.

(B) Exception

Subparagraph (A) does not apply to an alien deportable under section 1227(a)(4)(D) of this title or if the Attorney General decides that—

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual’s race, religion, nationality, membership in a particular social group, or political opinion;

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

(iii) there are serious reasons to believe that the alien committed a serious non-political crime outside the United States before the alien arrived in the United States; or

(iv) there are reasonable grounds to believe that the alien is a danger to the security of the United States.

For purposes of clause (ii), an alien who has been convicted of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime. The previous sentence shall not preclude the Attorney General from determining that, notwithstanding the length of sentence imposed, an alien has been convicted of a particularly serious crime. For purposes of clause (iv), an alien who is described in section 1227(a)(4)(B) of this title shall be considered to be an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States.

(C) Sustaining burden of proof; credibility determinations

In determining whether an alien has demonstrated that the alien’s life or freedom would be threatened for a reason described in subparagraph (A), the trier of fact shall determine whether the alien has sustained the alien’s burden of proof, and shall make credibility determinations, in the manner described in clauses (ii) and (iii) of section 1158(b)(1)(B) of this title.

(c) Removal of aliens arriving at port of entry

(1) Vessels and aircraft

An alien arriving at a port of entry of the United States who is ordered removed either without a hearing under section 1225(b)(1) or 1225(c) of this title or pursuant to proceedings under section 1229a of this title initiated at the time of such alien’s arrival shall be removed immediately on a vessel or aircraft owned by the owner of the vessel or aircraft on which the alien arrived in the United States, unless—

(A) it is impracticable to remove the alien on one of those vessels or aircraft within a reasonable time, or

(B) the alien is a stowaway—

(i) who has been ordered removed in accordance with section 1225(a)(1) of this title,

(ii) who has requested asylum, and

(iii) whose application has not been adjudicated or whose asylum application has been denied but who has not exhausted all appeal rights.

(2) Stay of removal

(A) In general

The Attorney General may stay the removal of an alien under this subsection if the Attorney General decides that—

(i) immediate removal is not practicable or proper; or

(ii) the alien is needed to testify in the prosecution of a person for a violation of a law of the United States or of any State.

(B) Payment of detention costs

During the period an alien is detained because of a stay of removal under subparagraph (A)(ii), the Attorney General may pay from the appropriation “Immigration and Naturalization Service—Salaries and Expenses”—

(i) the cost of maintenance of the alien; and
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(3) Costs of detention and maintenance pending removal

(A) In general

Except as provided in subparagraph (B) and subsection (d) of this section, an owner of a vessel or aircraft bringing an alien to the United States shall pay the costs of detaining and maintaining the alien—

(i) while the alien is detained under subsection (d)(1) of this section, and

(ii) in the case of an alien who is a stowaway, while the alien is being detained pursuant to—

(I) subsection (d)(2)(A) or (d)(2)(B)(i) of this section,

(II) subsection (d)(2)(B)(ii) or (iii) of this section for the period of time reasonably necessary for the owner to arrange for repatriation or removal of the stowaway, including obtaining necessary travel documents, but not to extend beyond the date on which it is ascertained that such travel documents cannot be obtained from the country to which the stowaway is to be returned, or

(III) section 1225(b)(1)(B)(ii) of this title, for a period not to exceed 15 days (excluding Saturdays, Sundays, and holidays) commencing on the first such day which begins on the earlier of 72 hours after the time of the initial presentation of the stowaway for inspection or at the time the stowaway is determined to have a credible fear of persecution.

(B) Nonapplication

Subparagraph (A) shall not apply if—

(i) the alien is a crewmember;

(ii) the alien has an immigrant visa;

(iii) the alien has a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States and applies for admission not later than 120 days after the date the visa or documentation was issued;

(iv) the alien has a reentry permit and applies for admission not later than 120 days after the date of the alien’s last inspection and admission;

(v)(I) the alien has a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States or a reentry permit;

(II) the alien applies for admission more than 120 days after the date the visa or documentation was issued or after the date of the last inspection and admission under the reentry permit; and

(III) the owner of the vessel or aircraft satisfies the Attorney General that the existence of the condition relating to inadmissibility could not have been discovered by exercising reasonable care before the alien boarded the vessel or aircraft; or

(vi) the individual claims to be a national of the United States and has a United States passport.

(d) Requirements of persons providing transportation

(1) Removal at time of arrival

An owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States shall—

(A) receive an alien back on the vessel or aircraft or another vessel or aircraft owned or operated by the same interests if the alien is ordered removed under this part; and

(B) take the alien to the foreign country to which the alien is ordered removed.

(2) Alien stowaways

An owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft arriving in the United States with an alien stowaway—

(A) shall detain the alien on board the vessel or aircraft, or at such place as the Attorney General shall designate, until completion of the inspection of the alien by an immigration officer;

(B) may not permit the stowaway to land in the United States, except pursuant to regulations of the Attorney General temporarily—

(i) for medical treatment,

(ii) for detention of the stowaway by the Attorney General, or

(iii) for departure or removal of the stowaway; and

(C) if ordered by an immigration officer, shall remove the stowaway on the vessel or aircraft or on another vessel or aircraft.

The Attorney General shall grant a timely request to remove the stowaway under subparagraph (C) on a vessel or aircraft other than that on which the stowaway arrived if the requester has obtained any travel documents necessary for departure or repatriation of the stowaway and removal of the stowaway will not be unreasonably delayed.

(3) Removal upon order

An owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel, aircraft, or other transportation line shall comply with an order of the Attorney General to take on board, guard safely, and transport to the destination specified any alien ordered to be removed under this chapter.

(e) Payment of expenses of removal

(1) Costs of removal at time of arrival

In the case of an alien who is a stowaway or who is ordered removed either without a hear-
ing under section 1225(a)(1) or 1225(c) of this title or pursuant to proceedings under section 1229a of this title initiated at the time of such alien's arrival, the owner of the vessel or aircraft (if any) on which the alien arrived in the United States shall pay the transportation cost of removing the alien. If removal is on a vessel or aircraft not owned by the owner of the vessel or aircraft on which the alien arrived in the United States, the Attorney General may—

(A) pay the cost from the appropriation "Immigration and Naturalization Service—Salaries and Expenses"; and

(B) recover the amount of the cost in a civil action from the owner, agent, or consignee of the vessel or aircraft (if any) on which the alien arrived in the United States.

(2) Costs of removal to port of removal for aliens admitted or permitted to land

In the case of an alien who has been admitted or permitted to land and is ordered removed, the cost (if any) of removal of the alien to the port of removal shall be at the expense of the appropriation for the enforcement of this chapter.

(3) Costs of removal from port of removal for aliens admitted or permitted to land

(A) Through appropriation

Except as provided in subparagraph (B), in the case of an alien who has been admitted or permitted to land and is ordered removed, the cost (if any) of removal of the alien from the port of removal shall be at the expense of the appropriation for the enforcement of this chapter.

(B) Through owner

(i) In general

In the case of an alien described in clause (ii), the cost of removal of the alien from the port of removal may be charged to any owner of the vessel, aircraft, or other transportation line by which the alien came to the United States.

(ii) Aliens described

An alien described in this clause is an alien who—

(I) is admitted to the United States (other than lawfully admitted for permanent residence) and is ordered removed within 5 years of the date of admission based on a ground that existed before or at the time of admission, or

(II) is an alien crewman permitted to land temporarily under section 1228 of this title and is ordered removed within 5 years of the date of landing.

(C) Costs of removal of certain aliens granted voluntary departure

In the case of an alien who has been granted voluntary departure under section 1229c of this title and who is financially unable to depart at the alien's own expense and whose removal the Attorney General deems to be in the best interest of the United States, the expense of such removal may be paid from the appropriation for the enforcement of this chapter.

(f) Aliens requiring personal care during removal

(1) In general

If the Attorney General believes that an alien being removed requires personal care because of the alien's mental or physical condition, the Attorney General may employ a suitable person for that purpose who shall accompany and care for the alien until the alien arrives at the final destination.

(2) Costs

The costs of providing the service described in paragraph (1) shall be defrayed in the same manner as the expense of removing the accompanied alien is defrayed under this section.

(g) Places of detention

(1) In general

The Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal. When United States Government facilities are unavailable or facilities adapted or suitably located for detention are unavailable for rental, the Attorney General may expend from the appropriation "Immigration and Naturalization Service—Salaries and Expenses", without regard to section 6101 of title 41, amounts necessary to acquire land and to acquire, build, remodel, repair, and operate facilities (including living quarters for immigration officers if not otherwise available) necessary for detention.

(2) Detention facilities of the Immigration and Naturalization Service

Prior to initiating any project for the construction of any new detention facility for the Service, the Commissioner shall consider the availability for purchase or lease of any existing prison, jail, detention center, or other comparable facility suitable for such use.

(h) Statutory construction

Nothing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(i) Incarceration

(1) If the chief executive officer of a State (or, if appropriate, a political subdivision of the State) exercising authority with respect to the incarceration of an undocumented criminal alien submits a written request to the Attorney General, the Attorney General shall, as determined by the Attorney General—

(A) enter into a contractual arrangement which provides for compensation to the State or a political subdivision of the State, as may be appropriate, with respect to the incarceration of the undocumented criminal alien; or

(B) take the undocumented criminal alien into the custody of the Federal Government and incarcerate the alien.

(2) Compensation under paragraph (1)(A) shall be the average cost of incarceration of a pris-
(3) For purposes of this subsection, the term "undocumented criminal alien" means an alien who—

(A) has been convicted of a felony or two or more misdemeanors; and

(B)(i) entered the United States without inspection 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 to or with respect to which it was changed under section 1258 of this title, or to comply with the conditions of any such status.

(4)(A) In carrying out paragraph (1), the Attorney General shall give priority to the Federal incarceration of undocumented criminal aliens who have committed aggravated felonies. (B) The Attorney General shall ensure that undocumented criminal aliens incarcerated in Federal facilities pursuant to this subsection are held in facilities which provide a level of security appropriate to the crimes for which they were convicted.

(5) There are authorized to be appropriated to carry out this subsection—

(A) $750,000,000 for fiscal year 2006;

(B) $850,000,000 for fiscal year 2007; and

(C) $950,000,000 for each of the fiscal years 2008 through 2011.

(6) Amounts appropriated pursuant to the authorization of appropriations in paragraph (5) that are distributed to a State or political subdivision of a State, including a municipality, that are distributed to a State or political subdivision of a State, including a municipality, or to a municipality, or to a political subdivision of the State has failed to maintain the nonimmigrant status in which the alien was admitted to or with respect to which it was changed under section 1258 of this title, or to comply with the conditions of any such status.

Subsec. (i)(6). Pub. L. 109–162, § 1196(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "To the extent of available appropriations, funds otherwise authorized to be appropriated under this section with respect to a State (or political subdivision, including a municipality) for incarceration of an undocumented criminal alien may, at the discretion of the recipient of the funds, be used for the costs of imprisonment of such alien in a State, local, or municipal prison or jail."


Subsec. (i)(3)(B). Pub. L. 104–208, § 328(a)(1)(A), substituted "felony or two or more misdemeanors" for "felony and sentenced to a term of imprisonment".


Effective Date of 2006 Amendment
Pub. L. 109–162, title XI, § 1196(d), as added by Pub. L. 109–271, § 8(n)(6), Aug. 12, 2006, 120 Stat. 768, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall take effect on October 1, 2006."

Effective Date of 2005 Amendment
Amendment by Pub. L. 109–13 effective May 11, 2005, and applicable to applications for asylum, withholding, or other relief from removal made on or after such date, see section 101(h)(2) of Pub. L. 109–13, set out as a note under section 1158 of this title.

Effective Date of 1996 Amendment
Amendment by section 306(a)(1) of Pub. L. 104–208 applicable as provided under section 309 of Pub. L. 104–208 (see Effective Date note below), see section 306(c) of Pub. L. 104–208, as amended, set out as a note under section 1252 of this title.

Section 328(a)(2) of div. C of Pub. L. 104–208 provided that: "The amendment made by paragraph (1) [amending this section] shall apply beginning with fiscal year 1997."

Effective Date
Section effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

Abolition of Immigration and Naturalization Service and Transfer of Functions
For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related
references, see note set out under section 1551 of this title.

UNITED STATES POLICY WITH RESPECT TO INVOLUNTARY RETURN OF PERSONS IN DANGER OF SUBJECTION TO TORTURE


“(a) POLICY.—It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.

“(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act [Oct. 21, 1998], the heads of the appropriate agencies shall prescribe regulations to implement the obligations of the United States under Article 3 of the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisions contained in the United States Senate resolution of ratification of the Convention.

“(c) EXCLUSION OF CERTAIN ALIENS.—To the maximum extent consistent with the obligations of the United States under the Convention, subject to any reservations, understandings, declarations, and provisions contained in the United States Senate resolution of ratification of the Convention, the regulations described in subsection (b) shall exclude from the protection of such regulations aliens described in section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1255(b)(3)(B)).

“(d) REVIEW AND CONSTRUCTION.—Notwithstanding any other provision of law, and except as provided in the regulations described in subsection (b), no court shall have jurisdiction to review the regulations adopted to implement this section, and nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention or this section, or any other determination made with respect to the application of the policy set forth in subsection (a), except as part of the review of a final order of removal pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1255).

“(e) AUTHORITY TO DETAIN.—Nothing in this section shall be construed as limiting the authority of the Attorney General to detain any person under any provision of law, including, but not limited to, provisions of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].

“(f) DEFINITIONS.—

“(1) CONVENTION DEFINED.—In this section, the term ‘Convention’ means the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on December 10, 1984.

“(2) SAME TERMS AS IN THE CONVENTION.—Except as otherwise provided, the terms used in this section have the meanings given those terms in the Convention, subject to any reservations, understandings, declarations, and provisions contained in the United States Senate resolution of ratification of the Convention.

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 208(d)(1) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

PILOT PROGRAM ON USE OF CLOSED MILITARY BASES FOR DETENTION OF INADMISSIBLE OR DEPORTABLE ALIENS

Section 387 of div. C of Pub. L. 104–208 provided that:

“(a) ESTABLISHMENT.—The Attorney General and the Secretary of Defense shall establish one or more pilot programs for up to 2 years each to determine the feasibility of the use of military bases, available because of actions under a base closure law, as detention centers by the Immigration and Naturalization Service. In selecting real property at a military base for use as a detention center under the pilot program, the Attorney General and the Secretary shall consult with the redevelopment authority established for the military base and give substantial deference to the redevelopment plan prepared for the military base.

“(b) REPORT.—Not later than 30 months after the date of the enactment of this Act [Sept. 30, 1996], the Attorney General, together with the Secretary of Defense, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate, and the Committees on Armed Services of the House of Representatives and of the Senate, on the feasibility of using military bases closed under a base closure law as detention centers by the Immigration and Naturalization Service.

“(c) DEFINITION.—For purposes of this section, the term ‘base closure law’ means each of the following:


“(3) Section 2687 of title 10, United States Code.

“(4) Any other similar law enacted after the date of the enactment of this Act [Sept. 30, 1996].”

INTERIOR REPATRIATION PROGRAM

Section 388 of div. C of Pub. L. 104–208 provided that:

“Not later than 30 months after the date of the enactment of this Act [Sept. 30, 1996], the Attorney General, in consultation with the Secretary of State, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the operation of the program of interior repatriation developed under section 437 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) [set out as a note below].”

Pub. L. 104–132, title IV, §437, Apr. 24, 1996, 110 Stat. 1275, provided that: “Not later than 180 days after the date of enactment of this Act [Apr. 24, 1996], the Attorney General and the Commissioner of Immigration and Naturalization shall develop and implement a program in which aliens who previously have illegally entered the United States not less than 3 times and are deported or returned to a country contiguous to the United States will be returned to locations not less than 500 kilometers from that country’s border with the United States.”

TERMINATION OF LIMITATION


§1232. Enhancing efforts to combat the trafficking of children

(a) Combating child trafficking at the border and ports of entry of the United States

(1) Policies and procedures

In order to enhance the efforts of the United States to prevent trafficking in persons, the Secretary of Homeland Security, in conjunction with the Secretary of State, the Attorney
General, and the Secretary of Health and Human Services, shall develop policies and procedures to ensure that unaccompanied alien children in the United States are safely repatriated to their country of nationality or of last habitual residence.

(2) Special rules for children from contiguous countries

(A) Determinations

Any unaccompanied alien child who is a national or habitual resident of a country that is contiguous with the United States shall be treated in accordance with subparagraph (B), if the Secretary of Homeland Security determines, on a case-by-case basis, that—

(i) such child has not been a victim of a severe form of trafficking in persons, and there is no credible evidence that such child is at risk of being trafficked upon return to the child’s country of nationality or of last habitual residence;
(ii) such child does not have a fear of returning to the child’s country of nationality or of last habitual residence owing to a credible fear of persecution; and
(iii) the child is able to make an independent decision to withdraw the child’s application for admission to the United States.

(B) Return

An immigration officer who finds an unaccompanied alien child described in subparagraph (A) at a land border or port of entry of the United States determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) may—

(i) permit such child to withdraw the child’s application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and
(ii) return such child to the child’s country of nationality or of last habitual residence.

(C) Contiguous country agreements

The Secretary of State shall negotiate agreements between the United States and countries contiguous to the United States with respect to the repatriation of children. Such agreements shall be designed to protect children from severe forms of trafficking in persons, and shall, at a minimum, provide that—

(i) no child shall be returned to the child’s country of nationality or of last habitual residence unless returned to appropriate employees or officials, including child welfare officials where available, of the accepting country’s government;
(ii) no child shall be returned to the child’s country of nationality or of last habitual residence outside of reasonable business hours; and
(iii) border personnel of the countries that are parties to such agreements are trained in the terms of such agreements.

(3) Rule for other children

The custody of unaccompanied alien children not described in paragraph (2)(A) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with subsection (b).

(4) Screening

Within 48 hours of the apprehension of a child who is believed to be described in paragraph (2)(A), but in any event prior to returning such child to the child’s country of nationality or of last habitual residence, the child shall be screened to determine whether the child meets the criteria listed in paragraph (2)(A). If the child does not meet such criteria, or if no determination can be made within 48 hours of apprehension, the child shall immediately be transferred to the Secretary of Health and Human Services and treated in accordance with subsection (b). Nothing in this paragraph may be construed to preclude an earlier transfer of the child.

(5) Ensuring the safe repatriation of children

(A) Repatriation pilot program

To protect children from trafficking and exploitation, the Secretary of State shall create a pilot program, in conjunction with the Secretary of Health and Human Services and the Secretary of Homeland Security, nongovernmental organizations, and other national and international agencies and experts, to develop and implement best practices to ensure the safe and sustainable repatriation and reintegration of unaccompanied alien children into their country of nationality or of last habitual residence, including placement with their families, legal guardians, or other sponsoring agencies.

(B) Assessment of country conditions

The Secretary of Homeland Security shall consult the Department of State’s Country Reports on Human Rights Practices and the Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.

(C) Report on repatriation of unaccompanied alien children

Not later than 18 months after December 23, 2008, and annually thereafter, the Secretary of State and the Secretary of Health and Human Services, with assistance from the Secretary of Homeland Security, shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on efforts to improve repatriation programs for unaccompanied alien children. Such report shall include—

(i) the number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States;
(ii) a statement of the nationalities, ages, and gender of such children;
(iii) a description of the policies and procedures used to effect the removal of such children from the United States and the steps taken to ensure that such children were safely and humanely repatriated to their country of nationality or of last ha-
bital residence, including a description of the repatriation pilot program created pursuant to subparagraph (A);

(iii) a description of the type of immigration relief sought and denied to such children;

(iv) any information gathered in assessments of country and local conditions pursuant to paragraph (2); and

(v) statistical information and other data on unaccompanied alien children as provided for in section 279(b)(1)(J) of title 6.

(D) Placement in removal proceedings

Any unaccompanied alien child sought to be removed by the Department of Homeland Security, except for an unaccompanied alien child from a contiguous country subject to exceptions under subsection (a)(2), shall be—

(i) placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a);

(ii) eligible for relief under section 240B of such Act (8 U.S.C. 1229c) at no cost to the child; and

(iii) provided access to counsel in accordance with subsection (c)(5).

(b) Combating child trafficking and exploitation in the United States

(1) Care and custody of unaccompanied alien children

Consistent with section 279 of title 6, and except as otherwise provided under subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services.

(2) Notification

Each department or agency of the Federal Government shall notify the Department of Health and Human Services within 48 hours upon—

(A) the apprehension or discovery of an unaccompanied alien child; or

(B) any claim or suspicion that an alien in the custody of such department or agency is under 18 years of age.

(3) Transfers of unaccompanied alien children

Except in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child.

(4) Age determinations

The Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security, shall develop procedures to make a prompt determination of the age of an alien, which shall be used by the Secretary of Homeland Security and the Secretary of Health and Human Services for children in their respective custody. At a minimum, these procedures shall take into account multiple forms of evidence, including the non-exclusive use of radiographs, to determine the age of the unaccompanied alien.

(c) Providing safe and secure placements for children

(1) Policies and programs

The Secretary of Health and Human Services, Secretary of Homeland Security, Attorney General, and Secretary of State shall establish policies and programs to ensure that unaccompanied alien children in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity, including policies and programs reflecting best practices in witness security programs.

(2) Safe and secure placements

Subject to section 279(b)(2) of title 6, an unaccompanied alien child in the custody of the Secretary of Health and Human Services shall be promptly placed in the least restrictive setting that is in the best interest of the child. In making such placements, the Secretary may consider danger to self, danger to the community, and risk of flight. Placement of child trafficking victims may include placement in an Unaccompanied Refugee Minor program, pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1229(d)), if a suitable family member is not available to provide care. A child shall not be placed in a secure facility absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense. The placement of a child in a secure facility shall be reviewed, at a minimum, on a monthly basis, in accordance with procedures prescribed by the Secretary, to determine if such placement remains warranted.

(3) Safety and suitability assessments

(A) In general

Subject to the requirements of subparagraph (B), an unaccompanied alien child may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child’s physical and mental wellbeing. Such determination shall, at a minimum, include verification of the custodian’s identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child.

(B) Home studies

Before placing the child with an individual, the Secretary of Health and Human Services shall determine whether a home study is first necessary. A home study shall be conducted for a child who is a victim of a severe form of trafficking in persons, a special needs child with a disability (as defined in section 12102 of title 42), a child who has been a victim of physical or sexual abuse.

\[1\] So in original. Probably should be capitalized.
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Vocate shall not be compelled to testify or provide evidence in any proceeding concerning any information or opinion received from the child in the course of serving as a child advocate. The child advocate shall be presumed to be acting in good faith and be immune from civil and criminal liability for lawful conduct of duties as described in this provision.

(d) Permanent protection for certain at-risk children

(1) Omitted

(2) Expeditious adjudication

All applications for special immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) shall be adjudicated by the Secretary of Homeland Security not later than 180 days after the date on which the application is filed.

(3) Omitted

(4) Eligibility for assistance

(A) In general

A child who has been granted special immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) and who was either in the custody of the Secretary of Health and Human Services at the time a dependency order was granted for such child or who was receiving services pursuant to section 501(a) of the Refugee Education Assistance Act of 1980 (8 U.S.C. 1522 note) at the time such dependency order was granted, shall be eligible for placement and services under section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) until the earlier of—

(i) the date on which the child reaches the age designated in section 412(d)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1522(d)(2)(B)); or

(ii) the date on which the child is placed in a permanent adoptive home.

(B) State reimbursement

Subject to the availability of appropriations, if State foster care funds are expended on behalf of a child who is not described in subparagraph (A) and has been granted special immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), the Federal Government shall reimburse the State in which the child resides for such expenditures by the State.

(5) State courts acting in loco parentis

A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of this section or section 279 of title 6.

(6) Transition rule

Notwithstanding any other provision of law, an alien described in section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by paragraph (1), may not be denied special immigrant status under such section after December 23, 2008, based on age if the alien was a child on the date on which the alien applied for such status.

(7) Omitted

(8) Specialized needs of unaccompanied alien children

Applications for asylum and other forms of relief from removal in which an unaccom-
panied alien child is the principal applicant shall be governed by regulations which take into account the specialized needs of unaccompanied alien children and which address both procedural and substantive aspects of handling unaccompanied alien children’s cases.

(e) Training

The Secretary of State, the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Attorney General shall provide specialized training to all Federal personnel, and upon request, state and local personnel, who have substantive contact with unaccompanied alien children. Such personnel shall be trained to work with unaccompanied alien children, including identifying children who are victims of severe forms of trafficking in persons, and children for whom asylum or special immigrant relief may be appropriate, including children described in subsection (a)(2).

(f) Omitted

(g) Definition of unaccompanied alien child

For purposes of this section, the term “unaccompanied alien child” has the meaning given such term in section 279(g) of title 6.

(h) Effective date

This section—

(1) shall take effect on the date that is 90 days after December 23, 2008; and

(2) shall also apply to all aliens in the United States in pending proceedings before the Department of Homeland Security or the Executive Office for Immigration Review, or related administrative or Federal appeals, on December 23, 2008.

(i) Grants and contracts

The Secretary of Health and Human Services may award grants to, and enter into contracts with, voluntary agencies to carry out this section and section 279 of title 6.


References in Text


Section, Pub. L. 85–316, § 7, Sept. 11, 1957, 71 Stat. 640, excepted spouse, child or parent of a United States citizen, and aliens admitted between Dec. 22, 1945, and Nov. 1, 1954, inclusive, who misrepresented their nationality, place of birth, identity or residence, provided this latter group did so misrepresent because of fear of persecution because of race, religion or politics if repatriated and not to evade quota restrictions, or an investigation of themselves, from the deportation provisions of section 1251 of this title which declared excludable, those aliens who sought to procure or procured entry into the United States by fraud and misrepresentation, or who were not of the nationality specified in their visas, and authorized the admission, after Sept. 11, 1957, of any alien spouse, parent or child of a United States citizen or of an alien admitted for permanent residence who sought, or had procured fraudulent entry into the United States or admitted committing perjury in connection therewith, if otherwise admissible and the Attorney General consented. See section 1182(h) of this title.

§ 1252. Judicial review of orders of removal

(a) Applicable provisions

(1) General orders of removal

Judicial review of a final order of removal (other than an order of removal without a hearing pursuant to section 1225(b)(1) of this title) is governed only by chapter 158 of title 28, except as provided in subsection (b) of this section and except that the court may not order the taking of additional evidence under section 2347(c) of such title.

(2) Matters not subject to judicial review

(A) Review relating to section 1225(b)(1)

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review—

(i) except as provided in subsection (e) of this section, any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1) of this title,

(ii) except as provided in subsection (e) of this section, a decision by the Attorney General to invoke the provisions of such section,

(iii) the application of such section to individual aliens, including the determination made under section 1225(b)(1)(B) of this title, or

(iv) except as provided in subsection (e) of this section, procedures and policies adopted by the Attorney General to implement the provisions of section 1225(b)(1) of this title.

(B) Denials of discretionary relief

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas
corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review—

(i) any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c, or 1255 of this title, or

(ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title.

(C) Orders against criminal aliens

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in section 1182(a)(2)(A)(i), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to their date of commission, otherwise covered by section 1227(a)(2)(A)(i) of this title.

(D) Judicial review of certain legal claims

Nothing in subparagraph (B) or (C), or in any other provision of this chapter (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.

(3) Treatment of certain decisions

No alien shall have a right to appeal from a decision of an immigration judge which is based solely on a certification described in section 1229a(c)(1)(B) of this title.

(4) Claims under the United Nations Convention

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) of this section. For purposes of this chapter, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms “judicial review” and “jurisdiction to review” include habeas corpus review pursuant to section 2241 of title 28, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

(b) Requirements for review of orders of removal

With respect to review of an order of removal under subsection (a)(1) of this section, the following requirements apply:

(1) Deadline

The petition for review must be filed not later than 30 days after the date of the final order of removal.

(2) Venue and forms

The petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings. The record and briefs do not have to be printed. The court of appeals shall review the proceeding on a typewritten record and on typewritten briefs.

(3) Service

(A) In general

The respondent is the Attorney General. The petition shall be served on the Attorney General and on the officer or employee of the Service in charge of the Service district in which the final order of removal under section 1229a of this title was entered.

(B) Stay of order

Service of the petition on the officer or employee does not stay the removal of an alien pending the court’s decision on the petition, unless the court orders otherwise.

(C) Alien’s brief

The alien shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available, and may serve and file a reply brief not later than 14 days after service of the brief of the Attorney General, and the court may not extend these deadlines except upon motion for good cause shown. If an alien fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.

(4) Scope and standard for review

Except as provided in paragraph (5)(B)—

(A) the court of appeals shall decide the petition only on the administrative record on which the order of removal is based,

(B) the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary,

(C) a decision that an alien is not eligible for admission to the United States is conclusive unless manifestly contrary to law, and
(D) the Attorney General’s discretionary judgment whether to grant relief under section 1158(a) of this title shall be conclusive unless manifestly contrary to the law and an abuse of discretion.

No court shall reverse a determination made by a trier of fact with respect to the availability of corroborating evidence, as described in section 1158(b)(1)(B), 1229a(c)(4)(B), or 1231(b)(3)(C) of this title, unless the court finds, pursuant to subsection (b)(4)(B) of this section, that a reasonable trier of fact is compelled to conclude that such corroborating evidence is unavailable.

(5) Treatment of nationality claims

(A) Court determination if no issue of fact

If the petitioner claims to be a national of the United States and the court of appeals finds from the pleadings and affidavits that no genuine issue of material fact about the petitioner’s nationality is presented, the court shall decide the nationality claim.

(B) Transfer if issue of fact

If the petitioner claims to be a national of the United States and the court of appeals finds that a genuine issue of material fact about the petitioner’s nationality is presented, the court shall transfer the proceeding to the district court of the United States for the judicial district in which the petitioner resides for a new hearing on the nationality claim and a decision on that claim as if an action had been brought in the district court under section 2201 of title 28.

(C) Limitation on determination

The petitioner may have such nationality claim decided only as provided in this paragraph.

(6) Consolidation with review of motions to reopen or reconsider

When a petitioner seeks review of an order under this section, any review sought of a motion to reopen or reconsider the order shall be consolidated with the review of the order.

(7) Challenge to validity of orders in certain criminal proceedings

(A) In general

If the validity of an order of removal has not been judicially decided, a defendant in a criminal proceeding charged with violating section 1253(a) of this title may challenge the validity of the order in the criminal proceeding only by filing a separate motion before trial. The district court, without a jury, shall decide the motion before trial.

(B) Claims of United States nationality

If the defendant claims in the motion to be a national of the United States and the district court finds that—

(i) no genuine issue of material fact about the defendant’s nationality is presented, the court shall decide the motion only on the administrative record on which the removal order is based and the administrative findings of fact are conclusive if supported by reasonable, substan-

(1) Challenge to validity of orders in certain

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tial, and probative evidence on the record considered as a whole; or

(ii) a genuine issue of material fact about the defendant’s nationality is presented, the court shall hold a new hearing on the nationality claim and decide that claim as if an action had been brought under section 2201 of title 28.

The defendant may have such nationality claim decided only as provided in this subparagraph.

(C) Consequence of invalidation

If the district court rules that the removal order is invalid, the court shall dismiss the indictment for violation of section 1253(a) of this title. The United States Government may appeal the dismissal to the court of appeals for the appropriate circuit within 30 days after the date of the dismissal.

(D) Limitation on filing petitions for review

The defendant in a criminal proceeding under section 1253(a) of this title may not file a petition for review under subsection (a) of this section during the criminal proceeding.

(8) Construction

This subsection—

(A) does not prevent the Attorney General, after a final order of removal has been issued, from detaining the alien under section 1251(a) of this title;

(B) does not relieve the alien from complying with section 1231(a)(4) of this title and section 1231(g) of this title; and

(C) does not require the Attorney General to defer removal of the alien.

(9) Consolidation of questions for judicial review

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

(c) Requirements for petition

A petition for review or for habeas corpus of an order of removal—

(A) shall attach a copy of such order, and

(B) shall state whether a court has upheld the validity of the order, and, if so, shall state the name of the court, the date of the court’s ruling, and the kind of proceeding.

(d) Review of final orders

A court may review a final order of removal only if—

1 See References in Text note below.
(1) the alien has exhausted all administrative remedies available to the alien as of right, and
(2) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

(e) Judicial review of orders under section 1225(b)(1)

(1) Limitations on relief

Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may—

(A) enter declaratory, injunctive, or other equitable relief in any action pertaining to an order to exclude an alien in accordance with section 1225(b)(1) of this title except as specifically authorized in a subsequent paragraph of this subsection, or

(B) certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection.

(2) Habeas corpus proceedings

Judicial review of any determination made under section 1225(b)(1) of this title is available in habeas corpus proceedings, but shall be limited to determinations of—

(A) whether the petitioner is an alien;

(B) whether the petitioner was ordered removed under such section, and

(C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 1225(b)(1)(C) of this title.

(3) Challenges on validity of the system

(A) In general

Judicial review of determinations under section 1225(b) of this title and its implementation is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—

(i) whether such section, or any regulation issued to implement such section, is constitutional; or

(ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General to implement such section, is not consistent with applicable provisions of this subchapter or is otherwise in violation of law.

(B) Deadlines for bringing actions

Any action instituted under this paragraph must be filed no later than 60 days after the date the challenged section, regulation, directive, guideline, or procedure described in clause (i) or (ii) of subparagraph (A) is first implemented.

(C) Notice of appeal

A notice of appeal of an order issued by the District Court under this paragraph may be filed not later than 30 days after the date of issuance of such order.

(D) Expeditious consideration of cases

It shall be the duty of the District Court, the Court of Appeals, and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any case considered under this paragraph.

(4) Decision

In any case where the court determines that the petitioner—

(A) is an alien who was not ordered removed under section 1225(b)(1) of this title, or

(B) has demonstrated by a preponderance of the evidence that the alien is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, the court may order no remedy or relief other than to require that the petitioner be provided a hearing in accordance with section 1229a of this title. Any alien who is provided a hearing under section 1229a of this title pursuant to this paragraph may thereafter obtain judicial review of any resulting final order of removal pursuant to subsection (a)(1) of this section.

(5) Scope of inquiry

In determining whether an alien has been ordered removed under section 1225(b)(1) of this title, the court’s inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.

(f) Limit on injunctive relief

(1) In general

Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

(2) Particular cases

Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.
(g) Exclusive jurisdiction

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.


REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2)(D), (5), and (g), was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 208, known as the Immigration and Nationality Act, which is classified principally to chapter 3 of this title.

Section 1253 of this title, referred to in subsec. (b)(8)(B), was amended generally by Pub. L. 104–208, div. C, title III, § 307(a), Sept. 30, 1996, 110 Stat. 3009–612, and, as so amended, no longer contains a subsec. (g). Provisions similar to those contained in former subsec. (g) of section 1253 are now contained in subsec. (d) of section 1253.


For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS


Subsec. (a)(2)(B). Pub. L. 109–13, § 106(a)(1)(A)(ii), inserted "(statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law" in introductory provisions.
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adding pars. (2) and (3) authorizing the Attorney General to deport an alien prior to the completion of a sentence of imprisonment and requiring notice to deported aliens of the possibility of reentry.

Subsec. (1). Pub. L. 104–132, § 430(b)(1), inserted at end "Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is not enforceable by any party against the United States or its agencies or officers or any other person." 


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.


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 that are 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)". 


1990—Subsec. (a)(2). Pub. L. 101–649, § 506(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,". 


1984—Subsec. (h). Pub. L. 98–473, which directed that "supervised release," be inserted after "parole," as if included in the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, 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 2005 AMENDMENT

Pub. L. 109–13, div. B, title I, § 101(h)(3), (4), May 11, 2005, 119 Stat. 305, 306, provided that: "(3) The amendment made by subsection (e) [amending this section] shall take effect upon the date of the enactment of this division [May 11, 2005] and shall apply to all cases in which the final administrative removal order is or was issued before, on, or after such date.

(4) The amendments made by subsection (f) [amending this section] shall take effect upon the date of the enactment of this division [May 11, 2005] and shall apply to all cases pending before any court on or after such date.

Pub. L. 109–13, div. B, title I, § 106(b), May 11, 2005, 119 Stat. 311, provided that: "The amendments made by subsection (a) [amending this section] shall take effect upon the date of the enactment of this division [May 11, 2005] and shall apply to all cases in which the final administrative order of removal, deportation, or exclusion was issued before, on, or after the date of the enactment of this division."

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 306(c) of div. C of Pub. L. 104–208, as amended by Pub. L. 104–302, § 2(1), Oct. 11, 1996, 110 Stat. 3657, provided that: "(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsections (a) and (b) [amending this section and section 1291 of this title and substituting section 1105a of this title] shall apply as provided under section 309 [8 U.S.C. 1101 note], except that subsection (g) of section 242 of the Immigration and Nationality Act [8 U.S.C. 1252(g)] (as added by subsection (g) of section 440 of Public Law 109–13, div. B, title I, § 106(b) of Pub. L. 109–13, 119 Stat. 305), as amended, shall apply without limitation to claims arising from all past, pending, or future exclusion, deportation, or removal proceedings under such Act [8 U.S.C. 1101 et seq.],

(2) LIMITATION.—Paragraph (1) shall not be considered to invalidate or to require the reconsideration of any judgment or order entered under section 106 of the Immigration and Nationality Act [former 8 U.S.C. 1105a], as amended by section 440 of Public Law 104–132."

[Section 2 of Pub. L. 104–302 provided that the amendment made by that section to section 306(c)(1) of Pub. L. 104–208, set out above, is effective Sept. 30, 1996.]

Amendment by subsection (a) of such section is effective on a date specified by the Attorney General when the central address file system (described in paragraph (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 239(a)(3) of the Immigration and Nationality Act) [8 U.S.C. 1229(a)(3)] 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].

"(B) 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.

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 1227 of this title.

Effective Date of 1998 Amendment

Section 7343(c) of Pub. L. 100–690 provided that: "The amendments made by subsections (a) and (b) [amendments of 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


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."

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.

Transfer of Cases

Pub. L. 109–13, div. B, title I, §106(c), May 11, 2005, 119 Stat. 311, provided that: "If an alien's case, brought under section 2241 of title 28, United States Code, and challenging a final administrative order of removal, deportation, or exclusion, is pending in a district court on the date of the enactment of this division [May 11, 2005], then the district court shall transfer the case (or the part of the case that challenges the order of removal, deportation, or exclusion) to the court of appeals for the circuit in which a petition for review could have been properly filed under section 2242 of the Immigration and Nationality Act (8 U.S.C. 1252), as amended by this section, or under section 306(c)(4)(D) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208, div. C) (8 U.S.C. 1101 note). The court of appeals shall treat the transferred case as if it had been filed pursuant to a petition for review under such section 242, except that subsection (b)(1) of such section shall not apply."

Transitional Rule Cases

under former section 106(a) of the Immigration and Nationality Act (8 U.S.C. 1105a(a)) (as in effect before its repeal by section 306(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208, div. C) (8 U.S.C. 1252 note)) shall be treated as if it had been filed as a petition for review under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252), as amended by this section. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1861 and 1861B of such title, such petition for review shall be the sole and exclusive means for judicial review of an order of deportation or exclusion.”

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation, or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

AUTHORITY TO ACCEPT CERTAIN ASSISTANCE

Section 13008 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.”

§ 1252a. Transferred

CODIFICATION


EFFECTIVE DATE OF REPEAL

Repeal effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1252c. Authorizing State and local law enforcement officials to arrest and detain certain illegal aliens

(a) In general

Notwithstanding any other provision of law, to the extent permitted by relevant State and local law, State and local law enforcement officials are authorized to arrest and detain an individual who—

(1) is an alien illegally present in the United States; and

(2) has previously been convicted of a felony in the United States and deported or left the United States after such conviction,

but only after the State or local law enforcement officials obtain appropriate confirmation from the Immigration and Naturalization Service of the status of such individual and only for such period of time as may be required for the Service to take the individual into Federal custody for purposes of deporting or removing the alien from the United States.

(b) Cooperation

The Attorney General shall cooperate with the States to assure that information in the control of the Attorney General, including information in the National Crime Information Center, that would assist State and local law enforcement officials in carrying out duties under subsection (a) of this section is made available to such officials.


CODIFICATION

This section was enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1253. Penalties related to removal

(a) Penalty for failure to depart

(1) In general

Any alien against whom a final order of removal is outstanding by reason of being a member of any of the classes described in section 1227(a) of this title, who—

(A) willfully fails or refuses to depart from the United States within a period of 90 days from the date of the final order of removal under administrative processes, or if judicial review is had, then from the date of the final order of the court.

(B) willfully fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure.

(C) connives or conspires, or takes any other action, designed to prevent or hamper the alien’s departure pursuant to such, or
(D) willfully fails or refuses to present himself or herself for removal at the time and place required by the Attorney General pursuant to such order, shall be fined under title 18, or imprisoned not more than four years (or 10 years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 1227(a) of this title), or both.

(2) Exception
It is not a violation of paragraph (1) to take any proper steps for the purpose of securing cancellation of or exemption from such order of removal or for the purpose of securing the alien’s release from incarceration or custody.

(3) Suspension
The court may for good cause suspend the sentence of an alien under this subsection and order the alien’s 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—

(A) the age, health, and period of detention of the alien;
(B) the effect of the alien’s release upon the national security and public peace or safety;
(C) the likelihood of the alien’s resuming or following a course of conduct which made or would make the alien deportable;
(D) the character of the efforts made by such alien himself and by representatives of the country or countries to which the alien’s removal is directed to expedite the alien’s departure from the United States;
(E) the reason for the inability of the Government of the United States to secure passports, other travel documents, or removal facilities from the country or countries to which the alien has been ordered removed; and
(F) the eligibility of the alien for discretionary relief under the immigration laws.

(b) Willful failure to comply with terms of release under supervision
An alien who shall willfully fail to comply with regulations or requirements issued pursuant to section 1231(a)(3) of this title or knowingly give false information in response to an inquiry under such section shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(c) Penalties relating to vessels and aircraft
(1) Civil penalties

(A) Failure to carry out certain orders
If the Attorney General is satisfied that a person has violated subsection (d) or (e) of section 1231 of this title, the person shall pay to the Commissioner the sum of $2,000 for each violation.

(B) Failure to remove alien stowaways
If the Attorney General is satisfied that a person has failed to remove an alien stowaway as required under section 1231(d)(2) of this title, the person shall pay to the Commissioner the sum of $5,000 for each alien stowaway not removed.

(C) No compromise
The Attorney General may not compromise the amount of such penalty under this paragraph.

(2) Clearing vessels and aircraft

(A) Clearance before decision on liability
A vessel or aircraft may be granted clearance before a decision on liability is made under paragraph (1) only if a bond approved by the Attorney General or an amount sufficient to pay the civil penalty is deposited with the Commissioner.

(B) Prohibition on clearance while penalty unpaid
A vessel or aircraft may not be granted clearance if a civil penalty imposed under paragraph (1) is not paid.

(d) Discontinuing granting visas to nationals of country denying or delaying accepting alien
On being notified by the Attorney General that the government of a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country after the Attorney General asks whether the government will accept the alien under this section, the Secretary of State shall order consular officers in that foreign country to discontinue granting immigrant visas or nonimmigrant visas, or both, to citizens, subjects, nationals, and residents of that country until the Attorney General notifies the Secretary that the country has accepted the alien.

AMENDMENTS
1996—Pub. L. 104–238 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (h) relating to countries to which aliens were to be deported.

Subsec. (h)(2). Pub. L. 104–132, § 413(a), inserted at end “For purposes of subparagraph (D), an alien who is described in section 1251(a)(4)(B) of this title shall be considered to be an alien for whom there are reasonable grounds for regarding as a danger to the security of the United States.”

Subsec. (h)(3). Pub. L. 104–132, § 413(f), added par. (3) which read as follows: “Notwithstanding any other provision of law, paragraph (1) shall apply to any alien if the Attorney General determines, in the discretion of the Attorney General, that—

“(A) such alien’s life or freedom would be threatened, in the country to which such alien would be deported or returned, on account of race, religion, nationality, membership in a particular social group, or political opinion; and

“(B) the application of paragraph (1) to such alien is necessary to ensure compliance with the 1967 United Nations Protocol Relating to the Status of Refugees.”

Subsec. (h)(2). Pub. L. 101–649, §515(a)(2), inserted sentence at end relating to aliens who have been convicted of aggravated felonies.


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.

1979—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 1996 Amendments**

Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

**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 603(d) of Pub. L. 101–649, set out as a note under section 1227 of this title.

**Effective Date of 1981 Amendment**


**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.

**Abolition of Immigration and Naturalization Service and Transfer of Functions**

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

**References to Order of Removal Deemed To Include Order of Exclusion and Deportation**

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

**Sense of Congress Respecting Treatment of Cuban Political Prisoners**

Pub. L. 99–603, title III, §315(c), Nov. 6, 1986, 100 Stat. 3440, as amended by Pub. L. 104–208, div. C, title III, §308(g)(7)(C)(i), Sept. 30, 1996, 110 Stat. 3009–623, 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(d) of the Immigration and Nationality Act (8 U.S.C. 1253(d))."


**Effective Date of Repeal**

Repeal effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

**§ 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 remove 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 removal 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 removal 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 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 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
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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 publishing 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 removal 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 1158(b)(2)(A) 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—
(d) Documentation

The Attorney General may stagger the periods of documentation and any extension of such period. The designation of the foreign state (or part thereof) shall be valid during the initial period of renewal of such documentation and authorization in order to provide for an orderly transition and for an orderly transition (under paragraph (3)) upon the termination of a 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 cancellation of removal

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 1229a(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 paragraphs (1) and (2) and supersede the 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.

(6) This chapter, referred to in subsec. (a)(5), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 1101 of this title and Tables.

AMENDMENTS
Subsec. (b)(5)(B), Pub. L. 104–208, § 308(e)(1)(G), substituted “removal” for “deportation”.
Subsec. (c)(1)(B). Pub. L. 102–232, § 304(b)(2), as amended by Pub. L. 103–416, § 3219(c)(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.
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)(i)(II). 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)(i)(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.

EFFECTIVE DATE OF 1996 AMENDMENT
Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 369 of Pub. L. 104–208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT
L. 103-416, set out as a note under section 1101 of this title.

Section 218(g) of Pub. L. 103-416 provided that the amendment made by subsec. (a)(2) of that section is effective as if included in the Miscellaneous 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 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.

Abolition of Immigration and Naturalization Service and Transfer of Functions
For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

Limitation on Suspension of Deportation
The Attorney General may not suspend deportation and adjust status under this section of more than 4,000 aliens 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, as amended by Pub. L. 104-208, div. C, title III, §308(g)(1), (b)(A)(ii), (C), Sept. 30, 1996, 110 Stat. 3009-622, 3009-624, provided that:

"(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)(A), the alien is found not to be excludable on a ground of exclusion referred to in section 244(c)(2)(A)(ii) of the Immigration and Nationality Act [8 U.S.C. 1254a(c)(2)(A)(ii)] 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 240A(a) of the Immigration and Nationality Act [8 U.S.C. 1229b(a)] if the absence meets the requirements of section 240A(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 244 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

Special Temporary Protected Status for Salvadorans

"(a) Designation.—

"(1) In general.—El Salvador is hereby designated under section 244(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 244 of the Immigration and Nationality Act [8 U.S.C. 1254a] pursuant to the designation under this section, subject to section 244(c)(3) of such Act, an alien who is a national of El Salvador meets the requirements of section 244(c)(1) of such Act only if—

"(A) the alien has been continuously physically present in the United States since September 19, 1990; and

"(B) the alien is admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of such Act, and is not ineligible for temporary protected status under section 244(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 244 of the Immigration and Nationality Act [8 U.S.C. 1254a] (including subsection (b) 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 (l) of such section 244 shall not apply under this section.

"(3) 6-month period of registration and work authorization.—Notwithstanding section 244(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 244(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 244(d)(2) of such Act, the period of validity of documentation under this section shall be 6 months.
§ 1254b. Collection of fees under temporary protected status program

(a) In addition to collection of registration fees described in section 1254a(c)(1)(B) of this title, fees for fingerprinting services, biometric services, and other necessary services may be collected when administering the program described in section 1254a of this title.

(b) Subsection (a) shall be construed to apply for fiscal year 1998 and each fiscal year thereafter.


CODIFICATION

This section was enacted as part of the Department of Homeland Security Appropriations Act, 2010, and not as part of the Immigration and Nationality Act which comprises this chapter.

§ 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 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.

(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 classification as a VAWA self-petitioner, or any date thereafter, to that of an alien lawfully admitted to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

(c) Alien crewmen, aliens continuing or accepting unauthorized employment, and aliens admitted in transit without visa

Other than an alien having an approved petition for classification as a VAWA self-petitioner, subsection (a) of this section shall not be applicable to (1) an alien crewman; (2) subject to subsection (k) of this section, 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(d) of this title or section 1187 of this title; (5) an alien who was admitted as a nonimmigrant described in section 1101(a)(27)(H), (I), (J), or (K) of this title, who is deportable under section 1227(a)(4)(B) of this title; (7) any alien who seeks adjustment of status to that of an immigrant under section 1153(b) of this title and is not in a lawful nonimmigrant status; or (8) any alien who was employed while the alien was an unauthorized alien, as defined in section 1324a(b)(3) of this title, or who has otherwise violated the terms of a nonimmigrant visa.

(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 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 non-

*So in original. The comma probably should be a semicolon.*
immigrant status under section 1101(a)(15)(K) of this title.

(e) Restriction on adjustment of status based on marriages entered while in admissibility 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 be admitted 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 admission 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) of this title or subsection (d) or (p) of section 1184 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), (6)(A), (6)(C), (6)(D), (7)(A), and (9)(B) 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) 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—

(A) who—

(i) entered the United States without inspection; or

(ii) is within one of the classes enumerated in subsection (c) of this section;

(B) who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under section 1153(d) of this title) of—

(i) a petition for classification under section 1154 of this title that was filed with the Attorney General on or before April 30, 2001; or

(ii) an application for a labor certification under section 1182(a)(5)(A) of this title that was filed pursuant to the regulations of the Secretary of Labor on or before such date; and

(C) who, in the case of a beneficiary of a petition for classification, or an application for labor certification, described in subparagraph (B) that was filed after January 14, 1998, is physically present in the United States on December 21, 2000;

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 equaling $1,000 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; or

(ii) entered the United States before 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 speci-
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and (n) General as provided in subsections (m), (n), this subsection shall be disposed of by the Attorney General under this section and is remitted to the Attorney General, as provided in subsections (m), (n), and (o) of section 1356 of this title.

Any remaining portion of such fees remitted under such paragraphs shall be deposited by the Attorney General into the Breached Bond/Debtors' Property Recovery Account established under section 1356(r) of this title, except that in the case of fees attributable to applications for a beneficiary with respect to whom a petition for classification, or an application for labor certification, described in paragraph (1)(B) was filed after January 14, 1998, one-half of such remaining portion shall be deposited by the Attorney General into the Immigration Examinations Fee Account established under section 1356(m) of this title.

(j) 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 paragraph (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.

(k) Inapplicability of certain provisions for certain employment-based immigrants

An alien who is eligible to receive an immigrant visa under paragraph (1), (2), or (3) of section 1153(b) of this title (or, in the case of an alien who is an immigrant described in section 1101(a)(27)(C) of this title, under section 1153(b)(4) of this title) may adjust status pursuant to subsection (a) of this section and notwithstanding subsection (c)(2), (c)(7), and (c)(8) of this section, if—

(1) the alien, on the date of filing an application for adjustment of status, is present in the United States pursuant to a lawful admission;

(2) the alien, subsequent to such lawful admission has not, for an aggregate period exceeding 180 days—

(A) failed to maintain, continuously, a lawful status;

(B) engaged in unauthorized employment; or

(C) otherwise violated the terms and conditions of the alien's admission.

(l) Adjustment of status for victims of trafficking

(1) If, in the opinion of the Secretary of Homeland Security, or in the case of subparagraph (C)(i), in the opinion of the Secretary of Homeland Security, in consultation with the Attorney General, as appropriate, a nonimmigrant admitted into the United States under section 1101(a)(15)(T)(i) of this title—

(A) has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under section 1101(a)(15)(T)(i) of this title, or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and that, in the opinion of the Attorney General, the investigation or prosecution is complete, whichever period of time is less:

(B) subject to paragraph (6), has, throughout such period, been a person of good moral character; and

(C)(i) has, during such period, complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking;

(ii) the alien would suffer extreme hardship involving unusual and severe harm upon removal from the United States; or

3  So in original. The words "the alien" probably should not appear.

4  So in original. Probably should be followed by a comma.
(iii) was younger than 18 years of age at the time of the victimization qualifying the alien for relief under section 1101(a)(15)(T) of this title.\footnote{So in original. The period probably should be a comma.}

the Secretary of Homeland Security may adjust the status of the alien (and any person admitted under section 1101(a)(15)(T)(ii) of this title as the spouse, parent, sibling, or child of the alien) to that of an alien lawfully admitted for permanent residence.

(2) Paragraph (1) shall not apply to an alien admitted under section 1101(a)(15)(T) of this title who is inadmissible to the United States by reason of a ground that has not been waived under section 1182 of this title, except that, if the Secretary of Homeland Security considers it to be in the national interest to do so, the Secretary of Homeland Security, in the Attorney General's discretion, may waive the application of—

(A) paragraphs (1) and (4) of section 1182(a) of this title; and

(B) any other provision of such section (excluding paragraphs (3), (10)(C), and (10)(E)).\footnote{So in original. Probably should be "Secretary's".}

if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 1101(a)(15)(T)(i)(I) of this title.

(3) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days, unless—

(A) the absence was necessary to assist in the investigation or prosecution described in paragraph (1)(A); or

(B) an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

(4) (A) The total number of aliens whose status may be adjusted under paragraph (1) during any fiscal year may not exceed 5,000.

(B) The numerical limitation of subparagraph (A) shall only apply to principal aliens and not to the spouses, sons, daughters, siblings, or parents of such aliens.

(5) Upon the approval of adjustment of status under paragraph (1), the Secretary of Homeland Security shall consult with the Attorney General, as appropriate, in making a determination under paragraph (1) whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution described in section 1101(a)(15)(T)(i)(I) of this title.

(7) The Secretary of Homeland Security shall permit aliens to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for a VAWA self-petitioner and for relief under sections 1101(a)(15)(T), 1101(a)(15)(U), 1105a, 1229b(b)(2), and 1254a(a)(3) of this title (as in effect on March 31, 1997).\footnote{So in original. Probably should be "(10(E))".}

\(m\) Adjustment of status for victims of crimes against women

(1) The Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 1101(a)(15)(U) of this title 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, unless the Secretary determines based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution, if—

(A) the alien has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 1101(a)(15)(U) of this title; and

(B) in the opinion of the Secretary of Homeland Security, the alien’s continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

(2) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days unless the absence is in order to assist in the investigation or prosecution or unless an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

(3) Upon approval of adjustment of status under paragraph (1) of an alien described in section 1101(a)(15)(U)(i) of this title the Secretary of Homeland Security may adjust the status of or issue an immigrant visa to a spouse, a child, or, in the case of an alien child, a parent who did not receive a nonimmigrant visa under section 1101(a)(15)(U)(ii) of this title if the Secretary considers the grant of such status or visa necessary to avoid extreme hardship.

(4) Upon the approval of adjustment of status under paragraph (1) or (3), the Secretary of Homeland Security shall record the alien’s lawful admission for permanent residence as of the date of such approval.

(5) (A) The Secretary of Homeland Security shall consult with the Attorney General, as appropriate, in making a determination under paragraph (1) whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a Federal law enforcement official, Federal prosecutor, Federal judge, or other Federal authority investigating or prosecuting criminal activity described in section 1101(a)(15)(U)(ii) of this title.

(B) Nothing in paragraph (1)(B) may be construed to prevent the Secretary from consulting with the Attorney General in making a determination whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a State or local law enforcement official, State or local prosecutor, State or local judge, or other State or local authority investigating or prosecuting criminal activity described in section 1101(a)(15)(U)(iii) of this title.

\footnote{So in original. Probably should be "Secretary’s".}

\footnote{So in original. Probably should be "(10(E))".}

Subsec. (h)(1). Pub. L. 110–457, §201(d)(2), substituted “...” for period at end and added subpars. (A) and (B).


Subsec. (m)(1). Pub. L. 110–457, §201(e)(2), substituted “...unless the Secretary” for “...unless the Attorney General...” in introductory provisions.


2006—Subsec. (a). Pub. L. 109–271, §16(1), substituted “...as a VAWA self-petitioner” for “...under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 1154(a)(1) of this title or...”

Subsec. (c). Pub. L. 109–271, §16(2), substituted “...as a VAWA self-petitioner” for “...under subparagraph (A)(iii), (A)(iv), (A)(v), (A)(vi), (B)(ii), (B)(iii), or (B)(iv) of section 1154(a)(1) of this title...”


Subsec. (m)(3). Pub. L. 109–162, §803(b)(2), substituted “Secretary of Homeland Security may adjust” for “Attorney General may adjust”.


Subsec. (i)(4)(C). Pub. L. 108–193, §8(a)(4)(A), redesignated paras. (3) and (4) as (4) and (5), respectively.

Subsec. (m). Pub. L. 108–193, §8(a)(4)(B), redesignated subsec. (i), relating to adjustment of status for victims of crimes against women, as (m).

...
“into the United States” to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 106–386, §1506(a)(1)(B), substituted “other than an alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (A)(v), (A)(vi), (B)(ii), (B)(iii), or (B)(iv) of section 1154(a)(1) of this title, subsection (a) of this section shall not be applicable to” for “Subsection (a) of this section shall not be applicable to”.

Subsec. (d). Pub. L. 106–554, §1104(a)(4) (div. B, title XV, §1505(b)(2)), struck out “or (m)” after “under subsection (a)” in two places.

Pub. L. 106–553–555, §1(a)(2) [title XI, §1102(d)(2)(A)], struck out “relating to an alien fiance or fiancee or the minor child of such alien” before “except to that of an alien”.

Pub. L. 106–553–555, §1(a)(2) [title XI, §1102(d)(2)(A)], substituted “under subsection (a) or (m) of this section, for “under subsection (a)” of this section,” in two places.

Subsec. (e)(1). Pub. L. 106–554, §1105(a)(4) (div. B, title XV, §1505(b)(2)), struck out “or (m)” after “under subsection (a)”.

Pub. L. 106–553–555, §1(a)(2) [title XI, §1102(d)(2)(B)], substituted “subsection (a) or (m)” for “subsection (a)”.

Subsec. (e)(2). Pub. L. 106–554, §1105(a)(4) (div. B, title XV, §1505(b)(2)), struck out “or (m)” after “under subsection (a)”.

Pub. L. 106–553–555, §1(a)(2) [title XI, §1102(d)(2)(A)], substituted “under subsection (a)” or “(m)” of this section, for “under subsection (a)” of this section,” in two places.


Pub. L. 106–554, §1104(a)(4) (div. B, title XV, §1505(a)(2)(A)) inserted before period at end “,” except that in the case of fees attributable to applications for a beneficiary with respect to whom a petition for classification, or an application for labor certification, described in paragraph (1)(B) was filed after January 14, 1998, one-half of such remaining portion shall be deposited by the Attorney General into the Immigration Examinations Fee Account established under section 1356(m) of this title”.


Pub. L. 106–386, §107(f), added subsec. (i) relating to adjustment of status for victims of trafficking.

Pub. L. 106–554, §1104(a)(4) (div. B, title XV, §1505(a)(2)), struck out subsec. (m), which related to adjustment of status of nonimmigrant described in section 1101(a)(15)(V) of this title who was determined to have been physically present in the United States at any time during period beginning July 1, 1995, and ending October 1, 2000.

Pub. L. 106–553–555, §1(a)(2) [title XI, §1102(c)(3)] added subsec. (m).

1997—Subsec. (c)(2). Pub. L. 105–119, §111(c)(1), substituted “(2) subject to subsection (k) of this section, an alien (other than “(2) an alien (other than”.

Subsec. (k). Pub. L. 105–119, §111(a), substituted first sentence for prior first sentence which read as follows: “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 under [this subpart].”

Subsec. (k)(3)(B). Pub. L. 105–119, §110(3), substituted “Breach Bond/Detention Fund established under section 1356(r) of this title” for “Immigration Detention Account established under section 1356(e)(1) of this title”.


Subsec. (c)(7), (8). Pub. L. 104–208, §375, added cls. (7) and (8).

Subsec. (e)(2). Pub. L. 104–208, §308(f)(2)(C), substituted “be admitted” for “enter”.

Pub. L. 104–208, §308(d)(1)(O), substituted “admission” for “entry”.

Subsec. (i). Pub. L. 104–208, §376(a)(1), substituted “$1,000” for “five times the fee required for the processing of applications under this section”.

Subsec. (i)(3). Pub. L. 104–208, §376(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “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.”

Subsec. (j). Pub. L. 104–208, §371(a)(4)(A), redesignated subsec. (i), relating to adjustment to permanent resident status, as (j).

Subsec. (j)(3). Pub. L. 104–208, §671(a)(5), substituted “paragraph (1) or (2)” for “paragraphs (1) or (2)”.


Subsec. (l). Pub. L. 103–322, §13003(c)(1), added subsec. (l) relating to adjustment to permanent resident status.

Pub. L. 103–317, §506(b), added subsec. (l) relating to adjustment in status of certain aliens physically present in the United States.

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. (i)(1), (2), (3). Pub. L. 102–119, §§2(c)(1), substituted “(J),” for “(I),” and “(K)” for “(I)”, “(J),”.

Subsec. (e)(3). Pub. L. 102–232, §308(a), substituted “section 1154(g)” for “section 1154(h)”.


1990—Subsec. (b). Pub. L. 101–649, §162(e)(3), struck out “or nonpreference” after “number of the preference” and substituted “section 1151(a)” for “section 1151(e) or 1153(a)” and “succeeding fiscal year” for “fiscal year then current”.


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)(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. (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 fiancé 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 116a 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.".


1981—Subsec. (c)(2). Pub. L. 97–161 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 an alien crewman, alien 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, §13a, 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, §13b, 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 alien crewman's 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 Date of 2008 Amendment**


**Effective Date of 2000 Amendments**

Pub. L. 106–554, §1(a)(4) [div. B, title XV, §1506], Dec. 21, 2000, 114 Stat. 2763, 2763A–328, provided that: "This title [amending this section, enacting provisions set out as notes under this section, and amending provisions set out as notes under this section and section 1101 of this title] shall take effect as if included in the enactment of the Legal Immigration Family Equity Act [see Short Title of 2000 Amendments note set out under section 1101 of this title]."

Amendment by section 1(a)(2) [title XI, §1102(c)(2)] of Pub. L. 106–553 effective Dec. 21, 2000, and applicable to an alien who is the beneficiary of a classification petition filed under section 1154 of this title or on or before Dec. 21, 2000, see section 1(a)(2) [title XI, §1102(e)] of Pub. L. 106–553, set out as a note under section 1101 of this title.

Amendment by section 1(a)(2) [title XI, §1103(c)(3)] of Pub. L. 106–553 effective Dec. 21, 2000, and applicable to an alien who is the beneficiary of a classification petition filed under section 1154 of this title, see section 1(a)(2) [title XI, §1103(d)] of Pub. L. 106–553, set out as a note under section 1101 of this title.


**Effective Date of 1996 Amendments**

Amendment by section 308(f)(1)(O), (2)(C), (g)(10)(B) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Aug. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

Section 378(c) of div. C of Pub. L. 104–208 provided that: "The amendments made by this section [amending this section and section 1356 of this title] shall apply to applications made on or after the end of the 90-day period beginning on the date of the enactment of this Act [Sept. 30, 1996]."


Amendment by Pub. L. 104–132 effective Apr. 24, 1996, and applicable to applications filed before, on, or after such date if final action not yet taken on them before such date, see section 413(g) of Pub. L. 104–132, set out as a note under section 1253 of this title.

**Effective Date of 1994 Amendments**


**Effective Date of 1991 Amendments**


Section 308(a) of Pub. L. 102–232 provided that the amendment made by that section is effective Oct. 1, 1991.


**Effective Date of 1990 Amendment**

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 subsection (b) [amending this section] and by section 117 of IRCA [section 117 of Pub. L. 99–603, amending this section] shall apply to adjustments occurring on or after November 6, 1986.”


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. 99–639 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 1986 Amendment note above.

**Effective Date of 1981 Amendment**


**Effective Date of 1976 Amendment**

Amendment by Pub. L. 94–571 effective on first day of the 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 29 of Pub. L. 89–236, set out as a note under section 1351 of this title.

**Abolition of Immigration and Naturalization Service and Transfer of Functions**

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

**Adjustment of Status for Certain Haitian Orphans**

Pub. L. 111–293, Dec. 9, 2010, 124 Stat. 3175, provided that: “(a) In General.—The Secretary of Homeland Security may adjust the status of an alien to that of an alien lawfully admitted for permanent residence if the alien—

‘‘(1) was inspected and granted parole into the United States pursuant to the humanitarian parole policy for certain Haitian orphans announced by the Secretary of Homeland Security on January 18, 2010, and suspended as to new applications on April 15, 2010;

‘‘(2) is physically present in the United States;

‘‘(3) is admissible to the United States as an immigrant, except as provided in subsection (c); and

‘‘(4) files an application for an adjustment of status under this section not later than 3 years after the date of the enactment of this Act [Dec. 9, 2010].

‘‘(b) Numerical Limitation.—The number of aliens who are granted the status of an alien lawfully admitted for permanent residence under this section shall not exceed 1400.

‘‘(c) Grounds of Inadmissibility.—Section 212(a)(7)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(7)(A)) shall not apply to an alien seeking an adjustment of status under this section.

‘‘(d) Visa Availability.—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.) for any alien granted the status of having been lawfully admitted for permanent residence under this section.

‘‘(e) Aliens Deemed To Meet Definition of Child.—An unmarried alien described in subsection (a) who is under the age of 18 years shall be deemed to satisfy the requirements applicable to adopted children under section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) if—

‘‘(1) the alien obtained adjustment of status under this section; and

‘‘(2) a citizen of the United States adopted the alien prior to, on, or after the date of the decision granting such adjustment of status.

‘‘(f) No Immigration Benefits for Birth Parents.—No birth parent of an alien who obtains adjustment of status under this section shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this section or the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

‘‘(g) Compliance with PayGO. —The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010 [2 U.S.C. 931 et seq.], shall be determined by reference to the latest statement titled ‘Budgetary Effects of PayGO Legislation’ for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, or, if such statement has been submitted prior to the date of enactment of this Act, the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.”

**Permitting Motion to Reopen**

Pub. L. 106–554, § 1(a)(4) [div. B, title XV, § 1505(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–326, provided that: Notwithstanding any time and number limitations imposed by law on motions to reopen exclusion, removal, or deportation proceedings (except limitations premised on an alien’s conviction of an aggravated felony (as defined by section 181(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(4))), a national of Cuba or Nicaragua who has become eligible for adjustment of status under the Nicaraguan Adjustment and Central American Relief Act (see Short Title of 1997 Central American Relief Act Act for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, or, if such statement has been submitted prior to the vote on passage).
moval, or deportation proceedings (except limitations premised on an alien’s conviction of an aggravated fel-
yony as defined by section 101(a) of the Immigration
and Nationality Act [(§ 8 U.S.C. 1101(a)), a national of
Haiti who has become eligible for adjustment of status
under the Haitian Refugee Immigration Fairness Act of
1998 [see Short Title of 1998 Amendments note set out
under section 1301 of this title] as a result of the
amendments made by paragraph 1 [amending section
92 of section 101(h) of div. A of Pub. L. 105–277, set out
below], may file one motion to reopen exclusion, depar-
tation or removal proceedings to apply for such adjust-
ment under that Act. The scope of any proceeding re-
opened on this basis shall be limited to a determination
of the alien’s eligibility for adjustment of status under
that Act. All such motions shall be filed within 180
days of the date of the enactment of this Act [Dec. 21,
2000]."

ADJUSTMENT OF STATUS OF CERTAIN JEWISH SYRIAN
NATIONALS

Pub. L. 106–378, div. A, § 191(b) [title IX, § 902], Oct. 21,
1522; Pub. L. 106–554, § 1(a)(4) [div. B, title XV,
§ 1505(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–326;
Stat. 2250, provided that:

(1) ADJUSTMENT OF STATUS.—

(A) In general.—The status of any alien described in
subsection (b) shall be adjusted by the Attorney
General to that of an alien lawfully admitted for
permanent residence, if the alien—

(i) applies for such adjustment before April 1,
2000; and

(ii) is otherwise admissible to the United States
for permanent residence, except that, in determin-
ing such admissibility, the grounds for inadmis-
sibility specified in paragraphs (4), (5), (6), (7), (9),
and (9)(B) of section 212(a) of the Immigration and
Nationality Act [(§ 8 U.S.C. 1182(a)(4), (5), (6), (7)
and (9)(B)] shall not apply.

(B) Notice of final determination.—In the case of
an alien described in subsection (b) (1) who
is applying for adjustment of status under this sec-
tion—

(i) the provisions of section 241(a)(5) of the
Immigration and Nationality Act [(§ 8 U.S.C. 1255(a)(5)]
shall not apply; and

(ii) the Attorney General may grant the alien a
waiver on the grounds of inadmissibility under sub-
paragraphs (A) and (C) of section 212(a)(9) of such
Act [(§ 8 U.S.C. 1182(a)(9)]

In granting waivers under subparagraph (B), the At-
torney General shall use standards used in granting
waiver under subparagraphs (A)(iii) and (C)(ii) of such
section 212(a)(9)."

(2) Relationship of Application to Certain Orders.—An alien present in the United States who has been
ordered excluded, deported, removed, or ordered to
depart voluntarily from the United States under any
provision of the Immigration and Nationality Act [(§ 8 U.S.C. 1101 et seq.)] may, notwithstanding such
order, apply for adjustment of status under paragraph
(1). Such an alien may not be required, as a condition
on submitting or granting such application, to file a
separate motion to reopen, reconsider, or vacate such
order. If the Attorney General grants the application, the
Attorney General shall cancel the order, and the
Attorney General makes a final decision to deny the
application, the order shall be effective and enforce-
able to the same extent as if the application had not
been made.

(b) Aliens Eligible for Adjustment of Status.—
The benefits provided by subsection (a) shall apply to
any alien who is a national of Haiti who—

(1) was present in the United States on December
31, 1995, who—

(A) filed for asylum before December 31, 1995;

(B) was paroled into the United States prior to
December 31, 1995, after having been identified as
having a credible fear of persecution, or paroled for
emergency reasons or reasons deemed strictly in the
public interest, or

(C) was a child (as defined in the text above sub-
paragraph (A) of section 101(b)(1) of the Immi-
gration and Nationality Act [(§ 8 U.S.C. 1101(b)(1))]
at the time of arrival in the United States and on
December 31, 1995, and who—

(i) arrived in the United States without par-
ents in the United States and has remained with-
out parents in the United States since such arriv-
al;

(ii) became orphaned subsequent to arrival in
the United States, or

(iii) was abandoned by parents or guardians
prior to April 1, 1998 and has remained abandoned
since such abandonment; and

(2) has been physically present in the United States
for a continuous period beginning not later than
December 31, 1995, and ending not earlier than
the date the application for such adjustment is filed,
except that an alien shall not be considered to have
failed to maintain continuous physical presence by
reason of an absence, or absences, from the United
States for any period or periods amounting in the ag-
gregate to not more than 180 days.

(c) Stay of Removal.—

(1) In General.—The Attorney General shall pro-

vide by regulation for an alien who is subject to a
final order of deportation or removal or exclusion
to seek a stay of such order based on the filing of an
application under subsection (a), except where the Attorney General has
made a final determination to deny the application.

(2) During Certain Proceedings.—Notwithstanding
any provision of the Immigration and Nationality Act [(§ 8 U.S.C. 1101 et seq.)], the Attorney General shall
not order any alien to be removed from the United
States, if the alien is in exclusion, deportation, or re-
moval proceedings under any provision of such Act
and has applied for adjustment of status under sub-
section (a), except where the Attorney General has
made a final determination to deny the application.

(d) Authorization of Employment.—The Attorney
General may authorize an alien who has applied for adjust-
ment of status under subsection (a) to engage in em-
ployment in the United States during the pendency of
such application and may provide the alien with an
‘‘employment authorized’’ endorsement or other ap-
propriate document signifying authorization of em-
ployment, except that if such application is pending for
a period exceeding 180 days, and has not been de-
nied, the Attorney General shall authorize such em-
ployment.
“(A) the alien is a national of Haiti;

“(B)(i) the alien is the spouse, child, or unmarried son or daughter of an alien who is or was eligible for classification under subsection (a), except that, in the case of such an unmarried son or daughter, the son or daughter shall be required to establish that the son or daughter has been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date on which the application for such adjustment is filed;

“(ii) the alien is the spouse of a citizen of the United States who, on the date the application is filed, was a lawful permanent resident of the United States,

“(2) the alien is otherwise admissible to the United States for permanent residence, except that, in determining such admissibility, the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4), (5), (6)(A), (7)(A), (9)(B)] shall not apply;

“(3) the alien is the child of a citizen of the United States who is or was a lawful permanent resident of the United States on the date the application is filed; and

“(4) the alien were a child of a citizen of the United States who was a lawful permanent resident of the United States on the date the alien was born.

“(2) PROOF OF CONTINUOUS PRESENCE.—For purposes of determining the period of continuous physical presence referred to in paragraph (1)(B), an alien shall be considered to have failed to maintain continuous physical presence by reason of an absence, or absence, from the United States for any period or periods amounting in the aggregate to not more than 180 days.

“(3) AVAILABILITY OF ADMINISTRATIVE REVIEW.—The Attorney General shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to—

“(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act [8 U.S.C. 1255]; or

“(2) aliens subject to removal proceedings under section 240 of such Act [8 U.S.C. 1229a].

“(4) LIMITATION ON JUDICIAL REVIEW.—A determination by the Attorney General as to whether the status of an alien should be adjusted under this section is final and shall not be subject to review by any court.

“(5) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—When an alien is granted the status of having been lawfully admitted for permanent residence, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under any provision of the Immigration and Nationality Act [8 U.S.C. 1153 et seq.].

“(6) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—Except as otherwise specifically provided in this title [section 101(b) [title IX] of Pub. L. 105–277, enacting sections 1377 and 1378 of this title and provisions set out as a note under section 1101 of this title], 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 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 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 does not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

“(7) ADJUSTMENT OF STATUS HAS NO EFFECT ON ELIGIBILITY FOR WELFARE AND PUBLIC BENEFITS.—No alien whose status has been adjusted in accordance with this section and who was not a qualified alien on the date of enactment of this Act (Oct. 21, 1998) may, solely on the basis of such adjusted status, be considered to be a qualified alien under section 431(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [8 U.S.C. 1641(b)], as amended by section 5302 of the Balanced Budget Act of 1997 [Public Law 105–33; 111 Stat. 398], for purposes of determining the alien’s eligibility for supplemental security income benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] or medical assistance under title XIX of such Act [42 U.S.C. 1396 et seq.].

“(8) PERIOD OF APPLICABILITY.—Subsection (i) shall not apply after October 1, 2003.”


“ADJUSTMENT OF STATUS OF CERTAIN NICARAGUAANS AND CUBANS


“(a) ADJUSTMENT OF STATUS.—

“(1) IN GENERAL.—The status of any alien described in subsection (b) shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if the alien—

“(A) applies for such adjustment before April 1, 2000; and

“(B) is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4), (5), (6)(A), (7)(A), (9)(B)] shall not apply.

“(2) RULES IN APPLYING CERTAIN PROVISIONS.—In the case of an alien described in subsection (b) or (d) who is applying for adjustment of status under this section—

“(A) the provisions of section 241(a)(5) of the Immigration and Nationality Act [8 U.S.C. 1231(a)(5)] shall not apply; and

“(B) the Attorney General may grant the alien a waiver on the grounds of inadmissibility under subparagraphs (A) and (C) of section 212(a)(9) of such Act [8 U.S.C. 1182(a)(9)].

“In granting waivers under subparagraph (B), the Attorney General shall use standards used in granting consent under subparagraphs (A)(iii) and (C)(ii) of such section 212(a)(9).

“(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—An alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] may, notwithstanding such order, apply for adjustment of status under paragraph (1). Such an alien may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate such
If the Attorney General grants the application, the Attorney General shall cancel the order. If the Attorney General renders a final administrative decision to deny the application, the order shall be effective and enforceable to the same extent as if the application had not been made.

(b) Aliens Eligible for Adjustment of Status.—

(1) I, the spouse, child, or unmarried son or daughter of an alien whose status is adjusted under this section to that of an alien lawfully admitted for permanent residence subsection (a), except that in the case of such an unmarried son or daughter, the son or daughter shall be required to establish that the son or daughter has been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment under subsection (a) is filed, except an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence, or absences, from the United States for any periods in the aggregate not exceeding 180 days.

(2) Aliens subject to removal proceedings under any provision of such Act not order any alien to be removed from the United States unless the Attorney General has applied for adjustment of status under subsection (a), and the spouse, child, or child of the spouse has been battered or subjected to extreme cruelty by the alien that filed for adjustment under subsection (a);

(c) the alien applies for such adjustment and is physically present in the United States on the date the application is filed;

(d) the alien is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1154(a)(1)(J)].

(e) Availability of Administrative Review.—The Attorney General shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to—

(1) aliens subject to removal proceedings under section 240 of such Act [8 U.S.C. 1229a];

(2) aliens subject to removal proceedings under section 241 of such Act [8 U.S.C. 1227(a)(1)(J)].
shall apply in the administration of this section. Nothing contained 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. 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.


ADJUSTMENT OF STATUS FOR CERTAIN POLISH AND HUNGARIAN PAROLEES

Section 666 of div. C of Pub. L. 104–208 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 Poland or Hungary; and

‘‘(2) was inspected and granted parole into the United States during the period beginning on November 1, 1989, and ending on December 31, 1991, 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) and subparagraphs (A), (B), and (C) of paragraph (3)) with respect to such an adjustment for humanitarian purposes, to assure family unity when it is otherwise in the public interest.

‘‘(d) DATE OF APPROVAL.—Up on the approval of such an application for adjustment of status, the Attorney General shall create a record of the alien’s admission as an alien lawfully admitted for permanent residence 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 Naturalization Act (8 U.S.C. 1101 et seq.).’’

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 FOR CERTAIN NATIONALS OF PEOPLE’S REPUBLIC OF CHINA


‘‘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 FOR 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. 1152(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 subparagraphs (A), (B), and (C) 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 which

“(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.

“(c) 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


“(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 and Nationality 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 attained 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 163(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.

“(d) APPLICATION PERIOD.—The alien, and accompanying spouse and children, may be admitted as an immigrant within the 5-year period beginning on the date the Attorney General promulgates regulations required under subsection (a).

[Section 305(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. 101–499.]

ADJUSTMENT OF STATUS FOR CERTAIN SOVIET AND INDOCHINESE PAROLEES


“(a) The status of certain aliens from Vietnam, Cambodia, and Laos described in subsection (b) of this section may be adjusted by the Secretary of Homeland Security, under such regulations as the Secretary of Homeland Security may prescribe, to that of an alien lawfully admitted for permanent residence if

“(1) the alien makes an application for such adjustment and pays the appropriate fee;

“(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence except as described in subsection (c); and

“(3) the alien had been physically present in the United States prior to October 1, 1997.

“(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 was inspected and paroled into the United States after October 1, 1997 and was physically present in the United States on October 1, 1997 and

“(1) was paroled into the United States from Vietnam without the auspices of the Orderly Departure Program; or

“(2) was paroled into the United States from a refugee camp in East Asia; or

“(3) was paroled into the United States from a displaced person camp administered by the United Nations High Commissioner for Refugees in Thailand.

“(c) WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.—The provisions of paragraphs (4), (5), and (7)(A) and (B) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4), (5), (7)(A), (B)] shall not be applicable to any alien seeking admission to the United States under this subsection, and notwithstanding [sic] any other provision of law, the Secretary of Homeland Security may waive 212(a)(1), 212(a)(6)(B), (C), and (F); 212(a)(8)(A); 212(a)(10)(B) and (D) with respect to such an alien in order to prevent extreme hardship to the alien or the alien’s spouse, parent, son or daughter, who is a citizen of the United States or an alien lawfully admitted for permanent residence. Any such waiver by the Secretary of Homeland Security shall be in writing and shall be granted only on an individual basis following an investigation continued to maintain.

“(d) DATE OF APPROVAL.—Upon the approval of such an application for adjustment of status, the Secretary
of Homeland Security 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)(1), (b)(2), and (b)(3).

(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 and the Attorney General may waive any of the provision of section 212(a) (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.

(f) Date of Approval.—Upon the approval of such an application for adjustment of status, the Attorney General shall make 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.].

(f) Date of Approval.—Upon the approval of such an application for adjustment of status, the Attorney General shall make 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.].

(f) Date of Approval.—Upon the approval of such an application for adjustment of status, the Attorney General shall make 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.].

(f) Date of Approval.—Upon the approval of such an application for adjustment of status, the Attorney General shall make 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).
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 29, 1996) designated by the Attorney General. In the case of any alien described in section 245(a)(1)(J) of this Act, the alien must apply for such adjustment not later than the end of the 30-day period following the date of enactment of this Act [Nov. 2, 1996], whichever date is later.

(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 (as in effect before October 1, 1996), must make application under this section not later than the end of the 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 U.S.C. App. 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 dem-
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onstrated under clause (1)(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 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 96–145 [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

(A) In general

Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, 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;

(ii) make any publication whereby the information furnished by any particular applicant can be identified; or

(iii) 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.

(B) Required disclosures

The Attorney General shall provide the information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).
(C) Authorized disclosures

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.

(D) Construction

(i) In general

Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal convictions

Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(E) Crime

Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than $10,000.

(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 (as in effect before October 1, 1996).

(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.

(C) Jurisdiction of courts

Notwithstanding any other provision of law, no court shall have jurisdiction of any cause of action or claim by or on behalf of any person asserting an interest under this section unless such person in fact filed an application under this section within the period specified by subsection (a)(1) of this section, or attempted to file a complete application and application fee with an authorized legalization officer of the Service but had the application and fee refused by that officer.

(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 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 State program of assistance 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 and Nutrition Act of 2008 [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)(i) 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 resident 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 assistance under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.]) 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 section 1916(a)(1) 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)(B) of the Social Security Act [42 U.S.C. 1396o(a)(2)(D)]), and
(II) services described in section 1916(a)(2)(B) of such Act (relating to service for pregnant women).
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(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):


(B) The Child Nutrition Act of 1966 [42 U.S.C. 1771 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) Title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.].


(H) The Public Health Service Act [42 U.S.C. 201 et seq.].


(j) Adjustment not affecting Fasch-Stone benefits

For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96–122) 2 [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.

(8) So in original. Probably should be "(Public Law 96–422)."

(9) So in original. Probably should be "(Public Law 96–422)."

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 Public Law 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.


The Social Security Act, referred to in subsec. (h)(1)(A), (2)(B), (3)(A)(ii), (3)(B)(i), (C), (4)(I), is act Aug. 14, 1935, 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, 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.), 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.


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Amendments


For the “Job Training Partnership Act”.


Subsec. (c)(5). Pub. L. 104–208, § 623(a), amended heading and text of par. (5) generally, substituting subpars. (A) to (E) for former par. consisting of introductory and concluding provisions and subpars. (A) to (C), relating to confidentiality of information.

Pub. L. 104–208, § 308(d)(1), substituted “Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than $5,000 for each violation.” for “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.” in concluding provisions.

Pub. L. 104–132, § 431(a)(2), which directed the insertion of “and” and cl. (ii) after “Title 13”, was executed by making the insertion after “Title 13” in concluding provisions to reflect the probable intent of Congress. Cl. (ii) read as follows: “may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used: (I) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated; or (II) for criminal law enforcement purposes against the alien whose application is to be disclosed.”

Pub. L. 104–132, § 431(a)(1), which directed amendment by inserting “(i)” after “except the Attorney General”, was executed by making the insertion after “except that the Attorney General” in concluding provisions to reflect the probable intent of Congress.


Subsec. (c)(7)(C). Pub. L. 103–416, § 212(b)(1), realigned margins and substituted “paragraph (B)” for “subsection (B)”.

Subsec. (b)(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.”

Section 2301 of Title 20 and Tables.


Title I of the Act is classified to subchapter V of Title 20, Education, primarily to chapter 6A, Subchapter I of chapter 6A, subchapter I, section 936, as amended, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of Title 42 and Tables.

Title 20 and Tables.

The Elementary and Secondary Education Act of 1965 is classified generally to subchapter IV (§ 1070 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1711 of Title 20 and Tables.


The Headstart-Follow Through Act, referred to in subsec. (b)(4)(E), is title V of Pub. L. 98–452, Aug. 20, 1984, 78 Stat. 227, as amended, which was classified generally to chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 20 and Tables.


The Richard B. Russell National School Lunch Act, referred to in chapter 75 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 20 and Tables.

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.”

Subsec. (c)(1)(A), Pub. L. 101–649, § 703(a)(2), substituted “‘2-year period’ for ‘‘one-year period’.”

Subsec. (b)(3)(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)(i)(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)’”.


Subpar. (B) to reflect the probable intent of Congress.

Amendment by section 308(g)(2)(B), (5)(A)(iii) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

Section 377(b) of div. C of Pub. L. 104–208 provided that: “The amendment made by subsection (a) [amending this section] shall be effective as if included in the enactment of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603].”

Amendment by section 384(d)(4) of Pub. L. 104–208 applicable to offenses occurring on or after Sept. 30, 1996, see section 384(d)(4) of Pub. L. 104–208, set out as a note under section 1160 of this title.

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

Effective Date of 1994 Amendment


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(c)(2) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Effective Date of 1988 Amendment


Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

Report on Citizenship of Certain Legalized Aliens

Section 109 of Pub. L. 103–416 provided that: ‘‘Not later than June 30, 1996, the Commissioner of the Immi-
gration 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 pending.

"(4) The number of applications returned for correction.

FAMILY UNITY


(a) TEMPORARY STAY OF REMOVAL 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, 1996 (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 removed 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 237(a) of the Immigration and Nationality Act [8 U.S.C. 1227(a)] (other than so much of section 237(a) of such Act as relates to a ground of inadmissibility 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 evidence of 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. 1255a, 1160]; or

"(B) temporary or permanent residence status under section 245A of the Immigration and Nationality Act [8 U.S.C. 1255a, 1161].

(c) APPLICATION OF DEFINITIONS.—Except as otherwise specified 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 208(b)(2)(A) 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,
‘(b) Status and Adjustment of Status.—The provisions of subsections (b), (c), (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.’

(a) The provisions were contained in Pub. L. 100–202, §101(a) [title IX, §§901, 902], Dec. 22, 1987, 101 Stat. 1329, 1329–43.

(b) Procedures for Property Acquisition or Leasing

Pub. L. 99–603, title II, §201(c)(1), Nov. 6, 1986, 100 Stat. 3493, is amended by Pub. L. 100–525, §2(n)(3), Oct. 24, 1988, 102 Stat. 2612, which provided that, ‘‘Notwithstanding any other provision of law, the Attorney General is authorized to promulgate regulations providing, among other things, that: ‘‘(1) geographical origins and manner of entry of these aliens into the United States, and
‘‘(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 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.’’

(d) Application of Certain State Assistance Provisions


(e) 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) Initial 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 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 Secretary of Homeland Security 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, as amended, set out as a note under section 1364 of this title.]

§ 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 101(a)(15)(A)(i) or (ii) or 101(a)(15)(G)(i) or (ii) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(A)(i) or (ii), (G)(i), (ii)], 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 admisible for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], and that such ac-
tion 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 202 of the Immigration and Nationality Act (8 U.S.C. 1152) 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.


REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (b), is act June 27, 1952, ch. 477, 66 Stat. 63, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

CODIFICATION

Section was not enacted as a part of the Immigration and Nationality Act which comprises this chapter.

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), as amended by Pub. L. 104–208, substituted “The” for “If neither the Senate nor the House of Representatives passes such a resolution within the time above specified, the”.

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 1996 AMENDMENT


EFFECTIVE DATE OF 1981 AMENDMENT


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.

DEFINITIONS; APPLICABILITY OF SECTION 1101(a) AND (b) OF THIS TITLE

The definitions in subsections (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.

§ 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 1253 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 removal 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. Nothing in this subsection shall require the Attorney General to rescind the alien’s status prior to commencement of procedures to remove the alien under section 1229a of this title, and an order of removal issued by an immigration judge shall be sufficient to rescind the alien’s status.

(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.


REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original, “this Act”, meaning act June 27, 1952, ch. 477,
Service, transfer of functions, and treatment of related amendments made by that section is effective Oct. 25, references, see note set out under section 1551 of this title.

**Effective Date of 1996 Amendment**
Amendment by section 308(e)(1)(H) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

**Effective Date of 1994 Amendment**
Section 219(m) of Pub. L. 103–416 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the title III–A effective date (as defined in 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**
Amendment by section 309(e)(1)(H) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

**Effective Date of 1994 Amendment**
Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

**Abolition of Immigration and Naturalization Service and Transfer of Functions**
For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1258. Change of nonimmigrant classification
(a) The Secretary of Homeland Security 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 and who is not inadmissible under section 1182(a)(9)(B)(i) of this title (or whose inadmissibility under such section is waived under section 1182(a)(9)(B)(v) of this title), except (subject to subsection (b) of this section) 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 for-
eign residence requirement of section 1182(e) of this title and has not received a waiver there-of, 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.

(b) The exceptions specified in paragraphs (1) through (4) of subsection (a) of this section shall not apply to a change of nonimmigrant classification to that of a nonimmigrant under subparagraph (T) or (U) of section 1101(a)(15) of this title.


AMENDMENTS


1994—Pub. L. 103–322, § 130003(b)(3), as amended by Pub. L. 104–208, § 671(a)(2), substituted “(K), (S)’’ for “or (K)”.


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 diplomatic status, prohibited the adjustment of non-immigrant 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 1996 AMENDMENT


EFFECTIVE DATE OF 1981 AMENDMENT


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.

§ 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 and is not deportable under section 1227(a)(4)(B) of this title.


AMENDMENTS


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.
§ 1280. 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.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original, ‘‘this Act’’, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

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.

PART VI—SPECIAL PROVISIONS RELATING TO ALIEN CREWMEM

§ 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, or of 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 At-
torney 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 1101 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.

(c) 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.

(Amendment by Pub. L. 102–232 substituted “con- signee” for “charterer” after “the owner, agent,” in second sentence.

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 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 1282 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 306(c)(3) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Abolition of Immigration and Naturalization Service and Transfer of Functions
For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

Inapplicability of Amendment by Pub. L. 101–649

§ 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 on which he arrived, 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 removed from the United States at the expense of the transportation line which brought him to the United States. Until such alien is so removed, 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 1229a 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.

(Amendment by Pub. L. 101–649 applicable to services performed on or after 180 days after Nov. 29, 1990, see section 306(c)(3) of Pub. L. 101–649, set out as a note under section 1101 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.)

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.

§ 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 remove such alien crewman if required to do so by an immigration officer, whether such removal requirement is imposed before or after the crewman is permitted to land temporarily under section 1182(d)(5) or 1283 of this title, pay to the Commissioner the sum of $3,000 for each alien crewman in respect of whom 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 remove such alien crewman.
§ 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.


AMENDMENTS

1996—Pub. L. 104-208 substituted “remove” for “deport,” in subsec. (a) and (b), “removal” for “deportation,” wherever appearing in subsecs. (a) and (c), and “removed” for “deported” in subsec. (c).


1990—Subsec. (a). 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 1211 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 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


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 1211 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.
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.


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.

AMENDMENTS
1990—Pub. L. 101–649 substituted “‘$10,000’” for “‘$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.

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.

§ 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.


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.

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.

§ 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 “‘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.

(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 employ-
er'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) 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

(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 attestation 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 has failed 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 (B). 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 and who are available in sufficient numbers and 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 the outcome of 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 the particular time and location from the parties to whom notice has been provided under clause (ii) of subparagraph (D) of 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 particular 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 at the particular 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 90 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.

1 So in original. The word “at” probably should not appear.
(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 of a vessel is in each list under section 1231 of this title that it continues to comply with the conditions in the attestation.

(5)(A) Except as otherwise provided by subparagraph (B), section (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 vacuum-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; and

(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 533 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.


References in Text


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 107 of Title 29 and Tables.

Amendments


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), which amended subsec. (a) 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

§ 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.


AMENDMENTS


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


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.
after Nov. 14, 1986, see section 23(b) of Pub. L. 99–653, set out as a note under section 1301 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.

**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.

### § 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 removal, (5) aliens who are or have been on criminal probation or criminal parole within the United States, and (6) 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 non-immigrant 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.


**AMENDMENTS**


**Effective Date of 1996 Amendment**

Amendment by section 308(e)(1)(J) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

**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.

### § 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.

(f) **Alien’s social security account number**

Notwithstanding any other provision of law, the Attorney General is authorized to require any alien to provide the alien’s social security account number for purposes of inclusion in any record of the alien maintained by the Attorney General or the Service.


**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 469 of this title, was repealed by section 483(a)(39) of act June 27, 1952.

This chapter, referred to in subsec. (d), was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

**AMENDMENTS**


1990—Subsec. (b). Pub. L. 101–649 inserted "(1) pursuant to section 1307(f)(2) of this title, and (2) "after "only".".


**Effective Date of 1988 Amendment**


**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, 1966, see section 23(b) of Pub. L. 99–653, set out as a note under section 1201 of this title.

**Abolition of Immigration and Naturalization Service and Transfer of Functions**

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

**§ 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.


**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**


**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.

**§ 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 removed in the manner provided by part IV 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 removed in the manner provided in part IV 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, §366, 66 Stat. 225; Pub. L. 104–208, div. C, title III, §308(e)(2)(G), (g)(9)(A), Sept. 30, 1996, 110 Stat. 3009–620, 3009–624.)

AMENDMENTS

1996—Subsecs. (b), (c). Pub. L. 104–208 substituted “removed” for “deported” and “Part IV” for “Part V”.

Effective Date of 1996 Amendment

Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

Abolition of Immigration and Naturalization Service

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.

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 1223 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).

(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 1211 of this title.)

Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208 substituted “$3,000” for “$1,000”.

1990—Subsec. (a). Pub. L. 101–649 substituted “$3,000” for “$1,000”.


Effective Date of 1996 Amendment

Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

Effective Date of 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 1211 of this title.

Abolition of Immigration and Naturalization Service

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.
§ 1322. Bringing in aliens subject to denial of admission 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 inadmissible 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 non-immigrant 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 (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 condition causing inadmissibility 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 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. 3009–617, 3009–618.)

AMENDMENTS


1990—Pub. L. 101–649, §603(a)(15)(D), substituted “exclusion on a health-related ground” for “disability or afflicted with disease” in section caption.

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, §603(a)(15)(B), 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 (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, §603(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, §543(a)(9)(C), redesignated subsec. (d) as (c), Former subsec. (c) redesignated (b).


Subsecs. (b), (d), Pub. L. 101–649, §603(a)(15)(C), redesignated subsec. (e) as (d), Former subsec. (d) redesignated (c).


EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT


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 in-
§ 1323. Unlawful bringing of aliens into United States

(a) Persons liable

(1) It shall be unlawful for any person, including any transportation company, or the owner, master, commanding officer, agent, charterer, or consignee of any such 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.

(2) It is unlawful for an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft who is bringing an alien (except an alien crewmember) to the United States to take any consideration to be kept or returned contingent on whether an alien is admitted to, or ordered removed from, the United States.

(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 remains unpaid, except that clearance may be granted prior to the determination of such question 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.

(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.


(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.

References in Text

This chapter, referred to in subsec. (a)(1), was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 227, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

Amendments

1996—Subsec. (a). Pub. L. 104–208, § 308(c)(3), designated existing provisions as par. (1) and added par. (2).


Pub. L. 104–208, § 671(b)(6), substituted "remains" for "remain".

Subsec. (d). Pub. L. 104–208, § 371(b)(8), substituted "immigration judges" for "special inquiry officers".

Pub. L. 104–208, § 308(e)(13), struck out subsec. (d) which 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 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 immigration judges 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."


Pub. L. 103–416, §209(a)(1), as amended by Pub. L. 104–208, §671(b)(7), substituted "a fine of $3,000" for ""the sum of $5,000.""

Pub. L. 103–416, §206(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 $3000,"" 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""."


1991—Subsec. (b). Pub. L. 102–232 substituted "Commissioner" for ""collector of customs" before ""a fine of $3,000" for ""the sum of $3,000,"", 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 $3000,"", 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""."


Effective Date of 1994 Amendment
Section 209(b) of Pub. L. 103–416, as amended by Pub. L. 104–208, div. C, title VI, §671(b)(8), Sept. 30, 1996, 110 Stat. 3009–722, provided that: "The amendments made by this section [amending 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]."


Effective Date of 1991 Amendment

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.

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.

§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; (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; or (v)(I) engages in any conspiracy to commit any of the preceding acts, or (II) aids or abets the commission of any of the preceding acts,
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) or (v)(I) or in the case of a violation of
subparagraph (A)(ii), (iii), or (iv) in which the
offense was done for the purpose of commercial
advantage or private financial gain, be
fined under title 18, imprisoned not more than
10 years, or both;
(ii) in the case of a violation of subparagraph
(A)(i), (iii), (iv), or (v)(II) 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
(iii) in the case of a violation of subparagraph
(A)(i), (iii), (iv), or (v) resulting in
the death of any person, be
fined under title 18, imprisoned for
any term of years or for life, or
fined under title 18, or imprisoned for
not more than 10 years,

(C) It is not a violation of clauses (i) or (ii)
of subparagraph (A), or of clause (iv) of subpara-
graph (A) except where a person encourages or
induces an alien to come to or enter the United
States, for a religious denomination having a
bona fide nonprofit, religious organization in
the United States, for a religious denomination
for at least one year.

(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 alien in
respect to whom a violation of this paragraph occurs—
(A) be fined in accordance with title 18 or
imprisoned not more than one year, or both; or
(B) in the case of—
(i) an offense committed with the intent or
with reason to believe that the alien unlaw-
fully brought into the United States will
commit an offense against the United States
or any State punishable by imprisonment for
more than 1 year.
(ii) an offense done for the purpose of com-
mercial advantage or private financial gain, or

1So in original. Probably should be “clause”.

be fined under title 18 and shall be imprisoned,
in the case of a first or second violation of
subparagraph (B)(iii), not more than 10 years,
in the case of a first or second violation of
subparagraph (B)(i) or (B)(ii), not less than 3
nor more than 10 years, and for any other vio-
lation, not less than 5 nor more than 15 years.

(3)(A) Any person who, during any 12-month
period, knowingly hires for employment at least
10 individuals with actual knowledge that the
individuals are aliens described in subparagraph
(B) shall be fined under title 18 or imprisoned for
not more than 5 years, or both.

(B) An alien described in this subparagraph is
an alien who—
(i) is an unauthorized alien (as defined in
section 1324(a)(3) of this title); and
(ii) has been brought into the United States
in violation of this subsection.

(4) In the case of a person who has brought
aliens into the United States in violation of this
subsection, the sentence otherwise provided for
may be increased by up to 10 years if—
(A) the offense was part of an ongoing com-
mercial organization or enterprise;
(B) aliens were transported in groups of 10 or
more; and
(C)(i) aliens were transported in a manner
that endangered their lives; or
(ii) the aliens presented a life-threatening
health risk to people in the United States.

(b) Seizure and forfeiture

(1) In general

Any conveyance, including any vessel, vehi-
cle, or aircraft, that has been or is being used
in the commission of a violation of subsection
(a) of this section, the gross proceeds of such
violation, and any property traceable to such
conveyance or proceeds, shall be seized and
subject to forfeiture.

(2) Applicable procedures

Seizures and forfeitures under this sub-
section shall be governed by the provisions of
chapter 46 of title 18 relating to civil forfeit-
ures, including section 981(d) of such title, ex-
cept that such duties as are imposed upon the
Secretary of the Treasury under the customs
laws described in that section shall be per-
formed by such officers, agents, and other per-
sons as may be designated for that purpose by
the Attorney General.

(3) Prima facie evidence in determinations of
violations

In determining whether a violation of sub-
section (a) of this section has occurred, 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 re-
mained in the United States in violation of law:

(A) Records of any judicial or adminis-
trative 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.

(d) Admissibility of videotaped witness testimony

Notwithstanding any provision of the Federal Rules of Evidence, the videotaped (or otherwise audiovisually preserved) deposition of a witness to a violation of subsection (a) of this section who has been deported or otherwise expelled from the United States, or is otherwise unable to testify, may be admitted into evidence in an action brought for that violation if the witness was available for cross examination and the deposition otherwise complies with the Federal Rules of Evidence.

(e) Outreach program

The Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, as appropriate, shall develop and implement an outreach program to educate the public in the United States and abroad about the penalties for bringing in and harboring aliens in violation of this section.


Subsec. (a)(1)(B), Pub. L. 104–208, § 203(b)(3), in concluding provisions, substituted “be fined under title 18 and shall be imprisoned, in the case of a first or second violation of subparagraph (B)(ii), not more than 5 years, in the case of a first or second violation of subparagraph (B)(ii), not less than 5 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years,” for “be fined in accordance with title 18 or in the case of a violation of subparagraph (B)(ii), imprisoned not more than 5 years, or both,”.


Subsec. (a)(2)(B), Pub. L. 103–322, § 60024(1)(F), as amended, substituted “shall be fined as provided in subparagraph (B)” for “shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both,”.

Subsec. (d), Pub. L. 104–208, § 219, added subsec. (d).

1994—Subsec. (a)(1). Pub. L. 103–322, § 60024(1)(F), as amended, substituted “be fined under title 18 and shall be imprisoned, in the case of a first or second violation of subparagraph (B)(ii), not more than 5 years, or both;” for “be fined in accordance with title 18 or in the case of a violation of subparagraph (B)(ii), imprisoned not more than 5 years, or both,”.

Subsec. (a)(1)(C), added subpar. (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), substituted “shall be fined as provided in subparagraph (B)” for “shall be fined in accordance with title 18, United States Code, 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”.


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)(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 144(f) of title 40,”.


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 2000 Amendment

Pub. L. 106–185, §21, Apr. 25, 2000, 114 Stat. 225, provided that: “Except as provided in section 14(c) [set out as an Effective Date note under section 246 of title 28, Judiciary and Judicial Procedure], this Act [see Short Title of 2000 Amendment note set out under section 981 of Title 18, Crimes and Criminal Procedure] and the amendments made by this Act shall apply to any forfeiture proceeding commenced on or after the date that is 120 days after the date of the enactment of this Act [Apr. 25, 2000].”

Effective Date of 1996 Amendment

Section 203(i) of div. C of Pub. L. 104–208 provided that: “This section [amending this section and enact provisions set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] and the amendments made by this section shall apply with respect to offenses occurring on or after the date of the enactment of this Act [Sept. 30, 1996].” Amendment by section 671(a)(1) of Pub. L. 104–208 effective as if included in the enactment of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, see section 671(a)(7) of Pub. L. 104–208, set out as a note under section 1101 of this title.

Effective Date of 1988 Amendment


Effective Date of 1981 Amendment


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.

§ 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 ac-
§ 1324a

(1)(A). in the United States in violation of paragraph (h)(3) of this section) with respect to performing such labor, shall be confined in subsection (b) of this section with respect to employment of an alien in the United States knowing after November 6, 1986, to obtain the labor of an alien, except that an individual who was referred for such employment in the United States in violation of 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). 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:

(A) Attestation after examination of documentation

For purposes of this section, if—

(i) an individual is a member of a collective-bargaining unit and is employed, under a collective bargaining agreement, entered into between one or more employee organizations and an association of two or more employers, by an employer that is a member of such association, and

(ii) within the period specified in subparagraph (B), another employer that is a member of the association (or an agent of such association on behalf of the employer) has complied with the requirements of subsection (b) of this section with respect to the employment of the individual,

the subsequent employer shall be deemed to have complied with the requirements of subsection (b) of this section with respect to the hiring of the employee and shall not be liable for civil penalties described in subsection (e)(5) of this section.

(B) Period

The period described in this subparagraph is 3 years, or, if less, the period of time that the individual is authorized to be employed in the United States.

(C) Liability

(i) In general

If any employer that is a member of an association hires for employment in the United States an individual and relies upon the provisions of subparagraph (A) to comply with the requirements of subsection (b) of this section and the individual is an alien not authorized to work in the United States, then for the purposes of paragraph (1)(A), subject to clause (ii), the employer shall be presumed to have known at the time of hiring or afterward that the individual was an alien not authorized to work in the United States.

(ii) Rebuttal of presumption

The presumption established by clause (i) may be rebutted by the employer only through the presentation of clear and convincing evidence that the employer did not know (and could not reasonably have known) that the individual at the time of hiring or afterward was an alien not authorized to work in the United States.

(iii) Exception

Clause (i) shall not apply in any prosecution under subsection (f)(1) of this section.

(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.

(6) Treatment of documentation for certain employees

(A) In general

For purposes of this section, if—

(i) an individual is a member of a collective-bargaining unit and is employed, under a collective bargaining agreement, entered into between one or more employee organizations and an association of two or more employers, by an employer that is a member of such association, and

(ii) within the period specified in subparagraph (B), another employer that is a member of the association (or an agent of such association on behalf of the employer) has complied with the requirements of subsection (b) of this section with respect to the employment of the individual,

the subsequent employer shall be deemed to have complied with the requirements of subsection (b) of this section with respect to the hiring of the employee and shall not be liable for civil penalties described in subsection (e)(5) of this section.

(B) Period

The period described in this subparagraph is 3 years, or, if less, the period of time that the individual is authorized to be employed in the United States.

(C) Liability

(i) In general

If any employer that is a member of an association hires for employment in the United States an individual and relies upon the provisions of subparagraph (A) to comply with the requirements of subsection (b) of this section and the individual is an alien not authorized to work in the United States, then for the purposes of paragraph (1)(A), subject to clause (ii), the employer shall be presumed to have known at the time of hiring or afterward that the individual was an alien not authorized to work in the United States.

(ii) Rebuttal of presumption

The presumption established by clause (i) may be rebutted by the employer only through the presentation of clear and convincing evidence that the employer did not know (and could not reasonably have known) that the individual at the time of hiring or afterward was an alien not authorized to work in the United States.

(iii) Exception

Clause (i) shall not apply in any prosecution under subsection (f)(1) of this section.

(7) Application to Federal Government

For purposes of this section, the term “entity” includes an entity in any branch of the Federal Government.

(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).

Such attestation may be manifested by either a hand-written or an electronic signature. A person or entity that fails to comply 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 rea-
erably 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) resident alien card, alien registration card, or other document designated by the Attorney General, if the document—

(I) contains a photograph of the individual and such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection,

(II) is evidence of authorization of employment in the United States, and

(III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

(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); or

(ii) 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 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.

(E) Authority to prohibit use of certain documents

If the Attorney General finds, by regulation, that any document described in subparagraph (B), (C), or (D) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Attorney General may prohibit or place conditions on its use for purposes of this subsection.

(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. Such attestation may be manifested by either a hand-written or an electronic signature.

(3) Retention of verification form

After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain a paper, microfiche, microfilm, or electronic version of 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.

(6) Good faith compliance

(A) In general

Except as provided in subparagraphs (B) and (C), a person or entity is considered to have complied with a requirement of this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

(B) Exception if failure to correct after notice

Subparagraph (A) shall not apply if—

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1So in original. Probably should be followed by “or”. 

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(i) the Service (or another enforcement agency) has explained to the person or entity the basis for the failure,

(ii) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure, and

(iii) the person or entity has not corrected the failure voluntarily within such period.

(C) Exception for pattern or practice violators

Subparagraph (A) shall not apply to a person or entity that has or is engaging in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) of this section.

(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 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. 665(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,

(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, and

(C) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).

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.
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(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 $500 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 paper-work 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 either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations, in which case the decision and order of the Attorney General shall become the final agency decision and 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 fines 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 employment 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.


REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(2), (5), (d)(2)(F), (G), and (b)(3), was in the original, “‘this Act’”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.


AMENDMENTS

2004—Subsec. (b)(1)(A). Pub. L. 108–390, §1(a)(1), inserted “Such attestation may be manifested by either a hand-written or an electronic signature.” before “‘A person or entity has compiled’” in concluding provisions.

Subsec. (b)(2). Pub. L. 108–390, §1(a)(2), inserted at end “‘Such attestation may be manifested by either a hand-written or an electronic signature.”’.


Subsec. (b)(1)(B). Pub. L. 104–208, §412(a)(1)(A), (B), redesignated cl. (v) as (ii), substituted “‘alien registration card, or other document designated by the Attorney General, if the document’” for “‘or other alien registration card, if the card’” in introductory provisions of that cl., and struck out former cls. (ii) to (iv) which read as follows:

“(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’’.

Subsec. (b)(1)(B)(ii). Pub. L. 104–208, §412(a)(1)(C), in subcl. (I), substituted “‘and’” for “‘or’” before “such other personal’” and struck out “‘and at end, in subcl. (II), substituted ‘‘‘and’’” for “‘or’” before “the period at end, and added subcl. (III).

Subsec. (b)(1)(C). Pub. L. 104–208, §412(a)(2), inserted “‘or’” at end of cl. (I), redesignated cl. (II) as (i), and struck out former cl. (ii) which read as follows: “‘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’’.


Subsec. (e)(7). Pub. L. 104–208, §379(a)(2), substituted “‘the final agency decision and order under this subsection’” for “‘a final order under this subsection’”.

Pub. L. 104–208, §379(a)(1), substituted “‘unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations’” for “‘unless, within 30 days, the Attorney General modifies or vacates the decision and order.’”

Subsecs. (i) to (n), Pub. L. 104–208, §412(c), struck out subsec. (i) which provided effective dates for implemen-
that: "The amendments made by subsection (a) amending this section shall apply to orders issued on or after the date of the enactment of this Act [Sept. 30, 1996]."

Section 412(e) of div. C of Pub. L. 104–208 provided that: "The amendment made by subsection (a) [amending this section] shall apply to failures occurring on or after the date of the enactment of this Act [Sept. 30, 1996]."

**Effective Date of 1994 Amendment**

Section 219(e) of Pub. L. 103–416 provided that the amendment made by subsection (c) [amending this section] shall take effect on the date of the enactment of this Act.

**Effective Date of 1991 Amendment**


**Effective Date of 1990 Amendment**

Section 538(b) of Pub. L. 104–208, set out above shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [div. C of Pub. L. 104–208]."

**Effective Date of 1988 Amendment**


**Date of Enactment of This Section for Aliens Employed Under Section 704 of Title 46, Shipping**

Date of enactment of this section with respect to aliens deemed employed under section 704 of Title 46, Shipping, as the date 180 days after Jan. 1, 1988, see section 5(r)(3) of Pub. L. 100–239, set out as a Construction note under section 704 of Title 46.
ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

DELEGATION OF AUTHORITY

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 delegated 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. 29, 1991, 56 F.R. 59203, set out as a note under section 301 of Title 3, The President.

PILOT PROGRAMS FOR EMPLOYMENT ELIGIBILITY CONFIRMATION


"SEC. 401. ESTABLISHMENT OF PROGRAMS.

"(a) IN GENERAL.—The Secretary of Homeland Security shall conduct 3 pilot programs of employment eligibility confirmation under this subtitle.

"(b) IMPLEMENTATION DEADLINE; TERMINATION.—The Secretary of Homeland Security shall implement the pilot programs in a manner that permits persons and other entities to have elections under section 402 of this division made and in effect no later than 1 year after the date of the enactment of this Act [Sept. 30, 1996]. Unless the Congress otherwise provides, the Secretary of Homeland Security shall terminate a pilot program on September 30, 2012.

"(c) SCOPE OF OPERATION OF PILOT PROGRAMS.—The Secretary of Homeland Security shall provide for the operation of the programs in a manner that permits persons and other entities to have elections under section 402 of this division in, at a minimum, 5 of the 7 States with the highest estimated population of aliens who are not lawfully present in the United States, and the Secretary of Homeland Security shall expand the operation of the program to all 50 States not later than December 1, 2004;

"(2) of the citizen attestation pilot program (described in section 403(b) of this division) in at least 5 States (or, if fewer, all of the States) that meet the condition described in section 403(b)(2)(A) of this division; and

"(3) of the machine-readable-document pilot program (described in section 403(c) of this division) in at least 5 States (or, if fewer, all of the States) that meet the condition described in section 403(c)(2) of this division.

"(d) REFERENCES IN SUBTITLE.—In this subtitle—

"(1) PILOT PROGRAM REFERENCES.—The terms 'program' or 'pilot program' refer to any of the 3 pilot programs provided for under this subtitle.

"(2) CONFIRMATION SYSTEM.—The term 'confirmation system' means the confirmation system established under section 404 of this division.

"(3) REFERENCES TO SECTION 274A.—Any reference in this subtitle to section 274A of this division (or a subdivision of such section) is deemed a reference to such section (or subdivision thereof) of the Immigration and Nationality Act [8 U.S.C. 1324a].

"(4) I-9 OR SIMILAR FORM.—The term 'I-9 or similar form' means the form used for purposes of section 274A(d)(1)(A) or such other form as the Secretary of Homeland Security determines to be appropriate.

"(5) LIMITED APPLICATION TO RECRUITERS AND REFERREES.—Any reference to recruitment or referral (or recruiter or referrer) in relation to employment is deemed a reference only to such recruitment or referral (or recruiter or referrer) that is subject to section 274A(a)(1)(B)(ii).

"(6) UNITED STATES CITIZENSHIP.—The term 'United States citizenship' includes United States nationality.

"(7) STATE.—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)].

"SEC. 402. VOLUNTARY ELECTION TO PARTICIPATE IN A PILOT PROGRAM.

"(a) VOLUNTARY ELECTION.—Subject to subsection (c)(3)(B), any person or other entity that conducts any hiring (or recruitment or referral) in a State in which a pilot program is operating may elect to participate in that pilot program. Except as specifically provided in subsection (e), the Secretary of Homeland Security may not require any person or other entity to participate in a pilot program.

"(b) BENEFIT OF REBUTTABLE PRESUMPTION.—

"(1) IN GENERAL.—If a person or other entity is participating in a pilot program and obtains confirmation of identity and employment eligibility in compliance with the terms and conditions of the program with respect to the hiring (or recruitment or referral) of an individual for employment in the United States, the person or entity has established a rebuttable presumption that the person or entity has not violated section 274A(a)(1)(A) with respect to such hiring (or such recruitment or referral).

"(2) CONSTRUCTION.—Paragraph (1) shall not be construed as preventing a person or other entity that has an election in effect under subsection (a) from establishing an affirmative defense under section 274A(a)(3) if the person or entity complies with the requirements of section 274A(a)(1)(B) but fails to obtain confirmation under paragraph (1).

"(c) GENERAL TERMS OF ELECTIONS.—

"(1) IN GENERAL.—An election under subsection (a) shall be in such form and manner, under such terms and conditions, and shall take effect, as the Secretary of Homeland Security shall specify. The Secretary of Homeland Security may not impose the condition described in section 404 of this division or in such a manner as a condition of making an election or participating in a pilot program.
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“(2) SCOPE OF ELECTION.—

“(A) IN GENERAL.—Subject to paragraph (3), any electing person or other entity may provide that the election under subsection (a) shall apply during the period in which the election is in effect—

“(i) to all its hiring (and all recruitment or referral) in the State (or States) in which the pilot program is operating, or

“(ii) to its hiring (or recruitment or referral) in one or more pilot program States or one or more places of hiring (or recruitment or referral, as the case may be) in the pilot program States.

“(B) APPLICATION OF PROGRAMS IN NON-PILOT PROGRAM STATES.—In addition, the Secretary of Homeland Security may permit a person or entity electing the citizen attestation pilot program (described in 403(b) of this division) or the machine-readable-document pilot program (described in section 403(c) of this division) to provide that the election applies to its hiring (or recruitment or referral) in one or more States or places of hiring (or recruitment or referral) in which the pilot program is not otherwise operating but only if such States meet the requirements of 403(b)(2)(A) and 403(c)(2) of this division, respectively.

“(3) TERMINATION OF ELECTIONS.—The Secretary of Homeland Security may terminate an election by a person or other entity under this section because the person or entity has substantially failed to comply with its obligations under the pilot program. A person or other entity may terminate an election in such form and manner as the Secretary of Homeland Security shall specify.

“(d) CONSULTATION, EDUCATION, AND PUBLICITY.—

“(1) CONSULTATION.—The Secretary of Homeland Security shall closely consult with representatives of employers (and recruiters and referrers) in the development and implementation of the pilot programs, including the education of employers (and recruiters and referrers) about such programs.

“(2) PUBLICITY.—The Secretary of Homeland Security shall widely publicize the election process and pilot programs, including the voluntary nature of the pilot programs and the advantages to employers (and recruiters and referrers) in participating in such a program.

“(3) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If a person or other entity is required under this subsection to participate in a pilot program and fails to comply with the terms and conditions of such program with respect to an individual—

“(A) such failure shall be treated as a violation of section 274A(a)(1)(B) with respect to that individual and

“(B) a rebuttable presumption is created that the person or entity has violated section 274A(a)(1)(B).

“Subparagraph (B) shall not apply in any prosecution under section 274A(f)(1).

“(1) CONSTRUCTION.—This subsection shall not affect the authority of the Secretary of Homeland Security under any other law (including section 274A(d)(4)) to conduct demonstration projects in relation to section 274A.

“SEC. 403. PROCEDURES FOR PARTICIPANTS IN PILOT PROGRAMS.

“(a) E-VERIFY PROGRAM.—A person or other entity that elects to participate in the E-Verify Program described in this subsection agrees to conform to the following procedures in the case of the hiring (or recruitment or referral) for employment in the United States of each individual covered by the election:

“(1) PROVISION OF ADDITIONAL INFORMATION.—The person or entity shall obtain from the individual (and the individual shall provide) and shall record on the I-9 or similar form—

“(A) the individual's social security account number, if the individual has been issued such a number, and

“(B) if the individual does not attest to United States citizenship under section 274A(b)(2), such identification or authorization number established by the Immigration and Naturalization Service for the alien as the Secretary of Homeland Security shall specify, and shall retain the original form and make it available for inspection for the period and in the manner required of I-9 forms under section 274A(b)(3).

“(2) PRESENTATION OF DOCUMENTATION.—

“(A) IN GENERAL.—The person or other entity, and the individual whose identity and employment eligibility are being confirmed, shall, subject to subparagraph (B), fulfill the requirements of section 274A(b) with the following modifications:

“(i) A document referred to in section 274A(b)(1)(B)(ii) (as redesignated by section 412(a) of this division) may be designated by the Secretary of Homeland Security as suitable for the purpose of identification in a pilot program.
A document referred to in section 274A(b)(1)(D) must contain a photograph of the individual.

The person or other entity has complied with the requirements of section 274A(b)(1) with respect to examination of a document if the document reasonably appears on its face to be genuine and it reasonably appears to pertain to the individual whose identity and work eligibility is being confirmed.

(B) LIMITATION OF REQUIREMENT TO EXAMINE DOCUMENTATION.—If the Secretary finds that a pilot program would reliably determine with respect to an individual whether—

(i) the person with the identity claimed by the individual is authorized to work in the United States, and

(ii) the individual is claiming the identity of another person,

if a person or entity could fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document specified in either subparagraph (B) or (D) of such section, the Secretary of Homeland Security may provide that, for purposes of such requirement, only such a document need be examined. In such case, any reference in section 274A(b)(1) to a verification that an individual is authorized to work in the United States, and it reasonably appears to pertain to the individual, shall be deemed to be a verification of the individual’s identity.

(3) SEEKING CONFIRMATION.—

(A) IN GENERAL.—The person or other entity shall make an inquiry, as provided in section 406(a)(1) of this division, using the confirmation system to seek confirmation of the identity and employment eligibility of an individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring (or recruitment or referral, as the case may be).

(B) EXTENSION OF TIME PERIOD.—If the person or other entity in good faith attempts to make an inquiry during such 3 working days and the confirmation system has registered that not all inquiries were received during such time, the person or entity can make an inquiry in the first subsequent working day in which the confirmation system registers that it has received all inquiries. If the confirmation system cannot receive inquiries at all or in such other manner as the Secretary of Homeland Security specifies under the E-Verify Program under subsection (a), the person or entity may terminate employment (or recruitment or referral) of the individual. If the person or entity does not terminate employment (or recruitment or referral) of the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the confirmation system or in such other manner as the Secretary of Homeland Security may specify.

(ii) THE INDIVIDUAL IS CLA9ING THE IDENTITY OF ANOTHER PERSON.—If the person or other entity has received a final nonconfirmation regarding an individual under subparagraph (B), the person or entity may terminate employment (or recruitment or referral) of the individual. If the person or entity does not terminate employment (or recruitment or referral) of the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the confirmation system or in such other manner as the Secretary of Homeland Security may specify.

(ii) FAILURE TO NOTIFY.—If the person or entity fails to provide notice with respect to an individual as required under clause (i), the failure is deemed to constitute a violation of section 274A(a)(1)(B) with respect to that individual and the applicable civil monetary penalty under section 274A(e)(5) shall be (notwithstanding the amounts specified in such section) no less than $500 and no more than $1,000 for each individual with respect to whom such violation occurred.

(iii) CONTESTED EMPLOYMENT AFTER FINAL NONCONFIRMATION.—If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonconfirmation, a rebuttable presumption is created that the person or entity has violated section 274A(a)(1)(B). The previous sentence shall not apply in any prosecution under section 274A(f)(1).

(4) CONCLUSION OF NONCONFIRMATION.—

(A) CONFIRMATION UPON INITIAL INQUIRY.—If the person or other entity receives an appropriate confirmation of an individual’s identity and work eligibility under the confirmation system within the time period specified under section 406(b) of this division, the person or entity shall record on the I-9 or similar form an appropriate code that is provided under the system to indicate a tentative nonconfirmation.

(B) RECORDING OF CONCLUSION ON FORM.—If a final confirmation or nonconfirmation is provided by the confirmation system under section 406(c) of this division regarding an individual, the person or entity shall record on the I-9 or similar form an appropriate code that is provided under the system and that indicates a confirmation or nonconfirmation of identity and work eligibility of the individual.

(i) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—If the person or other entity has received a final nonconfirmation regarding an individual under subparagraph (B), the person or entity may terminate employment (or recruitment or referral) of the individual. If the person or entity does not terminate employment (or recruitment or referral) of the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the confirmation system or in such other manner as the Secretary of Homeland Security may specify.

(ii) FAILURE TO NOTIFY.—If the person or entity fails to provide notice with respect to an individual as required under clause (i), the failure is deemed to constitute a violation of section 274A(a)(1)(B), and it reasonably appears to pertain to the individual, shall be considered final. The nonconfirmation will remain tentative until a final confirmation or nonconfirmation is provided by the confirmation system within the time period specified in such section. In no case shall an employer terminate employment of an individual because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonconfirmation becomes final. Nothing in this clause shall apply to a termination of employment for any reason other than because of such a failure.

(6) RECORDING OF CONCLUSION ON FORM.—If a final confirmation or nonconfirmation is provided by the confirmation system under section 406(c) of this division regarding an individual, the person or entity shall record on the I-9 or similar form an appropriate code that is provided under the system and that indicates a confirmation or nonconfirmation of identity and work eligibility of the individual.

(7) CONSEQUENCES OF NONCONFIRMATION.—

(A) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—If the person or other entity has received a final nonconfirmation regarding an individual under subparagraph (B), the person or entity may terminate employment (or recruitment or referral) of the individual. If the person or entity does not terminate employment (or recruitment or referral) of the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the confirmation system or in such other manner as the Secretary of Homeland Security may specify.

(ii) FAILURE TO NOTIFY.—If the person or entity fails to provide notice with respect to an individual as required under clause (i), the failure is deemed to constitute a violation of section 274A(a)(1)(B) with respect to that individual and the applicable civil monetary penalty under section 274A(e)(5) shall be (notwithstanding the amounts specified in such section) no less than $500 and no more than $1,000 for each individual with respect to whom such violation occurred.

(iii) CONTESTED EMPLOYMENT AFTER FINAL NONCONFIRMATION.—If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonconfirmation, a rebuttable presumption is created that the person or entity has violated section 274A(a)(1)(B). The previous sentence shall not apply in any prosecution under section 274A(f)(1).

(3)通过(5)，程序适用于申请公民参与试点计划的人。此计划在该州发布时，并不适用于每个司机的证书或类似的身份证件，描述在274A(b)(1)(D)(1)中，由州发布。

(1) IN GENERAL.—除作为在段落(3)至(5)中规定的程序外，申请人参与试点计划，其程序适用于该州，包括该州的州和联邦政府，以及其州和联邦政府的某些费用，于274A(b)(1)(D)(1)。
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"(B) Authorization to Limit Employer Participation.—The Secretary of Homeland Security may restrict the number of persons or other entities that may elect to participate in the citizen attestation pilot program under this subsection as the Secretary of Homeland Security determines to be necessary to produce a representative sample of employers and to reduce the potential impact of fraud.

"(3) No Confirmation Required for Certain Individuals Attesting to U.S. Citizenship.—In the case of a person or other entity hiring (or recruiting or referring) an individual under the citizen attestation pilot program, if the individual attests to United States citizenship (under penalty of perjury on an I-9 or similar form which form states on its face the criminal and other penalties provided under law for a false representation of United States citizenship)—

"(A) the person or entity may fulfill the requirement to examine documentation contained in subparagraph (B)(i) or (D) of such section; and

"(B) the person or other entity is not required to comply with respect to such individual with the procedures described in paragraphs (3) and (4) of subsection (a), but only if the person or entity retains the form on which the attestation is made and makes it available for inspection in the same manner as in the case of an I-9 form under section 274A(b)(3).

"(4) Waiver of Document Presentation Requirement in Certain Cases.—

"(A) In General.—In the case of a person or entity that elects, in a manner specified by the Secretary of Homeland Security consistent with subparagraph (B), to participate in the pilot program under this paragraph, if an individual being hired (or recruited or referred) attests (in the manner described in paragraph (3)) to United States citizenship and the person or entity retains the form on which the attestation is made and makes it available for inspection in the same manner as in the case of an I-9 form under section 274A(b)(3), the person or entity is not required to comply with the procedures described in section 274A(b).

"(B) Restriction.—The Secretary of Homeland Security shall restrict the election under this paragraph to no more than 1,000 employers and, to the extent practicable, shall select among employers seeking to make such election in a manner that provides for such an election by a representative sample of employers.

"(5) NonReviable Determinations.—The determinations of the Secretary of Homeland Security under paragraphs (2) and (4) are within the discretion of the Secretary of Homeland Security and are not subject to judicial or administrative review.

"(c) Machine-Readable-Document Pilot Program.—

"(1) In General.—Except as provided in paragraph (3), the procedures applicable under the machine-readable-document pilot program under this subsection shall be the same procedures as those under the E-Verify Program under subsection (a).

"(2) State Document Requirement to Participate in Pilot Program.—The Secretary of Homeland Security may not provide for the operation of the machine-readable-document pilot program in a State unless driver’s licenses and similar identification documents described in section 274A(b)(1)(D)(ii) issued by the State include a machine-readable social security account number.

"(3) Use of Machine-Readable Documents.—If the individual whose identity and employment eligibility must be confirmed presents to the person or entity hiring (or recruiting or referring) the individual a license or other document described in paragraph (2) that includes a machine-readable social security account number, the person or entity must make an inquiry through the confirmation system by using a machine-readable feature of such document. If the individual does not attest to United States citizenship under section 274A(b)(2), the individual’s identification or authorization number described in subsection (a)(1)(B) shall be provided as part of the inquiry.

"(d) Protection From Action Taken on the Basis of Information Provided by the Confirmation System.—No person or entity participating in a pilot program shall be civilly or criminally liable under any law for any action taken in good faith reliance on information provided through the confirmation system.

"SEC. 404. EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.

"(a) In General.—The Secretary of Homeland Security shall establish a pilot program confirmation system through which the Secretary of Homeland Security (or a designee of the Secretary of Homeland Security, which may be a nongovernmental entity)—

"(1) responds to inquiries made by electing persons and other entities (including those made by the transmittal of data from machine-readable documents under the machine-readable pilot program) at any time through a toll-free telephone line or other toll-free electronic media concerning an individual’s identity and whether the individual is authorized to be employed, and

"(2) maintains records of the inquiries that were made, of confirmations provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under the pilot programs.

To the extent practicable, the Secretary of Homeland Security shall seek to establish such a system using one or more nongovernmental entities.

"(b) Initial Response.—The confirmation system shall provide confirmation or a tentative nonconfirmation of an individual’s identity and employment eligibility within 3 working days of the initial inquiry. If providing confirmation or tentative nonconfirmation, the confirmation system shall provide an appropriate code indicating such confirmation or such nonconfirmation.

"(c) Secondary Verification Process in Case of Tentative Nonconfirmation.—In cases of tentative nonconfirmation, the Secretary of Homeland Security shall specify, in consultation with the Commissioner of Social Security and the Commissioner of the Immigration and Naturalization Service, an available secondary verification process to confirm the validity of information provided and to provide a final confirmation or nonconfirmation within 10 working days after the date of the tentative nonconfirmation. When final confirmation or nonconfirmation is provided, the confirmation system shall provide an appropriate code indicating such confirmation or nonconfirmation.

"(d) Design and Operation of System.—The confirmation system shall be designed and operated—

"(1) to maximize its reliability and ease of use by persons and other entities making elections under section 402(a) of this division consistent with insulating and protecting the privacy and security of the underlying information;

"(2) to respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received;

"(3) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information; and

"(4) to have reasonable safeguards against the system’s resulting in unlawful disclosures based on national origin or citizenship status, including—

"(A) the selective or unauthorized use of the system to verify eligibility;

"(B) the use of the system prior to an offer of employment;

"(C) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will
be required, beyond what is required for most job applicants.

(c) Responsibilities of the Commissioner of Social Security.—As part of the confirmation system, the Commissioner of Social Security, in consultation with the entity responsible for administration of the system, shall establish a reliable, secure method, which, within the time periods specified under subsections (b) and (c), compares the name and alien identification or authorization number described in section 403(a)(1)(B) of this division which are provided in an inquiry against such information maintained by the Immigration and Naturalization Service to determine whether the alien is authorized to be employed in the United States.

(d) Update Information.—The Commissioner of Social Security and the Immigration and Naturalization Service shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in subsection (c).

(e) Limitation on Use of the Confirmation System and Any Related Systems.—

(1) In general.—Notwithstanding any other provision of law, nothing in this subtitle shall be construed to permit or allow any department, bureau, or agency of the United States Government to utilize any information, data base, or other record assembled for this subtitle for any purpose other than as provided for under this subtitle.

(2) No national identification card.—Nothing in this subtitle shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

(f) SEC. 405. REPORTS.

(a) In general.—The Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate reports on the pilot programs within 3 months after the end of the third and fourth years in which the programs are in effect. Such reports shall—

(1) assess the degree of fraudulent attesting of United States citizenship,

(2) include recommendations on whether or not the pilot programs should be continued or modified, and

(3) assess the benefits of the pilot programs to employers.—As part of the report on enforcement of section 274A.

(b) Report on Expansion.—Not later than June 1, 2004, the Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report—

(1) evaluating whether the problems identified by the report submitted under subsection (a) have been substantially resolved; and

(2) describing what actions the Secretary of Homeland Security shall take before undertaking the expansion of the E-Verify Program to all 50 States in accordance with section 401(c)(1), in order to resolve any outstanding problems raised in the report filed under subsection (a).

Public Law 110–208, div. C., title IV, § 413(a), Sept. 30, 2006, 110 Stat. 3009–688, as amended by Pub. L. 108–156, § 3(d), Dec. 3, 2003, 117 Stat. 117, provided that not later than 1 year after Sept. 30, 1996, the Secretary of Homeland Security was to submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report on any additional authority or resources needed by the Immigration and Naturalization Service in order to enforce section 1324a of this title, or by Federal agencies in order to carry out Ex. Ord. No. 12989, set out below, and to expand the restrictions in such order to cover agricultural subsidies, grants, job training programs, and other Federally subsidized assistance programs.

Pilot Projects for Secure Documents


(a) Consultation.—Before June 1, 2001, 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, States and units of local government to support any 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) (see Pub. L. 110–329, div. A, § 143, Sept. 30, 2008, 122 Stat. 3590, as amended by Pub. L. 111–8, div. J, § 101, Mar. 11, 2009, 123 Stat. 968, provided that—Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Pub. L. 104–208] (8 U.S.C. 1324a note) shall be applied by substituting [‘‘September 30, 2009’’] for the 11-year period beginning on the first day the pilot program is in effect.’’)

Title 29, Labor, and enacting provisions set out as notes under this section, section 1802 of Title 29, and section 465 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 274(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 274(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 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 [8 U.S.C. 1324a], 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 Secretary of Homeland Security, 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, as amended, set out as a note under section 1364 of this title.


This order is designed to promote economy and efficiency in Federal Government procurement. Stability and dependability are important elements of economy and efficiency. A contractor whose workforce is less stable will be less likely to produce goods and services economically and efficiently than a contractor whose workforce is more stable. It is the policy of the executive branch to enforce fully the immigration laws of the United States, including the detection and removal of illegal aliens and the imposition of legal sanctions against employers that hire illegal aliens. Because of the worksite enforcement policy of the United States and the underlying obligation of the executive branch to enforce the immigration laws, contractors that employ illegal aliens cannot rely on the continuing availability and service of those illegal workers, and such contractors inevitably will have a less stable and less dependable workforce than contractors that do not employ such persons. Where a contractor assigns illegal aliens to work on Federal contracts, the enforcement of Federal immigration laws imposes a direct risk of disruption, delay, and increased expense in Federal contracting. Such contractors are less dependable procurement sources, even if they do not knowingly hire or knowingly continue to employ unauthorized workers.

Contractors that adopt rigorous employment eligibility confirmation policies are much less likely to face immigration enforcement actions, because they are less likely to employ unauthorized workers, and they are therefore generally more efficient and dependable procurement sources than contractors that do not employ the best available means to verify the work eligibility of their workforce. It is the policy of the executive branch to use an electronic employment verification system because, among other reasons, it provides the best available means to confirm the identity and work eligibility of all employees that join the Federal workforce. Private employers that choose to contract with the Federal Government should meet the same standard.

I find, therefore, that adherence to the general policy of contracting only with providers that do not know—
ingly employ unauthorized alien workers and that have agreed to utilize an electronic employment verification system designated by the Secretary of Homeland Security to confirm the employment eligibility of their workforce will promote economy and efficiency in Federal procurement.

NOW, THEREFORE, to ensure the economical and efficient administration and completion of Federal Government contracts, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including subsection 121(a)(5) of title 40 and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. (a) It is the policy of the executive branch in procuring goods and services that, to ensure the economical and efficient administration and completion of Federal Government contracts, contracting agencies should not contract with employers that have not complied with section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1324A(a)(1)(A), 1324A(a)(2)) (the “INA employment provisions”) prohibiting the unlawful employment of aliens.

(b) It is the policy of the executive branch in procuring goods and services that, to ensure the economical and efficient administration and completion of Federal Government contracts, contracting agencies may not enter into contracts with employers that do not use the best available means to confirm the work authorization of their workforce.

It is the policy of the executive branch to enforce fully the antidiscrimination provisions of the INA. Nothing in this order relieves employers of antidiscrimination obligations under section 274B of the INA or any other law.

(d) All discretion under this order shall be exercised consistent with the policies set forth in this section.

(b) The head of the contracting agency may debar the contractor or an organizational unit thereof based on determination shall not be reviewable in the debarment proceeding.

(b) The head of the contracting agency may debar the contractor or an organizational unit thereof based on the determination that the organizational unit of the Federal contractor continues to be in violation of the INA employment provisions.

(c) The Administrator of General Services shall list a debarred contractor or an organizational unit thereof on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs and the contractor or an organizational unit thereof shall be ineligible to participate in any procurement or nonprocurement activities.

(c) The Attorney General finds are not in compliance with the INA employment provisions.

(d) The period of the debarment shall be for 1 year and may be extended for additional periods of 1 year if, using the procedures established pursuant to 8 U.S.C. 1324a(e), the Secretary of Homeland Security or the Attorney General determines that the organizational unit of the Federal contractor continues to be in violation of the INA employment provisions.

(e) The Administrator of General Services shall list a debarred contractor or an organizational unit thereof on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs and the contractor or an organizational unit thereof shall be ineligible to participate in any procurement or nonprocurement activities.

(f) The Secretary of Homeland Security shall transmit that determination to the appropriate contracting agency and such other Federal agencies as may be necessary and appropriate to implement this order.

(g) The Secretary of Homeland Security shall administer and enforce this order; and

(h) May, after consultation to the extent appropriate and necessary and appropriate the electronic employment eligibility verification system designated by the Secretary under subsection (a) of this section; and

(i) May establish with respect to such electronic employment verification system:

(A) Terms and conditions for use of the system; and

(B) Procedures for monitoring the use, failure to use, or improper use of the system.

(c) The Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration shall amend the Federal Acquisition Regulation to the extent necessary and appropriate to implement the debarment responsibility, the employment eligibility verification responsibility, and other related responsibilities assigned to heads of departments and agencies under this order.

(d) Except to the extent otherwise specified by law or this order, the Secretary of Homeland Security and the Attorney General:

(i) Shall administer and enforce this order; and

(ii) May, after consultation to the extent appropriate with the Secretary of Defense, the Secretary of Labor, the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, the Administrator for Federal Procurement Policy, and the heads of such other departments or agencies as may be appropriate, issue such rules, regulations, or orders, or establish such requirements, as may be necessary and appropriate to implement this order.

(e) Each contracting department and agency shall cooperate with and provide such information and assistance to the Secretary of Homeland Security and the Attorney General as may be required in the performance of their respective functions under this order.

(f) The Secretary of Homeland Security, the Attorney General, the Secretary of Defense, the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, and the heads of contracting departments and agencies may delegate any of their functions or duties under this order to any officer or employee of their respective departments or agencies.

(g) This order shall be implemented in a manner intended to minimize the burden on participants in the Federal procurement process.

(h) This order shall be implemented in a manner consistent with the protection of intelligence and law enforcement sources, methods, and activities from unauthorized disclosure.

(i) Nothing in this order shall be construed to impair or otherwise affect the authority granted by law to a department or agency or the head thereof; or
(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.
(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforce-able at law or in equity, by any party against the United States, its departments, agencies or entities, its officers, employees, or agents, or any other person.

§ 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 1101(a) or 1225a(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 applica-

tion, 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 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

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 if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1).

(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 and be treated as an unfair immigration-related employment practice if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1).

(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 (o)(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.
§ 1324b

(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 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 subsection (a)(6) 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 title, 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

(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 prac-
(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 attorney’s 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 Opportunity 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).

(See References in Text note below.)

REFERENCES IN TEXT
The Civil Rights Act of 1964, referred to in subssecs. (b)(2) and (d)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, 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 Statutes at Large, see Table to Title 42 of Title 42 and Tables.

Subsections (j), (l), (m), and (n) of section 1324a of this title, referred to in subsec. (k), were repealed by Pub. L. 104–208, div. C, title IV, § 412(c), Sept. 30, 1996, 110 Stat. 3009–668.

AMENDMENTS

Subsec. (a)(6). Pub. L. 104–208, § 421(a), substituted “A person’s” for “For purposes of paragraph (1), a per- son’s” and “if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1)” for “relating to the hiring of individuals”.


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 “physically”.


Subsec. (a)(3)(C). Pub. L. 101–649, § 533(a)(4), substituted “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,’’ and in closing provisions substituted “(i)” for “(I)” and “(ii)” for “(II)”.

Pub. L. 101–649, § 532(a), inserted reference to sections 1160(a) and 1161(a) of this title in cl. (i).


Subsec. (d)(2). Pub. L. 101–649, § 537(a), inserted “the Special Counsel should 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.”


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. (e)(3). Pub. L. 100–525, § 2(b)(3), struck out “said” before “proceeding”.

Subsec. (g)(2)(A). Pub. L. 100–525, § 2(b)(3), substituted “that” for “that that”.

Subsec. (b). Pub. L. 100–525, § 2(b)(6), substituted “attorney’s” for “attorneys” in heading.

EFFECTIVE DATE OF 1996 AMENDMENT
Section 421(b) of div. C of Pub. L. 104–208 provided that: “The amendments made by subsection (a) [amending this section] shall apply to requests made on or after the date of the enactment of this Act [Sept. 30, 1991].”

EFFECTIVE DATE OF 1994 AMENDMENT

EFFECTIVE DATE OF 1991 AMENDMENT

EFFECTIVE DATE OF 1990 AMENDMENT
Section 532(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 533(b) of Pub. L. 101–649 provided that: “The amendments 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 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 sec-
tion) 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. 101-669 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. 101-669 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(a) of Pub. L. 100-525, set out as a note under section 1101 of this title.

**Abolition of Immigration and Naturalization Service and Transfer of Functions**

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

**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 or to obtain a benefit under 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 or to obtain a benefit under this chapter,

(3) to use or attempt to use or to provide or attempt to provide any document lawfully issued to or with respect to a person other than the possessor (including a deceased individual) for the purpose of satisfying a requirement of this chapter or obtaining a benefit under this chapter,

(4) to accept or receive or to provide any document lawfully issued to or with respect to a person other than the possessor (including a deceased individual) for the purpose of complying with section 1324a(b) of this title or obtaining a benefit under this chapter, or

(5) to prepare, file, or assist another in preparing or filing, any application for benefits under this chapter, or any document required under this chapter, or any document submitted in connection with such application or document, with knowledge or in reckless disregard of the fact that such application or document was falsely made or, in whole or in part, does not relate to the person on whose behalf it was or is being submitted, or

(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,

(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, and

(C) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).

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.
§ 1324c

(A) 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 that is the subject of a violation under subsection (a) of this section, 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 that is the subject of a violation under subsection (a) of this section.

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 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 unless

(A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or

(B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations, in which case the decision and order of the Attorney General shall become the final agency decision and 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.

(7) Waiver by Attorney General
The Attorney General may waive the penalties imposed by this section with respect to an alien who knowingly violates subsection (a) if the alien is granted asylum under section 1158 of this title or withholding of removal under section 1231(b)(3) of this title.

(e) Criminal penalties for failure to disclose role as document preparer
(1) Whoever, in any matter within the jurisdiction of the Department of Homeland Security, knowingly and willfully fails to disclose, conceals, or covers up the fact that he or she, on behalf of any person and for a fee or other remuneration, prepared or assisted in preparing an application which was falsely made (as defined in subsection (f) of this section) for immigration benefits, shall be fined in accordance with title 18, imprisoned for not more than 5 years, or both, and prohibited from preparing or assisting in preparing, whether or not for a fee or other remuneration, any other such application.

(2) Whoever, having been convicted of a violation of paragraph (1), knowingly and willfully prepares or assists in preparing an application for immigration benefits pursuant to this chapter, or the regulations promulgated thereunder, whether or not for a fee or other remuneration and regardless of whether in any matter within the jurisdiction of the Department of Homeland Security, shall be fined in accordance with title 18, imprisoned for not more than 15 years, or both, and prohibited from preparing or assisting in preparing any other such application.

(f) Falsely make
For purposes of this section, the term “falsely make” means to prepare or provide an application or document, with knowledge or in reckless disregard of the fact that the application or document contains a false, fictitious, or fraudulent statement or material representation, or has no basis in law or fact, or otherwise fails to state a fact which is material to the purpose for which it was submitted.

References in Text
This chapter, referred to in subsec. (a) and (e)(2), was in the original, “this Act,” meaning act June 27, 1952,
ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–208, §212(a)(1), inserted “or to obtain a benefit under this chapter” before comma at end.
Subsec. (a)(2). Pub. L. 104–208, §212(a)(2), inserted “or to obtain a benefit under this chapter” before comma at end.
Subsec. (a)(3). Pub. L. 104–208, §212(a)(3), inserted “or with respect to” after “issued to” and “or obtaining a benefit under this chapter” after “of this chapter” and struck out “or” at end.
Subsec. (a)(4). Pub. L. 104–208, §212(a)(4), inserted “or with respect to” after “issued to” and “or obtaining a benefit under this chapter” after “section 1324a(b) of this title” and substituted “., or” for the period at end.
Subsec. (d)(3)(A), (B). Pub. L. 104–208, §212(c), substituted “each document that is the subject of a violation under subsection (a) of this section” for “each document used, accepted, or created and each instance of use, acceptance, or creation”.
Subsec. (d)(4). Pub. L. 104–208, §379(a)(2), substituted “‘the final agency decision and order under this subsection’” for “‘a final order under this subsection’”.
Pub. L. 104–208, §379(a)(1), substituted “unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations” for “‘unless, within 30 days, the Attorney General modifies or vacates the decision and order’”.
Subsec. (d)(7). Pub. L. 104–208, §308(g)(10)(D), substituted “withholding of removal under section 1231(b)(3) of this title” for “withholding of deportation under section 1253(h) of this title”.
Pub. L. 104–208, §212(d), added part (7).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 212(e) of div. C of Pub. L. 104–208 provided that: “Section 274C(f) of the Immigration and Nationality Act [§ 1324c(f), as added by subsection (b), applies to the preparation of applications before, on, or after the date of the enactment of this Act [Sept. 30, 1996].”
Amendment by section 308(g)(10)(D) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.
Amendment by section 379(a) of Pub. L. 104–208 applicable to orders issued on or after Sept. 30, 1996, see section 379(b) of Pub. L. 104–208, set out as a note under section 1324a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT


EFFECTIVE DATE OF 1991 AMENDMENT


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 1227 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1324d. Civil penalties for failure to depart
(a) In general

Any alien subject to a final order of removal who—
(1) willfully fails or refuses to—
(A) depart from the United States pursuant to the order,
(B) make timely application in good faith for travel or other documents necessary for departure, or
(C) present for removal at the time and place required by the Attorney General; or
(2) conspires to or takes any action designed to prevent or hamper the alien’s departure pursuant to the order,
shall pay a civil penalty of not more than $500 to the Commissioner for each day the alien is in violation of this section.

(b) Construction

Nothing in this section shall be construed to diminish or qualify any penalties to which an alien may be subject for activities proscribed by section 1253(a) of this title or any other section of this chapter.


REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

EFFECTIVE DATE

Section 308(c) of div. C of Pub. L. 104–208 provided that: “The amendment made by subsection (a) (enacting this section) shall apply to actions occurring on or after the title III–A effective date (as defined in section 309(a) of this division [set out as a note under section 1101 of this title]).”

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related
§ 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 not less than two years, or imprisoned not more than two years, or 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 not under title 18, or imprisoned not more than 2 years, or both.

(b) Improper time or place; civil penalties

Any alien who is apprehended while entering (or attempting to enter) the United States at a time or place other than as designated by immigration officers, or (1) eludes examination or inspection by immigration officers, or (2) 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.

(c) 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 $2,000 (or, if greater, the amount provided under title 18).

(d) 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, or fined not more than $250,000, or both.

§ 1326. Reentry of removed aliens

(a) In general

Subject to subsection (b) of this section, any alien who—

(1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, 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 denied admission and removed, 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) Criminal penalties for reentry of certain removed aliens

Notwithstanding subsection (a) of this section, in the case of any alien described in such subsection—

(1) whose removal 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;

(2) whose removal 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;

(3) who has been excluded from the United States pursuant to section 1225(c) of this title because the alien was excludable under section 1182(a)(3)(B) of this title or who has been removed from the United States pursuant to the provisions of subchapter V, and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under title 18 and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence, or

(4) who was removed from the United States pursuant to section 1231(a)(4)(B) of this title who thereafter, without the permission of the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien’s reentry) shall be fined under title 18, imprisoned for not more than 10 years, or both.

For the purposes of this subsection, the term “removal” includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law.

(c) Reentry of alien deported prior to completion of term of imprisonment

Any alien deported pursuant to section 1252(h)(2) of this title who enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien’s reentry) shall be fined under title 18, imprisoned not more than 20 years, or both.

(d) Limitation on collateral attack on underlying deportation order

In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) of this section or subsection (b) of this section unless the alien demonstrates that—

(1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;

(2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

(3) the entry of the order was fundamentally unfair.

References in Text

This chapter, referred to in subsec. (a)(2), was in the original a reference to this Act, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Table.

Effective Date of 1996 Amendments

Amendment by sections 305(b) and 308(d)(4)(J) of Pub. L. 104–208 effective, with concluding sentence, at end.
tain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

Section 324(c) of div. C of Pub. L. 104–208 provided that: “The amendment made by this section [enacting sections 1531 to 1537 of this title and amending this section and section 1165a of this title] shall take effect on the date of enactment of this Act [Apr. 24, 1996] and shall apply to all aliens without regard to the date of entry or attempted entry into the United States.”

Section 411(b) of Pub. L. 104–132 provided that: “The amendments made by this section shall apply to criminal proceedings initiated after the date of enactment of this Act [Apr. 24, 1996].”

**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 1101 of this title.

**Effective Date of 1988 Amendment**

Section 734(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].”

**Abolition of Immigration and Naturalization Service and Transfer of Functions**

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

**References to Order of Removal Deemed to Include Order of Exclusion and Deportation**

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1327. Aiding or assisting certain aliens to enter

Any person who knowingly aids or assists any alien inadmissible under section 1182(a)(2) (insofar as an alien inadmissible 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),” after “1182(a)”:

**Effective Date of 1996 Amendment**

Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

**Effective Date of 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 1101 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 603(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

**Effective Date of 1988 Amendment**

Section 734(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].”

§ 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, 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.

**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.

§ 1329. Jurisdiction of district courts

The district courts of the United States shall have jurisdiction of all causes, civil and criminal, brought by the United States that arise under 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. Nothing in this section shall be construed as providing jurisdiction for suits against the United States or its agencies or officers.


**Amendments**

1996—Pub. L. 104–208, §381(a)(2), inserted at end “Nothing in this section shall be construed as providing jurisdiction for suits against the United States or its agencies or officers.”

Pub. L. 104–208, §381(a)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: “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.”

**Effective Date of 1996 Amendment**

Section 381(b) of div. C of Pub. L. 104–208 provided that: “The amendments made by subsection (a) [amending this section] shall apply to actions filed after the date of the enactment of this Act [Sept. 30, 1996].”

§ 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, 1224, 1253(c)(2), 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)(1) There is established in the general fund of the Treasury a separate account which shall be known as the “Immigration Enforcement Account”. Notwithstanding any other section of this subchapter, there shall be deposited as offsetting receipts into the Immigration Enforcement Account amounts described in paragraph (2) to remain available until expended.

(2) The amounts described in this paragraph are the following:

(A) The increase in penalties collected resulting from the amendments made by sections 203(b) and 543(a) of the Immigration Act of 1990.

(B) Civil penalties collected under sections 1229c(d), 1324c, 1324d, and 1325(b) of this title.

(3)(A) The Secretary of the Treasury shall refund out of the Immigration Enforcement Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Attorney General for activities that enhance enforcement of provisions of this subchapter. Such activities include—

(i) the identification, investigation, apprehension, detention, and removal of criminal aliens;

(ii) the maintenance and updating of a system to identify and track criminal aliens, deportable aliens, inadmissible aliens, and aliens illegally entering the United States; and

(iii) 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.

(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).

(C) The amounts required to be refunded from the Immigration Enforcement Account for fiscal year 1996 and thereafter shall be refunded in accordance with estimates made in the budget request of the Attorney General for those fiscal years. Any proposed changes in the amounts designated in such 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 605 of Public Law 104–134.

(D) The Attorney General shall prepare and submit annually to the Congress statements of financial condition of the Immigration Enforcement Account, including beginning account balance, revenues, withdrawals, and ending account balance and projection for the ensuing fiscal year.


**References in Text**

Sections 203(b) and 543(a) of the Immigration Act of 1990, referred to in subsec. (b)(2)(A), are sections 203(b) and 543(a) 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, former 1227, 1229 (now 1224), 1241, 1265, 1266, 1267, 1321, 1322, and 1323 of this title.


AMENDMENTS


Subsec. (b). Pub. L. 104–208, §382(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “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 appropriate—

“(1) for the Immigration and Nationalization 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 1262(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, or 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.”


1990—Pub. L. 101–619 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(4)(C) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

Section 362(c) of div. C of Pub. L. 104–208 provided that: “The amendments made by this section (amending this section and section 1356 of this title) shall take effect on the date of the enactment of this Act [Sept. 30, 1996].”

EFFECTIVE DATE OF 1994 AMENDMENT


EFFECTIVE DATE OF 1990 AMENDMENT

Section 542(b) of Pub. L. 101–619 provided that: “The amendment made by subsection (a) [amending this section] shall apply to fines and penalties collected on or after January 1, 1991.”

ABOLITION OF IMMIGRATION AND NATIONALIZATION 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.

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. Subject to such criteria as the Secretary of State may prescribe, including the duration of stay of the alien and the financial burden upon the charitable organization, the Secretary of State shall waive or reduce the fee for application and issuance of a nonimmigrant visa for any alien coming to the United States primarily for, or in activities related to, a charitable purpose involving health or nursing care, the provision of food or housing, job training, or any other similar direct service or assistance to poor or otherwise needy individuals in the United States.

1997—Pub. L. 105–54 inserted at end “Subject to such criteria as the Secretary of State may prescribe, including the duration of stay of the alien and the financial burden upon the charitable organization, the Secretary of State shall waive or reduce the fee for application and issuance of a nonimmigrant visa for any alien coming to the United States primarily for, or in activities related to, a charitable purpose involving health or nursing care, the provision of food or housing, job training, or any other similar direct service or assistance to poor or otherwise needy individuals in the United States.”

1965—Pub. L. 89–609 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.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 2(b) of Pub. L. 105–54 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 6, 1997].”

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 287 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1997—Pub. L. 105–54 inserted at end “Subject to such criteria as the Secretary of State may prescribe, including the duration of stay of the alien and the financial burden upon the charitable organization, the Secretary of State shall waive or reduce the fee for application and issuance of a nonimmigrant visa for any alien coming to the United States primarily for, or in activities related to, a charitable purpose involving health or nursing care, the provision of food or housing, job training, or any other similar direct service or assistance to poor or otherwise needy individuals in the United States.”

1965—Pub. L. 89–609 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.
SURCHARGE FOR PROCESSING MACHINE-READABLE NONIMMIGRANT VISAS

Pub. L. 110–293, title V, §501, July 30, 2008, 122 Stat. 2968, provided that:

"(a) Fee Increase.—Notwithstanding any other provision of law—

"(1) not later than October 1, 2010, the Secretary of State shall increase by $1 the fee or surcharge assessed under section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 8 U.S.C. 1351 note) for processing machine-readable nonimmigrant visas and machine-readable combined border crossing identification cards and nonimmigrant visas; and

"(2) not later than October 1, 2013, the Secretary shall increase the fee or surcharge described in paragraph (1) by an additional $1.

"(b) Deposit of Amounts.—Notwithstanding section 140(a)(2) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 8 U.S.C. 1351 note) for processing machine-readable nonimmigrant visas and machine readable combined border crossing identification cards and nonimmigrant visas; and

"(c) Duration of Increase.—The fee increase authorized under subsection (a) shall terminate on the date that is 3 years after the first date on which such increased fee is collected."

Pub. L. 110–293, title V, §501, July 30, 2008, 122 Stat. 2968, provided that:

"(a) Fee Increase.—Notwithstanding any other provision of law—

"(1) not later than October 1, 2010, the Secretary of State shall increase by $1 the fee or surcharge authorized under section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 8 U.S.C. 1351 note) for processing machine readable nonimmigrant visas and machine readable combined border crossing identification cards and nonimmigrant visas; and

"(2) not later than October 1, 2013, the Secretary shall increase the fee or surcharge described in paragraph (1) by an additional $1.


"(c) Duration of Increase.—The fee increase authorized under subsection (a) shall terminate on the date that is 3 years after the first date on which such increased fee is collected."

Pub. L. 110–293, title V, §501, July 30, 2008, 122 Stat. 2968, provided that:

"(a) Fee Increase.—Notwithstanding any other provision of law—

"(1) not later than October 1, 2009, the Secretary of State shall increase by $1 the fee or surcharge authorized under section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 8 U.S.C. 1351 note) for processing machine readable nonimmigrant visas and nonimmigrant visa under section 101(a)(15)(B) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(B)] has been reduced under paragraph (1) for a child under 15 years of age, the machine readable combined border crossing card and nonimmigrant visa is issued to expire on the earlier of—

"(i) the date on which the child attains the age of 15; or

"(ii) ten years after its date of issue.

"(B) The Secretary of State and the Attorney General may not commence implementation of the requirement in subparagraph (A) until the later of—

"(i) the date that is 6 months after the date of enactment of this Act [Oct. 21, 1998]; or

"(ii) the date on which the Secretary sets the amount of the fee or surcharge in accordance with paragraph (3).

"(2) Except as provided in paragraph (B), if the fee for a machine readable combined border crossing card and nonimmigrant visa issued under section 101(a)(15)(B) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(B)] is reduced under paragraph (1) for a child under 15 years of age, the machine readable combined border crossing card and nonimmigrant visa shall be issued to expire on the earlier of—

"(i) the date on which the child attains the age of 15; or

"(ii) ten years after its date of issue.

"(C) The Secretary of State is authorized to charge a fee or surcharge under section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 8 U.S.C. 1351 note) for the processing of machine readable nonimmigrant visas and machine readable combined border crossing cards and nonimmigrant visas at a level that will ensure the full recovery by the Department of State of the costs of processing such machine readable nonimmigrant visas and machine readable combined border crossing cards and nonimmigrant visas at a level that will ensure the full recovery by the Department of State of the costs of processing such machine readable nonimmigrant visas and machine readable combined border crossing cards and nonimmigrant visas, and for the costs of processing the machine readable combined border crossing card and nonimmigrant visas for which the fee is reduced pursuant to this subsection.

"(D) Notwithstanding any other provision of law, the Secretary of State shall set the amount of the fee or surcharge authorized pursuant to section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 8 U.S.C. 1351 note) for the processing of machine readable nonimmigrant visas and machine readable combined border crossing cards and nonimmigrant visas at a level that will ensure the full recovery by the Department of State of the costs of processing such machine readable nonimmigrant visas and machine readable combined border crossing cards and nonimmigrant visas, including the costs of processing the machine readable combined border crossing cards and nonimmigrant visas for which the fee is reduced pursuant to this subsection.

"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.

Pub. L. 110–293, title V, §501, July 30, 2008, 122 Stat. 2968, 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
§ 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.)

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.

§ 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.


Amendments


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.

§ 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 and 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 herefore 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.


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 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 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”. 
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. 1291, set out in the Appendix to Title 5, Government Organization and Employees. See sections 509 and 510 of Title 28, Judiciary and Judicial Procedure.

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.

§ 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.


CODIFICATION

Section was not enacted as part of the Immigration and Nationality Act which comprises this chapter.


Section was formerly classified to section 1353a of this title.

Section was formerly classified to section 342d of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 1106 (section 66 of former Title 5), inapplicable to immigration officials under the circumstances stated.

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.

§ 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. 76–125, 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 203 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. 69–554, § 1, Sept. 6, 1966, 80 Stat. 378. Prior thereto, section was classified to section 109c of this title.

AMENDMENTS


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.

§ 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.


CODIFICATION

Section was not enacted as part of the Immigration and Nationality Act which comprises this chapter.

Section was formerly classified to section 585 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by
§ 1354. Applicability to members of the Armed Forces

(a) 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.

(b) If a person lawfully admitted for permanent residence is the spouse or child of a member of the Armed Forces of the United States, is authorized to accompany the member and reside abroad with the member pursuant to the member’s official orders, and is so accompanying and residing with the member (in marital union if a spouse), then the residence and physical presence of the person abroad shall not be treated as—

1. An abandonment or relinquishment of lawful permanent resident status for purposes of clause (i) of section 1101(a)(13)(C) of this title; or

2. An absence from the United States for purposes of clause (ii) of such section.

(June 27, 1952, ch. 477, title II, ch. 9, §285, 66 Stat. 232.)

Codification


§ 1355. Disposition 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 provisions of section 6101 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.)
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 $7 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) Except as provided in paragraph (3), 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 State, 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.

(3) The Attorney General shall charge and collect $3 per individual for the immigration inspection or pre-inspection of each commercial vessel passenger whose journey originated in the United States or in any place set forth in paragraph (1): Provided, That this requirement shall not apply to immigration inspection at designated ports of entry of passengers arriving by ferry, or by Great Lakes vessels on the Great Lakes and connecting waterways when operating on a regular schedule. For the purposes of this paragraph, the term “ferry” means a vessel, in other than ocean or coastwise service, having provisions only for deck passengers and/or vehicles, operating on a short run on a frequent schedule between two points over the most direct water route, and offering a public service of a type normally attributed to a bridge or tunnel.

(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 pre-inspection 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 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 unexpended. 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 1233(c), 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. The secretaries 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, including training of, and technical assistance to, commercial airline personnel regarding such detection;

(v) providing detention and removal services for inadmissible aliens arriving on commercial aircraft and vessels and for any alien who is inadmissible 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; and

(vi) providing removal and asylum proceedings at air or sea ports-of-entry for inadmissible aliens arriving on commercial aircraft and vessels including immigration removal proceedings resulting from presentation of fraudulent documents and failure to present documentation and for any alien who is inadmissible 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.

The Attorney General shall provide for expenditures for training and assistance described in clause (iv) in an amount, for any fiscal year, not less than 5 percent of the total of the expenses incurred that are described in the previous sentence.

(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 (b) 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 bypass, 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 court: 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 fee 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 account 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)(A)(i) Notwithstanding any other provision of law, the Attorney General is authorized to establish, by regulation, not more than 96 projects under which a fee may be charged and collected for inspection services provided at one or more land border ports of entry. Such projects may include the establishment of commuter lanes to be made available to qualified United States citizens and aliens, as determined by the Attorney General.

(ii) This subparagraph shall take effect, with respect to any project described in clause (1) that was not authorized to be commenced before September 30, 1996, 30 days after submission of a written plan by the Attorney General detailing the proposed implementation of such project.

(iii) The Attorney General shall prepare and submit on a quarterly basis a status report on each land border inspection project implemented under this subparagraph.

(B) The Attorney General, in consultation with the Secretary of the Treasury, may conduct pilot projects to demonstrate the use of designated ports of entry after working hours through the use of card reading machines or other appropriate technology.

(2) All of the fees collected under this subsection, including receipts for services performed in processing forms I-94, I-94W, and I-68, and other similar applications processed at land border points of entry, 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 non-immigrant 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.

(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 security bonds, in excess of $5,000,000, posted under this chapter which are recovered by the Department of Justice, and amount\(^3\) described in section 1255(i)(3)(b)\(^4\) of this title.

(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 Attorney General 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 amounts required to be refunded from the Fund for fiscal year 1998 and thereafter shall be refunded in accordance with estimates made in the budget request of the President for those fiscal years. Any proposed changes in the amounts designated in such budget requests shall only be made after Congressional reprogramming notification in accordance with the reprogramming guidelines for the applicable fiscal year.

(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 the Fund for initial expenses necessary to enhance collection efforts: Provided, That any such transfers shall be refunded from the Fund back to the Immigration User Fee Account by December 31, 1993.

(s) H–1B Nonimmigrant Petitioner Account

(1) In general

There is established in the general fund of the Treasury a separate account, which shall be known as the “H–1B Nonimmigrant Petitioner Account”. Notwithstanding any other section of this subchapter, there shall be deposited as offsetting receipts into the account all fees collected under paragraphs (9) and (11) of section 1184(c) of this title.

(2) Use of fees for job training

50 percent of amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for demonstration programs and projects described in section 2916a of title 29.

(3) Use of fees for low-income scholarship program

30 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended for scholarships described in section 1869c of title 42 for low-income students enrolled in a program of study leading to a degree in mathematics, engineering, or computer science.

(4) National Science Foundation competitive grant program for K–12 math, science and technology education

(A) In general

10 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended to carry out a direct or matching grant program to support private-public partnerships in K–12 education.

(B) Types of programs covered

The Director shall award grants to such programs, including those which support the development and implementation of standards-based instructional materials models and related student assessments that enable K–12 students to acquire an understanding of science, mathematics, and technology; as well as to develop critical thinking skills; provide systemic improvement in training K–12 teachers and education for students in science, mathematics, and technology; support the professional development of K–12 math and science teachers in the use of technology in the classroom; stimulate system-wide K–12 reform of science, mathematics, and technology in rural, economically disadvantaged regions of the United States; provide externships and other opportunities for students to increase their appreciation and understanding of science, mathematics, engineering, and technology (including summer institutes sponsored by an institution of higher education for students in grades 7–12 that provide instruction in such fields); involve partnerships of industry, educational institutions, and community organizations to address the educational needs of disadvantaged communities; provide college preparatory support to expose and prepare students for careers in science, mathematics, engineering, and technology; and provide for carrying out systemic reform activities under section 1862(a)(1) of title 42.

(5) Use of fees for duties relating to petitions

5 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Homeland Security until expended to carry out duties under paragraphs (1) and (9) of section 1184(c) of this title related to petitions made for nonimmigrants described in section 1101(a)(15)(H)(i)(b) of this title, under paragraph (1)(C) or (D) of section 1154\(^5\) of this title related to petitions for immigrants described in section 1153(b) of this title.

(6) Use of fees for application processing and enforcement

For fiscal year 1999, 4 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the

\(^{3}\)So in original.

\(^{4}\)So in original. Probably should be section “1255(i)(3)(b)”.  

\(^{5}\)So in original. Probably should be section “1154(a)”.  

Secretary of Labor until expended for decreasing the processing time for applications under section 1182(n)(1) of this title and for carrying out section 1182(n)(2) of this title. Beginning with fiscal year 2000, 5 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for decreasing the processing time for applications under section 1182(n)(1) of this title and section 1182(a)(5)(A) of this title.

(i) Genealogy Fee

(1) There is hereby established the Genealogy Fee for providing genealogy research and information services. This fee shall be deposited as offsetting collections into the Examinations Fee Account. Fees for such research and information services may be set at a level that will ensure the recovery of the full costs of providing all such services.

(2) The Attorney General will prepare and submit annually to Congress statements of the financial condition of the Genealogy Fee.

(3) Any officer or employee of the Immigration and Naturalization Service shall collect fees prescribed under regulation before disseminating any requested genealogical information.

(u) Premium fee for employment-based petitions and applications

The Attorney General is authorized to establish and collect a premium fee for employment-based petitions and applications. This fee shall be used to provide certain premium-processing services to business customers, and to make infrastructure improvements in the adjudications and customer-service processes. For approval of the benefit applied for, the petitioner/applicant must meet the legal criteria for such benefit. This fee shall be set at $1,000, shall be paid in addition to any normal petition/application fee that may be applicable, and shall be deposited as offsetting collections in the Immigration Examinations Fee Account. The Attorney General may adjust this fee according to the Consumer Price Index.

(v) Fraud Prevention and Detection Account

(1) In general

There is established in the general fund of the Treasury a separate account, which shall be known as the “Fraud Prevention and Detection Account”. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under paragraph (12) or (13) of section 1184(c) of this title.

(2) Use of fees to combat fraud

(A) Secretary of State

One-third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of State until expended for programs and activities at United States embassies and consulates abroad—

(i) to increase the number diplomatic security personnel assigned exclusively or primarily to the function of preventing and detecting fraud by applicants for visas described in subparagraph (H)(i), (H)(ii), or (L) of section 1101(a)(15) of this title;

(ii) otherwise to prevent and detect visa fraud, including primarily fraud by applicants for visas described in subparagraph (H)(i), (H)(ii), or (L) of section 1101(a)(15) of this title, in cooperation with the Secretary of Homeland Security; and

(iii) upon request by the Secretary of Homeland Security, to assist such Secretary in carrying out the fraud prevention and detection programs and activities described in subparagraph (B).

(B) Secretary of Homeland Security

One-third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of Homeland Security until expended for programs and activities to prevent and detect immigration benefit fraud, including fraud with respect to petitions filed under paragraph (1) or (2)(A) of section 1184(c) of this title to grant an alien nonimmigrant status described in subparagraph (H) or (L) of section 1101(a)(15) of this title.

(C) Secretary of Labor

One-third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of Labor until expended for wage and hour enforcement programs and activities otherwise authorized to be conducted by the Secretary of Labor that focus on industries likely to employ nonimmigrants, including enforcement programs and activities described in section 1182(n) of this title and enforcement programs and activities related to section 1184(c)(14)(A)(i) of this title.

(D) Consultation

The Secretary of State, the Secretary of Homeland Security, and the Secretary of Labor shall consult one another with respect to the use of the funds in the Fraud Prevention and Detection Account or for programs and activities to prevent and detect fraud with respect to petitions under paragraph (1) or (2)(A) of section 1184(c) of this title to grant an alien nonimmigrant status described in section 1101(a)(15)(H)(ii) of this title.


So in original. Probably should be followed by “of”.
2003—Subsec. (e)(3). Pub. L. 108–7, § 108, added par. (3) and struck out former par. (3) which read as follows: “The Attorney General shall charge and collect $3 per individual for the immigration inspection or pre-inspection of each commercial vessel passenger whose journey originated in the United States or in any place set forth in paragraph (1): Provided, That this requirement shall not apply to immigration inspection at designated ports of entry of passengers arriving by the following vessels, when operating on a regular schedule: Great Lakes international ferries, or Great Lakes Vessels on the Great Lakes and connecting waterways.”
Subsec. (s)(1). Pub. L. 108–77, §§ 107(c), 402(d)(2), temporarily substituted “paragraphs (9) and (11) of section 1184(c) of this title” for “section 1184(c)(9) of this title”. See Effective and Termination Dates of 2003 Amendment note below.
2002—Subsec. (e)(3). Pub. L. 107–206 substituted “is authorized to” and “requirement for “authorization”.
Subsec. (m). Pub. L. 107–296, § 457, which directed the substitution of “such services,” for “such services, including the costs of similar services provided without charge to asylum applicants or other immigrants,”, was repealed by Pub. L. 108–7, § 107.
Subsec. (q)(2). Pub. L. 107–273 inserted “, including receipts for services performed in processing forms I–94, I–914, and I–68, and other similar applications processed at land border ports of entry,” after “subsequent to fiscal year 1994 and thereafter shall be refunded in accordance with estimates made in the budget request of the House of Representatives and the Senate in accordance with section 606 of Public Law 102–395.”
Subsec. (q)(1)(A)(i). Pub. L. 107–77, § 110, which directed the substitution of “96” for “6” in section 286(q)(1)(A) of the Immigration and Nationality Act of 1953, was executed by making the substitution in section 286(q)(1)(A) of the Immigration and Naturalization Act to reflect the probable intent of Congress.
Subsec. (e)(2). Pub. L. 106–313, § 110(a)(1), substituted “55 percent” for “56.3 percent”.
Subsec. (s)(3). Pub. L. 106–313, § 113(b), provided that in the amendment made by section 110(a)(2) of Pub. L. 106–313 the figure to be inserted is deemed to be “22 percent”. See below.
Subsec. (e)(4). Pub. L. 106–313, § 110(a)(3), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: “(A) GRANTS FOR MATHEMATICS, ENGINEERING, OR SCIENCE ENRICHMENT PROGRAMS.—4 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended to carry out systemic reform activities described in section 1862a(a)(1) of title 2 of the National Science Foundation under section 1182(a)(5)(A) of this title.”
Subsec. (s)(5). Pub. L. 106–313, § 113(a), amended text of par. (5) generally. Prior to amendment, text read as follows: “1.5 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Attorney General until expended to carry out systemic reform activities described in section 1182(a)(5)(A) of this title, to decrease the processing time for such petitions, and to carry out duties under section 416 of the American Competitiveness and Workforce Improvement Act of 1998. Such amounts shall be available in addition to any other fees authorized to be collected by the Attorney General.”
Subsec. (s)(6). Pub. L. 106–554, which directed amendment of section 286(q)(6) of the Immigration and Nationality Act by inserting “and section 1182a(a)(5)(A) of this title” after “decreasing the processing time for applications under section 1182a(n)(1) of this title”, was executed by making the amendment to this section, which is section 286 of the Immigration and Nationality Act, to reflect the probable intent of Congress.
Pub. L. 106–313, § 113(b), provided that in the amendments made by section 110(a)(4) and (5) of Pub. L. 106–313 the figures to be inserted are deemed to be “4 percent” and “2 percent”, respectively. See above.
Pub. L. 106–313, § 110(a)(4), substituted “5 percent” for “6 percent”. See above.
1999—Subsec. (q)(1)(A)(i) to (iv). Pub. L. 106–113, which directed amendment of section 286(q)(1)(A) of the Immigration and Nationality Act of 1953 by striking out cl. (i), redesignating cl. (iii) as (ii), striking out “,” until September 30, 2000,” after “submittal on a quarterly basis” in cl. (iv), and redesignating cl. (iv) as (iii), was executed by making the amendment to this section, which is section 286 of the Immigration and Nationality Act, to reflect the probable intent of Congress. Prior to amendment, cl. (ii) read as follows: “The program authorized in this subparagraph shall terminate on September 30, 2000, unless further authorized by an Act of Congress.”
1997—Subsec. (r)(2). Pub. L. 105–119, § 110(2)(A), inserted “, and amount described in section 1255a(3)(b) of this title” after “recovers from the Department of Justice”.
Subsec. (r)(4). Pub. L. 105–119, § 110(2)(C), added par. (4) and struck out former par. (4) which read as follows: “The amount required to be refunded from the Fund 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 102–380.”
Subsec. (s). Pub. L. 105–119, § 110(1), struck out heading and text of subsec. (s) which established Immigration Detention Account in general fund of the Treasury to be drawn upon to refund to any appropriation to the Attorney General for detention of aliens.
1996—Subsec. (a). Pub. L. 104–208, §§ 306(c)(1), substituted “section 1223(b)” for “section 1229(b)”.
Subsec. (h)(1)(B). Pub. L. 104–208, § 306(b), substituted “1223(c), 1221,” for “1223(c)”.

end year, the Secretary substantially complied with the requirement in section 1182a(n)(1) of this title relating to the provision of the certification described in section 110(a)(15)(H)(i)(b) of this title within a 7-day period.”

shall provide for expenditures for training and assistance described in clause (tv) in an amount, for any fiscal year, not less than 5 percent of the total of the expenses incurred that are described in the previous sentence.'


Pub. L. 104–208, § 308(e)(1)(L), substituted "removal" for "deportation."


Subsec. (q)(1). Pub. L. 104–208, § 122(a)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: "(a) 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."

Subsec. (q)(5). Pub. L. 104–208, § 122(a)(2), struck out par. (5) which read as follows: "(5) The program authorized in this subsection shall terminate on September 30, 1993, unless further authorized by an Act of Congress."

Subsec. (r)(4). Pub. L. 104–208, § 671(b)(11), substituted "additional" for "additional".


Subsec. (r)(1)(A). Pub. L. 104–208, § 308(d)(4)(K), substituted "paragraph (1)" for "subsection (q)(1)".


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;"


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. 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. "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. (m). Pub. L. 101–515, § 210(b)(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 additional [sic] costs associated with the administration of the fees collected".


$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.'"


Subsec. (b). Pub. L. 100–525, § 4(a)(1)(A), substituted "'section 1353b of this title'" for "'section 1353(a) of this title'" as heading.


Subsec. (f). Pub. L. 100–525, § 4(a)(1)(A), substituted "'section 1335b of this title'" for "'section 1335(a) of this title'".

Subsec. (g). Pub. L. 100–525, § 4(a)(1)(B), substituted "'section 1335b of this title'" for "'section 1335(a) of this title'".

Subsec. (h). 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.


Subsec. (j). Pub. L. 100–525, § 4(a)(1)(E), struck out subsection 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."


1987—Subsec. (h)(1)(A). Pub. L. 100–71, directed the general amendment of first sentence of section 205(b)(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 subsection (h)(1)(A) but did enact subsection (d)(1)(A) of this section and has had such amendment been executed to first sentence of subsection (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.


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)"."

TITLE 8—ALIENS AND NATIONALITY § 1356

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 403(b) of Pub. L. 109–13 effective Dec. 8, 2004, and the fees imposed under such amendment applicable to petitions under section 1184(c) of this title, and applications for nonimmigrant visas under section 1202 of this title, filed on or after the date that is 90 days after Dec. 8, 2004, see section 426(c) of Pub. L. 108–447, set out as a note under section 1184 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 426(b) of Pub. L. 108–447 effective Dec. 8, 2004, and the fees imposed under such amendment applicable to petitions under section 1184(c) of this title, and applications for nonimmigrant visas under section 1202 of this title, filed on or after the date that is 90 days after Dec. 8, 2004, see section 426(c) of Pub. L. 108–447, set out as a note under section 1184 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 100–525, § 8(f), added Pub. L. 100–525, § 4(a)(1)(C)(ii), substituted "Fee Account" for "Tax Account"; "(1) The provisions of this section and the amendments made by this section, shall apply to expenses incurred during or after fiscal year 1997." Amendment by section 308(d)(3)(A), (4)(K), (o)(1)(L), (r)(1) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1181 of this title.

Amendment by section 376(b) of Pub. L. 104–208 applicable to applications made on or after the end of the 90-day period beginning Sept. 30, 1996, see section 376(c) of Pub. L. 104–208, set out as a note under section 1255 of this title.

Amendment by section 382(b) of Pub. L. 104–208 applicable to fines and penalties collected on or after Sept. 30, 1996, see section 382(c) of Pub. L. 104–208, set out as a note under section 1330 of this title.


EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by 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. 102–295.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 309(a)(3) of Pub. L. 102–232, as amended by Pub. L. 103–416, title II, § 219(b)(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. 100–149, title II] and the Department of Justice Appropriations Act, 1990 [Pub. L. 101–162, title II], respectively."
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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 pre-inspection 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), set out as a note under section 1222 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.


"(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 236(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

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.

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.

RESTORATION OF PROVISION REGARDING FEES TO COVER THE FULL COSTS OF ALL ADJUDICATION SERVICES

REPORTING REQUIREMENT

"The Secretary of Labor and the Director of the National Science Foundation shall—

"(1) track and monitor the performance of programs receiving H-1B Nonimmigrant Fee grant money; and

"(2) not later than one year after the date of enactment of this subsection (Oct. 17, 2000), submit a report to the Committees on the Judiciary of the House of Representatives and the Senate—[sic]

"(A) the tracking system to monitor the performance of programs receiving H-1B grant funding; and

"(B) the number of individuals who have completed training and have entered the high-skill workforce through these programs."

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
Pub. L. 104–208, div. A, § 101(a)(title I), Sept. 30, 1996, 110 Stat. 3009, 3009–10, provided in part: "That the Land Border Fee Pilot Project scheduled to end September 30, 1996 [see subsec. (q) of this section], is extended to September 30, 1999, for projects on both the northern and southern borders of the United States, except that no pilot program may implement a universal land border crossing toll."

Similar provisions were contained in the following prior appropriations acts:


§ 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, expulsion, or removal 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 railroad 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, expulsion, or removal 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 program training 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 denial of admission to 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 1229a of this title.

(2) Such fingerprints and photographs shall be made available to Federal, State, and local law enforcement agencies, upon request.
(g) Performance of immigration officer functions by State officers and employees

(1) Notwithstanding section 1342 of title 31, the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.

(2) An agreement under this subsection shall require that an officer or employee of a State or political subdivision of a State performing a function under the agreement shall have knowledge of, and adhere to, Federal law relating to the function, and shall contain a written certification that the officers or employees performing the function under the agreement have received adequate training regarding the enforcement of relevant Federal immigration laws.

(3) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State shall be subject to the direction and supervision of the Attorney General.

(4) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State may use Federal property or facilities, as provided in a written agreement between the Attorney General and the State or subdivision.

(5) With respect to each officer or employee of a State or political subdivision who is authorized to perform a function under this subsection, the specific powers and duties that may be, or are required to be, exercised or performed by the individual, the duration of the authority of the individual, and the position of the agency of the Attorney General who is required to supervise and direct the individual, shall be set forth in a written agreement between the Attorney General and the State or subdivision.

(6) The Attorney General may not accept a service under this subsection if the service will be provided by any Federal employee.

(7) Except as provided in paragraph (8), an officer or employee of a State or political subdivision of a State performing functions under this subsection shall not be treated as a Federal employee for any purpose other than for purposes of chapter 81 of title 5 (relating to compensation for injury) and sections 2609 through 2680 of title 28 (relating to tort claims).

(8) An officer or employee of a State or political subdivision of a State acting under color of authority under this subsection, or any agreement entered into under this subsection, shall be considered to be acting under color of Federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under Federal or State law.

(9) Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General under this subsection.

(10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State—

(A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or

(B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

(h) Protecting abused juveniles

An alien described in section 1101(a)(27)(J) of this title who has been battered, abused, neglected, or abandoned, shall not be compelled to contact the alleged abuser (or family member of the alleged abuser) at any stage of applying for special immigrant juvenile status, including after a request for the consent of the Secretary of Homeland Security under section 1101(a)(27)(J)(iii)(I) of this title.


(3) Pub. L. 104–208, §308(d)(4)(C)(ii), substituted “denial of admission to” for “exclusion from”.

(4) Pub. L. 104–208, §308(d)(4)(C)(iii), substituted “section 1229a” for “section 1222”.

(5) Pub. L. 104–208, §308(e)(1)(M), substituted “denial of admission to” for “exclusion from”.

(6) Pub. L. 104–208, §308(e)(1)(N), substituted “United States” 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 concluding provisions.


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 unworn 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 1996 Amendment
Amendment by section 308(d)(4)(L), (e)(1)(M), (g)(5A)(i) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

Effective Date of 1991 Amendment

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(e) of Pub. L. 100–525, set out as a note under section 1101 of this title.

Abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 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) Establishment of central file
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 or denied admission to the United States, insofar as such information is available from the existing records of the Service, and the names of all aliens hereafter admitted or denied admission to the United States, 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) Information from other departments and agencies
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) Reports on social security account numbers and earnings of aliens not authorized to work

(1) Not later than 3 months after the end of each fiscal year (beginning with fiscal year 1996), the Commissioner of Social Security shall report to the Committees on the Judiciary of the House of Representatives and the Senate on the aggregate quantity of social security account numbers issued to aliens not authorized to be employed, with respect to which, in such fiscal year, earnings were reported to the Social Security Administration.

(2) If earnings are reported on or after January 1, 1997, to the Social Security Administration on a social security account number issued to an alien not authorized to work in the United States, the Commissioner of Social Security shall provide the Attorney General with information regarding the name and address of the alien, the name and address of the person reporting the earnings, and the amount of the earnings. The information shall be provided in an electronic form agreed upon by the Commissioner and the Attorney General.

(d) Certification of search of Service records
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.


REFERENCES IN TEXT
This chapter, referred to in subsec. (a), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS
1996—Subsec. (a). Pub. L. 104–208, § 308(d)(4)(M), substituted “admitted or denied admission to the United States” for “admitted to the United States, or excluded therefrom” in two places. Subsec. (c). Pub. L. 104–208, § 414(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The Attorney General shall, upon request from 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.


REFERENCES IN TEXT
This chapter, referred to in text, was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS

1981—Pub. L. 97–116 substituted “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 inadmissible under any provision of this chapter. In any removal proceeding under part IV 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.

§ 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 inadmissible 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 inadmissible under any provision of this chapter. In any removal proceeding under part IV 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.

§ 1362. Right to counsel
In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal 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.


AMENDING

EFFECTIVE DATE OF 1996 AMENDMENT

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.

§ 1363a. Undercover investigation authority

(a) In general
With respect to any undercover investigative operation of the Service which is necessary for the detection and prosecution of crimes against the United States—

(1) sums appropriated for the Service may be used for leasing space within the United States and the territories and possessions of the United States without regard to the following provisions of law:

(A) section 1341(a) of title 31,

(B) section 6301(a) and (b)(1) to (3) of title 41,

(C) chapter 45 of title 41,

(D) section 8141 of title 40,

(E) section 3324(a) and (b) of title 31,

(F) section 6306 of title 41, and

(G) section 3901 of title 41;

(2) sums appropriated for the Service may be used to establish or to acquire proprietary corporations or business entities as part of an undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to the provisions of section 9102 of title 31;

(3) sums appropriated for the Service, and the proceeds from the undercover operation, may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18 and of section 3302(a) of title 31; and

(4) the proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3302(b) of title 31.

The authority set forth in this subsection may be exercised only upon written certification of the Commissioner, in consultation with the Deputy Attorney General, that any action authorized by paragraph (1), (2), (3), or (4) is necessary for the conduct of the undercover operation.

(b) Disposition of proceeds no longer required
As soon as practicable after the proceeds from an undercover investigative operation, carried out under paragraphs (3) and (4) of subsection (a) of this section, are no longer necessary for the operation, the proceeds or the balance of the proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) Disposition of certain corporations and business entities
If a corporation or business entity established or acquired as part of an undercover operation under paragraph (2) of subsection (a) of this section with a net value of over $50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or Commissioner’s designee determines practicable, shall report the circumstances to the Attorney General, the Director of the Office of Management and Budget, and the Comptroller General. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.
(d) Financial audits

The Service shall conduct detailed financial audits of closed undercover operations on a quarterly basis and shall report the results of the audits in writing to the Deputy Attorney General.


§ 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 237 of the Immigration and Nationality Act [8 U.S.C. 1227]; 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 title II of the Immigration and Nationality Act [8 U.S.C. 1151 et seq.] bearing on the admission and entry of such aliens to the United States.


REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsection (d), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended. Title II of the Act is classified principally to subchapter II (§1151 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

CODIFICATION

Section was 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.

AMENDMENTS


Section, act June 27, 1952, ch. 477, title II, ch. 9, §296, as added Pub. L. 104–208, div. C, title VI, §626(a), Sept. 30, 1996, 110 Stat. 3009–700, related to transportation of remains of immigration officers and border patrol agents killed in the line of duty. Pub. L. 105–277, which directed the repeal of section 626 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which is section 626 of Pub. L. 104–208, div. C, title VI, Sept. 30, 1996, 110 Stat. 3009–700, was executed by repealing this section, which was section 296 of the Immigration and Nationality Act and was enacted by section 626(a) of Pub. L. 104–208, to reflect the probable intent of Congress.
§ 1365a. Integrated entry and exit data system

(a) Requirement

The Attorney General shall implement an integrated entry and exit data system.

(b) Integrated entry and exit data system defined

For purposes of this section, the term "integrated entry and exit data system" means an electronic system that—

(1) provides access to, and integrates, alien arrival and departure data that are—

(A) authorized or required to be created or collected under law;

(B) in an electronic format; and

(C) in a data base of the Department of Justice or the Department of State, including those created or used at ports of entry and at consular offices;

(2) uses available data described in paragraph (1) to produce a report of arriving and departing aliens by country of nationality, classification as an immigrant or non-
immigrant, and date of arrival in, and departure from, the United States;
(3) matches an alien’s available arrival data with the alien’s available departure data;
(4) assists the Attorney General (and the Secretary of State, to the extent necessary to carry out such Secretary’s obligations under immigration law) to identify, through on-line searching procedures, lawfully admitted nonimmigrants who may have remained in the United States beyond the period authorized by the Attorney General; and
(5) otherwise uses available alien arrival and departure data described in paragraph (1) to permit the Attorney General to make the reports required under subsection (e) of this section.

(c) Construction

(1) No additional authority to impose documentary or data collection requirements

Nothing in this section shall be construed to permit the Attorney General or the Secretary of State to impose any new documentary or data collection requirements on any person in order to satisfy the requirements of this section, including—
(A) requirements on any alien for whom the documentary requirements in section 1182(a)(7)(B) of this title have been waived by the Attorney General and the Secretary of State under section 1182(d)(4)(B) of this title; or
(B) requirements that are inconsistent with the North American Free Trade Agreement.

(2) No reduction of authority

Nothing in this section shall be construed to reduce or curtail any authority of the Attorney General or the Secretary of State under any other provision of law.

(d) Deadlines

(1) Airports and seaports

Not later than December 31, 2003, the Attorney General shall implement the integrated entry and exit data system using available alien arrival and departure data described in subsection (b)(1) of this section pertaining to aliens arriving in, or departing from, the United States at an airport or seaport. Such implementation shall include ensuring that such data, when collected or created by an immigration officer at such a port of entry, are entered into the system and can be accessed by immigration officers at airports, seaports, and other such land border ports of entry.

(3) Remaining data

Not later than December 31, 2005, the Attorney General shall fully implement the integrated entry and exit data system using all data described in subsection (b)(1) of this section. Such implementation shall include ensuring that all such data are available to immigration officers at all ports of entry into the United States.

(e) Reports

(1) In general

Not later than December 31 of each year following the commencement of implementation of the integrated entry and exit data system, the Attorney General shall use the system to prepare an annual report to the Committees on the Judiciary of the House of Representatives and of the Senate.

(2) Information

Each report shall include the following information with respect to the preceding fiscal year, and an analysis of that information:
(A) The number of aliens for whom departure data was collected during the reporting period, with an accounting by country of nationality of the departing alien.
(B) The number of departing aliens whose departure data was successfully matched to the alien's arrival data, with an accounting by the alien’s country of nationality and by the alien’s classification as an immigrant or nonimmigrant.
(C) The number of aliens who arrived pursuant to a nonimmigrant visa, or as a visitor under the visa waiver program under section 1187 of this title, for whom no matching departure data have been obtained through the system or through other means as of the end of the alien’s authorized period of stay, with an accounting by the alien’s country of nationality and date of arrival in the United States.
(D) The number of lawfully admitted nonimmigrants identified as having remained in the United States beyond the period authorized by the Attorney General, with an accounting by the alien's country of nationality.

(f) Authority to provide access to system

(1) In general

Subject to subsection (d) of this section, the Attorney General, in consultation with the Secretary of State, shall determine which officers and employees of the Departments of Justice and State may enter data into, and have access to the data contained in, the integrated entry and exit data system.

(2) Other law enforcement officials

The Attorney General, in the discretion of the Attorney General, may permit other Federal, State, and local law enforcement officials to have access to the data contained in the in-
igated entry and exit data system for law enforcement purposes.

(g) Use of task force recommendations

The Attorney General shall continuously update and improve the integrated entry and exit data system as technology improves and using the recommendations of the task force established under section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal years 2001 through 2008.

Visa Integrity and Security

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.

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.
§ 1365a

TASK FORCE


"(1) ESTABLISHMENT.—Not later than 6 months after the date of the enactment of this Act [June 15, 2000], the Attorney General, in consultation with the Secretary of State, the Secretary of Commerce, the Secretary of the Treasury, and the Office of Homeland Security, shall establish a task force to carry out the duties described in subsection (c) (in this section referred to as the 'Task Force').

"(b) MEMBERSHIP.—

"(1) CHAIRPERSON; APPOINTMENT OF MEMBERS.—The Task Force shall be composed of the Attorney General and 16 other members appointed in accordance with paragraph (2). The Attorney General shall be the chairperson and shall appoint the other members.

"(2) APPOINTMENT REQUIREMENTS.—In appointing the other members of the Task Force, the Attorney General shall include—

"(A) representatives of Federal, State, and local agencies with an interest in the duties of the Task Force, including representatives of agencies with an interest in—

"(i) immigration and naturalization;

"(ii) travel and tourism;

"(iii) transportation;

"(iv) law enforcement;

"(v) national security; or

"(vi) the environment; and

"(B) private sector representatives of affected industries and groups.

"(3) TERMS.—Each member shall be appointed for the life of the Task Force. Any vacancy shall be filled by the Attorney General.

"(4) COMPENSATION.—

"(A) IN GENERAL.—Each member of the Task Force shall serve without compensation, and members who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

"(B) TRAVEL EXPENSES.—The members of the Task Force shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of service for the Task Force.

"(c) DUTIES.—The Task Force shall evaluate the following:


"(2) How the United States can improve the flow of traffic at airports, seaports, and land border ports of entry through—


"(B) increasing cooperation among Federal agencies and among Federal and State agencies; and

"(C) increasing cooperation between the public and private sectors;

"(2) increasing cooperation among Federal agencies and among Federal and State agencies; and

"(D) increasing cooperation between the public and private sectors;

"(3) the cost of implementing each of its recommendations.

"(d) STAFF AND SUPPORT SERVICES.—

"(1) IN GENERAL.—The Attorney General may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Task Force to perform its duties. The employment and termination of an executive director shall be subject to confirmation by a majority of the members of the Task Force.

"(2) COMPENSATION.—The executive director shall be compensated at a rate not to exceed the rate payable for level V of the Executive Schedule under section 5303 of title 5, United States Code. The Attorney General may fix the compensation of other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and Executive Schedule pay rates, except that the rate of pay for such personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

"(3) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be detailed to the Task Force without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privilege.

"(4) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Attorney General may procure temporary and intermittent services for the Task Force under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

"(5) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Attorney General, the Administrator of General Services shall provide to the Task Force, on a reimbursable basis, the administrative support services necessary for the Task Force to carry out its responsibilities under this section.

"(6) HEARINGS AND SESSIONS.—The Task Force may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Task Force considers appropriate.

"(7) OBTAINING OFFICIAL DATA.—The Task Force 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 Attorney General, the head of that department or agency shall furnish that information to the Task Force.

"(8) REPORTS.—

"(1) DEADLINE.—Not later than December 31, 2002, and not later than December 31 of each year thereafter in which the Task Force is in existence, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate containing the findings, conclusions, and recommendations of the Task Force. Each report shall also measure and evaluate how much progress the Task Force has made, how much work remains, how long the remaining work will take to complete, and the cost of completing the remaining work.

"(2) DELEGATION.—The Attorney General may delegate to the Commissioner, Immigration and Naturalization Service, the responsibility for preparing and transmitting any such report.

"(9) LEGISLATIVE RECOMMENDATIONS.—

"(1) IN GENERAL.—The Attorney General shall make such legislative recommendations as the Attorney General deems appropriate—

"(A) to implement the recommendations of the Task Force; and

"(B) to obtain authorization for the appropriation of funds, the expenditure of receipts, or the reprogramming of existing funds to implement such recommendations.

"(2) DELEGATION.—The Attorney General may delegate to the Commissioner, Immigration and Natu-
§ 1365b. Biometric entry and exit data system

(a) Finding
Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that completing a biometric entry and exit data system as expeditiously as possible is an essential investment in efforts to protect the United States by preventing the entry of terrorists.

(b) Definition
In this section, the term "entry and exit data system" means the entry and exit system required by applicable sections of—

(1) the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208);
(2) the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106–205);1
(3) the Visa Waiver Program Act (Public Law 106–396);
(4) the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107–173) [§ 8 U.S.C. 1701 et seq.]; and
(5) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56).

c) Plan and report
(1) Development of plan
The Secretary of Homeland Security shall develop a plan to accelerate the full implementation of an automated biometric entry and exit data system.

(2) Report
Not later than 180 days after December 17, 2004, the Secretary shall submit a report to Congress on the plan developed under paragraph (1), which shall contain—

(A) a description of the current functionality of the entry and exit data system, including—

(i) a listing of ports of entry and other Department of Homeland Security and Department of State locations with biometric entry data systems in use and whether such screening systems are located at primary or secondary inspection areas;
(ii) a listing of ports of entry and other Department of Homeland Security and Department of State locations with biometric exit data systems in use;
(iii) a listing of databases and data systems with which the entry and exit data system are interoperable;

(B) a description of—

(I) identified deficiencies concerning the accuracy or integrity of the information contained in the entry and exit data system;
(II) identified deficiencies concerning technology associated with processing individuals through the system; and
(III) programs or policies planned or implemented to correct problems identified in subclause (I) or (II); and

(v) an assessment of the effectiveness of the entry and exit data system in fulfilling its intended purposes, including preventing terrorists from entering the United States;

(B) a description of factors relevant to the accelerated implementation of the biometric entry and exit data system, including—

(i) the earliest date on which the Secretary estimates that full implementation of the biometric entry and exit data system can be completed;
(ii) the actions the Secretary will take to accelerate the full implementation of the biometric entry and exit data system at all ports of entry through which all aliens must pass that are legally required to do so; and
(iii) the resources and authorities required to enable the Secretary to meet the implementation date described in clause (i);

(C) a description of any improvements needed in the information technology employed for the biometric entry and exit data system;

(D) a description of plans for improved or added interoperability with any other databases or data systems; and

(E) a description of the manner in which the Department of Homeland Security’s US-VISIT program—

(i) meets the goals of a comprehensive entry and exit screening system, including both entry and exit biometric; and
(ii) fulfills the statutory obligations under subsection (b) of this section.

d) Collection of biometric exit data
The entry and exit data system shall include a requirement for the collection of biometric exit data for all categories of individuals who are required to provide biometric entry data, regardless of the port of entry where such categories of individuals entered the United States.

e) Integration and interoperability
(1) Integration of data system
Not later than 2 years after December 17, 2004, the Secretary shall fully integrate all databases and data systems that process or contain information on aliens, which are maintained by—

(A) the Department of Homeland Security, at—

(i) the United States Immigration and Customs Enforcement;
(ii) the United States Customs and Border Protection; and

1 So in original. Probably should be “(Public Law 106–205)”.

§ 1365b

(f) Maintaining accuracy and integrity of entry and exit data system

So in original. Probably should be followed by “of 2002”.

(ii) collecting such data, to ensure that the information and data collected from foreign nationals, and the procedures utilized to access that data across multiple agencies.

(1) Policies and procedures

(A) Establishment

The Secretary of Homeland Security shall establish rules, guidelines, policies, and operating and auditing procedures for collecting, removing, and updating data maintained in, and adding information to, the entry and exit data system that ensure the accuracy and integrity of the data.

(B) Training

The Secretary shall develop training on the rules, guidelines, policies, and procedures established under subparagraph (A), and on immigration law and procedure. All personnel authorized to access information maintained in the databases and data system shall receive such training.

(2) Data collected from foreign nationals

The Secretary of Homeland Security, the Secretary of State, and the Attorney General, after consultation with directors of the relevant intelligence agencies, shall standardize the information and data collected from foreign nationals, and the procedures utilized to collect such data, to ensure that the information is consistent and valuable to officials accessing that data across multiple agencies.

(3) Data maintenance procedures

The rules, guidelines, policies, and procedures established under this subsection shall—

(A) incorporate a simple and timely method for—

(i) correcting errors in a timely and effective manner;

(ii) determining whether data provided by the applicant is accurate or not, so that the accuracy of the data can be ascertained; and

(iii) clarifying information known to cause false hits or misidentification errors;

(B) include procedures for individuals to—

(i) seek corrections of data contained in the databases or data systems; and

(ii) appeal decisions concerning data contained in the databases or data systems;

(C) strictly limit the agency personnel authorized to enter data into the system;

(D) identify classes of information to be designated as temporary or permanent entries, with corresponding expiration dates for temporary entries; and

(E) identify classes of prejudicial information requiring additional authority of supervisory personnel before entry.

(5) Centralizing and streamlining correction process

(A) In general

The President, or agency director designated by the President, shall establish a clearinghouse bureau in the Department of Homeland Security, to centralize and streamline the process through which members of the public can seek corrections to erroneous or inaccurate information contained in agency databases, which is related to immigration status, or which otherwise impedes lawful admission to the United States.

(B) Time schedules

The process described in subparagraph (A) shall include specific time schedules for reviewing data correction requests, rendering decisions on such requests, and implementing appropriate corrective action in a timely manner.

(g) Integrated biometric entry-exit screening system

The biometric entry and exit data system shall facilitate efficient immigration benefits processing by—

(1) ensuring that the system’s tracking capabilities encompass data related to all immigration benefits processing, including—

(A) visa applications with the Department of State;

(B) immigration related filings with the Department of Labor;

(C) cases pending before the Executive Office for Immigration Review; and

(D) matters pending or under investigation before the Department of Homeland Security;

(2) utilizing a biometric based identity number tied to an applicant’s biometric algorithm established under the entry and exit data system to track all immigration related matters concerning the applicant; and

(3) providing that—
(A) all information about an applicant’s immigration related history, including entry and exit history, can be queried through electronic means; and
(B) database access and usage guidelines include stringent safeguards to prevent misuse of data;
(4) providing real-time updates to the information described in paragraph (3)(A), including pertinent data from all agencies referred to in paragraph (1); and
(5) providing continuing education in counterterrorism techniques, tools, and methods for all Federal personnel employed in the evaluation of immigration documents and immigration-related policy.

(h) Entry-exit system goals
The Department of Homeland Security shall operate the biometric entry and exit system so that it—
(1) serves as a vital counterterrorism tool;
(2) screens travelers efficiently and in a welcoming manner;
(3) provides inspectors and related personnel with adequate real-time information;
(4) ensures flexibility of training and security protocols to most effectively comply with security mandates;
(5) integrates relevant databases and plans for database modifications to address volume increase and database usage; and
(6) improves database search capacities by utilizing language algorithms to detect alternate names.

(i) Dedicated specialists and front line personnel training
In implementing the provisions of subsections (g) and (h) of this section, the Department of Homeland Security and the Department of State shall—
(1) develop cross-training programs that focus on the scope and procedures of the entry and exit data system;
(2) provide extensive community outreach and education on the entry and exit data system’s procedures;
(3) provide clear and consistent eligibility guidelines for applicants in low-risk traveler programs; and
(4) establish ongoing training modules on immigration law to improve adjudications at our ports of entry, consulates, and embassies.

(j) Compliance status reports
Not later than 1 year after December 17, 2004, the Secretary of Homeland Security, the Secretary of State, the Attorney General, and the head of any other department or agency subject to the requirements of this section, shall issue individual status reports and a joint status report detailing the compliance of the department or agency with each requirement under this section.

(k) Expediting registered travelers across international borders

(1) Findings
Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(A) Expediting the travel of previously screened and known travelers across the borders of the United States should be a high priority.
(B) The process of expediting known travelers across the borders of the United States can permit inspectors to better focus on identifying terrorists attempting to enter the United States.

(2) Definition
In this subsection, the term “registered traveler program” means any program designed to expedite the travel of previously screened and known travelers across the borders of the United States.

(3) International registered traveler program
(A) In general
The Secretary of Homeland Security shall establish an international registered traveler program that incorporates available technologies, such as biometrics and e-passports, and security threat assessments to expedite the screening and processing of international travelers, including United States citizens and residents, who enter and exit the United States. The program shall be coordinated with the United States Visitor and Immigrant Status Indicator Technology program, other pre-screening initiatives, and the Visa Waiver Program.

(B) Fees
The Secretary may impose a fee for the program established under subparagraph (A) and may modify such fee from time to time. The fee may not exceed the aggregate costs associated with the program and shall be credited to the Department of Homeland Security for purposes of carrying out the program. Amounts so credited shall remain available until expended.

(C) Rulemaking
Within 365 days after December 26, 2007, the Secretary shall initiate a rulemaking to establish the program, criteria for participation, and the fee for the program.

(D) Implementation
Not later than 2 years after December 26, 2007, the Secretary shall establish a phased-implementation of a biometric-based international registered traveler program in conjunction with the United States Visitor and Immigrant Status Indicator Technology entry and exit system, other pre-screening initiatives, and the Visa Waiver Program at United States airports with the highest volume of international travelers.

(E) Participation
The Secretary shall ensure that the international registered traveler program includes as many participants as practicable by—
(i) establishing a reasonable cost of enrollment;
(ii) making program enrollment convenient and easily accessible; and
(iii) providing applicants with clear and consistent eligibility guidelines.
§ 1366. Annual report on criminal aliens

Not later than 12 months after September 30, 1996, and annually thereafter, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report detailing—

(1) the number of illegal aliens incarcerated in Federal and State prisons for having committed felonies, stating the number incarcerated for each type of offense;

(2) the number of illegal aliens convicted of felonies in any Federal or State court, but not sentenced to incarceration, in the year before the report was submitted, stating the number convicted for each type of offense;

(3) programs and plans underway in the Department of Justice to ensure the prompt removal from the United States of criminal aliens subject to removal; and

(4) methods 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.


CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

§ 1367. Penalties for disclosure of information

(a) In general

Except as provided in subsection (b) of this section, in no case may the Attorney General, or any other official or employee of the Department of Justice, the Secretary of Homeland Security, the Secretary of State (including any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)—

(1) make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] using information furnished solely by—

(A) a spouse or parent who has battered the alien or subjected the alien to extreme cruelty,

(B) a member of the spouse’s or parent’s family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty,

(C) a spouse or parent who has battered the alien’s child or subjected the alien’s child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty),
(D) a member of the spouse’s or parent’s family residing in the same household as the alien who has battered the alien’s child or subjected the alien’s child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty.


unless the alien has been convicted of a crime or crimes listed in section 241(a)(2) of the Immigration and Nationality Act [8 U.S.C. 1227(a)(2); or

(2) permit use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information which relates to an alien who is the beneficiary of an application for relief under paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(T), (U), (51)] or section 240A(b)(2) of such Act [8 U.S.C. 1229a(b)(2)].

The limitation under paragraph (2) ends when the application for relief is denied and all opportunities for appeal of the denial have been exhausted.

(b) Exceptions

(1) The Attorney General may provide, in the Attorney General’s discretion, for the disclosure of information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13.

(2) The Attorney General may provide in the discretion of the Attorney General for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose.

(3) Subsection (a) of this section shall not be construed as preventing disclosure of information in connection with judicial review of a determination in a manner that protects the confidentiality of such information.

(4) Subsection (a)(2) of this section shall not apply if all the battered individuals in the case are adults and they have all waived the restrictions of such subsection.

(5) The Attorney General is authorized to disclose information, to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to section 1641(c) of this title.

(6) Subsection (a) of this section may not be construed to prevent the Attorney General and the Secretary of Homeland Security from disclosing to the chairman and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, information on closed cases under this section in a manner that protects the confidentiality of such information and that omits personally identifying information (including locational information about individuals).

(7) Government entities adjudicating applications for relief under subsection (a)(2) of this section, and government personnel carrying out mandated duties under section 101(i)(1) of the Immigration and Nationality Act [8 U.S.C. 1101(i)(1)], may, with the prior written consent of the alien involved, communicate with non-profit, nongovernmental victims’ service providers for the sole purpose of assisting victims in obtaining victim services from programs with expertise working with immigrant victims.

(d) Guidance

The Attorney General and the Secretary of Homeland Security shall provide guidance to officers and employees of the Department of Justice or the Department of Homeland Security who have access to information covered by this section regarding the provisions of this section, including the provisions to protect victims of domestic violence from harm that could result from the inappropriate disclosure of covered information.

(1) The Attorney General may provide, in the Attorney General’s discretion, for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose.

(2) The Attorney General may provide in the discretion of the Attorney General for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose.

(3) Subsection (a) of this section shall not be construed as preventing disclosure of information in connection with judicial review of a determination in a manner that protects the confidentiality of such information.

(4) Subsection (a)(2) of this section shall not apply if all the battered individuals in the case are adults and they have all waived the restrictions of such subsection.

So in original. Probably should be followed by "or".

So in original. Probably should be followed by a closing parenthesis.
§ 1368. Increase in INS detention facilities; report on detention space

(a) Increase in detention facilities

Subject to the availability of appropriations, the Attorney General shall provide for an increase in the detention facilities of the Immigration and Naturalization Service to at least 9,000 beds before the end of fiscal year 1997.

(b) Report on detention space

(1) In general

Not later than 6 months after September 30, 1996, and every 6 months thereafter, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate estimating the amount of detention space that will be required, during the fiscal year in which the report is submitted and the succeeding fiscal year, to detain—

(A) all aliens subject to detention under section 1226(c) of this title and section 1231(a) of this title;

(B) all inadmissible or deportable aliens subject to proceedings under section 1228 of this title or section 1225b(2)(A) or 1229a of this title; and

(C) other inadmissible or deportable aliens in accordance with the priorities established by the Attorney General.

(2) Estimate of number of aliens released into the community

(A) Criminal aliens

(i) In general

The first report submitted under paragraph (1) shall include an estimate of the number of criminal aliens who, in each of the 3 fiscal years concluded prior to the date of the report—

(I) were released from detention facilities of the Immigration and Naturalization Service (whether operated directly by the Service or through contract with other persons or agencies); or

(II) were not taken into custody or detention by the Service upon completion of their incarceration.

(ii) Aliens convicted of aggravated felonies

The estimate under clause (i) shall estimate separately, with respect to each year described in such clause, the number of criminal aliens described in such clause who were convicted of an aggravated felony.

(B) All inadmissible or deportable aliens

The first report submitted under paragraph (1) shall also estimate the number of inadmissible or deportable aliens who were released into the community due to a lack of detention facilities in each of the 3 fiscal years concluded prior to the date of the report notwithstanding circumstances that the Attorney General believed justified detention (for example, a significant probability that the released alien would not appear, as agreed, at subsequent exclusion or deportation proceedings).

\[\text{CODIFICATION}\]

\[\text{Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter. Section is comprised of section 384 of div. C of Pub. L. 104–208. Another subsec. (d) of section 384 of div. C of Pub. L. 104–208 amended sections 1100 and 1255a of this title and enacted provisions set out as a note under section 1160 of this title.}\]

\[\text{AMENDMENTS}\]

\[2006—Subsec. (a). Pub. L. 109–162, § 817(1)(A), substituted “the Secretary of Homeland Security, the Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)” for “(including any bureau or agency of such Department)” in introductory provisions.\]


\[Subsec. (a)(2). Pub. L. 109–273 substituted “paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act or section 240A(b)(2) of such Act” for “clause (ii) or (iv) of section 204(a)(1)(A), clause (ii) or (iii) of section 204(a)(1)(B), section 216(c)(4)(C), section 101(a)(15)(U), or section 240a(a)(3) of such Act as an alien (or the parent of a child) who has been battered or subjected to extreme cruelty”.

\[Subsec. (b)(6), (7). Pub. L. 109–162, § 817(2), added paras. (6) and (7).\]

\[Subsec. (c). Pub. L. 109–182, § 817(3), inserted “or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act” after “in violation of this section”.


\[\text{EFFECTIVE DATE OF 1997 AMENDMENT}\]

Section 5582 of title V of Pub. L. 105–33 provided that: “Except as otherwise provided, the amendments made by this chapter [chapter 4 (§§ 5561–5562) of subtitle F of title V of Pub. L. 105–33, amending this section, sections 1611 to 1613, 1621, 1622, 1623, 1624, 1626, 1627, 1631, 1632, 1634 to 1643, and 1645 of this title, and sections 608, 1383, and 1437y of Title 42, The Public Health and Welfare] shall be effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–188].”

\[\text{EFFECTIVE DATE OF 1996 AMENDMENT}\]

Amendment by section 308(g)(8)(D) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

\[\text{ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS}\]

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.
(C) Subsequent reports

Each report under paragraph (1) following the first such report shall include the estimates under subparagraphs (A) and (B), made with respect to the 6-month period immediately preceding the date of the submission of the report.


CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–208, §308(g)(10)(G), substituted “inadmissible” for “excludable” in pars. (1)(B), (C) and (2)(B).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(10)(G) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

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.

§ 1369. Treatment of expenses subject to emergency medical services exception

(a) In general

Subject to such amounts as are provided in advance in appropriation Acts, each State or political subdivision of a State that provides medical assistance for care and treatment of an emergency medical condition (as defined in subsection (d) of this section) through a public hospital or other public facility (including a non-profit hospital that is eligible for an additional payment adjustment under section 1395ww of title 19) or through contract with another hospital or facility to an individual who is an alien not lawfully present in the United States is eligible for payment from the Federal Government of its costs of providing such services, but only to the extent that such costs are not otherwise reimbursed through any other Federal program and cannot be recovered from the alien or another person.

(b) Confirmation of immigration status required

No payment shall be made under this section with respect to services furnished to an individual unless the immigration status of the individual has been verified through appropriate procedures established by the Secretary of Health and Human Services and the Attorney General.

(c) Administration

This section shall be administered by the Attorney General, in consultation with the Secretary of Health and Human Services.

(d) “Emergency medical condition” defined

For purposes of this section, the term “emergency medical condition” means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(1) placing the patient’s health in serious jeopardy,

(2) serious impairment to bodily functions, or

(3) serious dysfunction of any bodily organ or part.

(e) Effective date

Subsection (a) of this section shall apply to medical assistance for care and treatment of an emergency medical condition furnished on or after January 1, 1997.


CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1370. Reimbursement of States and localities for emergency ambulance services

Subject to the availability of appropriations, the Attorney General shall fully reimburse States and political subdivisions of States for costs incurred by such a State or subdivision for emergency ambulance services provided to any alien who—

(1) is injured while crossing a land or sea border of the United States without inspection or at any time or place other than as designated by the Attorney General; and

(2) is under the custody of the State or subdivision pursuant to a transfer, request, or other action by a Federal authority.


CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1371. Reports

Not later than 180 days after the end of each fiscal year, the Attorney General shall submit a report to the Inspector General of the Department of Justice and the Committees on the Judiciary of the House of Representatives and of the Senate describing the following:
§ 1372  TITLE 8—ALIENS AND NATIONALITY

(1) Public charge deportations

The number of aliens deported on public charge grounds under section 1227(a)(5) of this title during the previous fiscal year.

(2) Indigent sponsors

The number of determinations made under section 1631(e) of this title during the previous fiscal year.

(3) Reimbursement actions

The number of actions brought, and the amount of each action, for reimbursement under section 1183a of this title (including private collections) for the costs of providing public benefits.


REFERENCES IN TEXT

CODIFICATION
Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1372. Program to collect information relating to nonimmigrant foreign students and other exchange program participants

(a) In general

(1) Program

The Attorney General, in consultation with the Secretary of State and the Secretary of Education, shall develop and conduct a program to collect from approved institutions of higher education, other approved educational institutions, and designated exchange visitor programs in the United States the information described in subsection (c) of this section with respect to aliens who—

(A) have the status, or are applying for the status, of nonimmigrants under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title; and

(B) are nationals of the countries designated under subsection (b) of this section.

(2) Deadline

The program shall commence not later than January 1, 1998.

(3) Aliens for whom a visa is required

The Attorney General, in consultation with the Secretary of State, shall establish an electronic means to monitor and verify—

(A) the issuance of documentation of acceptance of a foreign student by an approved institution of higher education or other approved educational institution, or of an exchange visitor program participant by a designated exchange visitor program;

(B) the transmittal of the documentation referred to in subparagraph (A) to the Department of State for use by the Bureau of Consular Affairs;

(C) the issuance of a visa to a foreign student or an exchange visitor program participant;

(D) the admission into the United States of the foreign student or exchange visitor program participant;

(E) the notification to an approved institution of higher education, other approved educational institution, or exchange visitor program sponsor that the foreign student or exchange visitor participant has been admitted into the United States;

(F) the registration and enrollment of that foreign student in such approved institution of higher education or other approved educational institution, or the participation of that exchange visitor in such designated exchange visitor program, as the case may be; and

(G) any other relevant act by the foreign student or exchange visitor program participant, including a changing of school or designated exchange visitor program and any termination of studies or participation in a designated exchange visitor program.

(4) Reporting requirements

Not later than 30 days after the deadline for registering for classes for an academic term of an approved institution of higher education or other approved educational institution for which documentation is issued for an alien as described in paragraph (3)(A), or the scheduled commencement of participation by an alien in a designated exchange visitor program, as the case may be, the institution or program, respectively, shall report to the Immigration and Naturalization Service any failure of the alien to enroll or to commence participation.

(b) Covered countries

The Attorney General, in consultation with the Secretary of State, shall designate countries for purposes of subsection (a)(1)(B) of this section. The Attorney General shall initially designate not less than 5 countries and may designate additional countries at any time while the program is being conducted.

(c) Information to be collected

(1) In general

The information for collection under subsection (a) of this section with respect to an alien consists of—

(A) the identity and current address in the United States of the alien;

(B) the nonimmigrant classification of the alien and the date on which a visa under the
classification was issued or extended or the date on which a change to such classification was approved by the Attorney General;

(C) in the case of a student at an approved institution of higher education, other approved educational institution, the current academic status of the alien, including whether the alien is maintaining status as a full-time student or, in the case of a participant in a designated exchange visitor program, whether the alien is satisfying the terms and conditions of such program;

(D) in the case of a student at an approved institution of higher education, or other approved educational institution, any disciplinary action taken by the institution against the alien as a result of the alien’s being convicted of a crime or, in the case of a participant in a designated exchange visitor program, any change in the alien’s participation as a result of the alien’s being convicted of a crime; and;

(E) the date of entry and port of entry;

(F) the date of the alien’s enrollment in an approved institution of higher education, other approved educational institution, or designated exchange visitor program in the United States;

(G) the degree program, if applicable, and field of study; and

(H) the date of the alien’s termination of enrollment and the reason for such termination (including graduation, disciplinary action or other dismissal, and failure to enroll).

(2) FERPA

The Family Educational Rights and Privacy Act of 1974 [20 U.S.C. 1232g] shall not apply to aliens described in subsection (a) of this section to the extent that the Attorney General determines necessary to carry out the program under subsection (a) of this section.

(3) Electronic collection

The information described in paragraph (1) shall be collected electronically, where practicable.

(4) Computer software

(A) Collecting institutions

To the extent practicable, the Attorney General shall design the program in a manner that permits approved institutions of higher education, other approved educational institutions, and designated exchange visitor programs to use existing software for the collection, storage, and data processing of information described in paragraph (1).

(B) Attorney General

To the extent practicable, the Attorney General shall use or enhance existing software for the collection, storage, and data processing of information described in paragraph (1).

(5) Reporting requirements

The Attorney General shall prescribe by regulation reporting requirements by taking into account the curriculum calendar of the approved institution of higher education, other approved educational institution, or exchange visitor program.

(d) Participation by institutions of higher education and exchange visitor programs

(1) Condition

The information described in subsection (c) of this section shall be provided by institutions of higher education, other approved educational institutions, or exchange visitor programs as a condition of—

(A) in the case of an approved institution of higher education, or other approved educational institution, the continued approval of the institution under subparagraph (F) or (M) of section 1101(a)(15) of this title; and

(B) in the case of an approved institution of higher education or a designated exchange visitor program, the granting of authority to issue documents to an alien demonstrating the alien’s eligibility for a visa under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.

(2) Effect of failure to provide information

If an approved institution of higher education, other approved educational institution, or a designated exchange visitor program fails to provide the specified information, such approvals and such issuance of visas shall be revoked or denied.

(e) Funding

(1) In general

Beginning on April 1, 1997, the Attorney General shall impose on, and collect from, each alien described in paragraph (5), with respect to whom the institution or program is required by subsection (a) of this section to collect information, a fee established by the Attorney General under paragraph (4) at a time prior to the alien being classified under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.

(2) Remittance

The fees collected under paragraph (1) shall be remitted by the alien pursuant to a schedule established by the Attorney General for immediate deposit and availability as described under section 1356(m) of this title.

(3) Aliens described

An alien referred to in paragraph (1) is an alien who seeks nonimmigrant status under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title (other than a nonimmigrant under section 1101(a)(15)(J) of this title who seeks to come to the United States as a participant in a program sponsored by the Federal Government).

(4) Amount and use of fees

(A) Establishment of amount

The Attorney General shall establish the amount of the fee to be imposed on, and collected from, an alien under paragraph (1). Except as provided in subsection (g)(2) of this section, the fee imposed on any individ-

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1 So in original.

2 So in original. The word “and” probably should not appear.
eral may not exceed $100, except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed $40, except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed $85. The amount of the fee shall be based on the Attorney General’s estimate of the cost per alien of conducting the information collection program described in this section.

(B) Use

Fees collected under paragraph (1) shall be deposited as offsetting receipts into the Immigration Examinations Fee Account (established under section 1356(m) of this title) and shall remain available until expended for the Attorney General to reimburse any appropriation the amount paid out of which is for expenses in carrying out this section. Such expenses include, but are not necessarily limited to, those incurred by the Secretary of State in connection with the program under subsection (a) of this section.

(5) Proof of payment

The alien shall present proof of payment of the fee before the granting of—

(A) a visa under section 1202 of this title or, in the case of an alien who is exempt from the visa requirement described in section 1182(d)(4) of this title, admission to the United States; or

(B) change of nonimmigrant classification under section 1259 of this title to a classification described in paragraph (2).

(6) Implementation

The provisions of section 553 of title 5 (relating to rule-making) shall not apply to the extent the Attorney General determines necessary to ensure the expeditious, initial implementation of this section.

(f) Joint report

Not later than 4 years after the commencement of the program established under subsection (a) of this section, the Attorney General, the Secretary of State, and the Secretary of Education, shall commence expansion of the program to cover the nationals of all countries.

(g) Worldwide applicability of program

(1) Expansion of program

Not later than 12 months after the submission of the report required by subsection (f) of this section, the Attorney General, in consultation with the Secretary of State and the Secretary of Education, shall commence expansion of the program to cover the nationals of all countries.

(2) Revision of fee

After the program has been expanded, as provided in paragraph (1), the Attorney General may, on a periodic basis, revise the amount of the fee imposed and collected under subsection (e) of this section in order to take into account changes in the cost of carrying out the program.

(h) Definitions

As used in this section:

(1) Approved institution of higher education

The term “approved institution of higher education” means a college or university approved by the Attorney General, in consultation with the Secretary of Education, under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.

(2) Designated exchange visitor program

The term “designated exchange visitor program” means a program that has been—

(A) designated by the Secretary of State for purposes of section 1101(a)(15)(J) of this title; and

(B) selected by the Attorney General for purposes of the program under this section.

(3) Other approved educational institution

The term “other approved educational institution” includes any air flight school, language training school, or vocational school, approved by the Attorney General, in consultation with the Secretary of Education and the Secretary of State, under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.

So in original. See 2000 amendment notes below.
Subsec. (d)(1). Pub. L. 107–56, §416(c)(1), inserted "‘other approved educational institutions,’" after ‘‘higher education’’ in introductory provisions.


Subsec. (d)(2). Pub. L. 107–56, §416(c)(3), inserted "‘other approved educational institution,’" after ‘‘higher education’’.

Subsec. (e)(1), (2). Pub. L. 107–56, §416(c)(3), which directed insertion of "‘other approved educational institution,’" after "‘higher education’" in pars. (1) and (2), could not be executed because the words "‘higher education’" did not appear. See 2000 Amendment notes below.


Subsec. (e)(1). Pub. L. 106–396, §404(1), in introductory provisions, substituted “the Attorney General” for “an approved institution of higher education and a designated exchange visitor program” and “a time prior to the alien being classified under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.” for “the time—

“(A) when the alien first registers with the institution or program after entering the United States; or

“(B) in a case where a registration under subparagraph (A) does not exist, when the alien first comes into the United States; or

“(C) when the alien first registers with the immigration service when the alien is an au pair, a camp counselor, or a participant in a summer work travel program, the fee shall not exceed $35” without reference to amendment made by Pub. L. 106–396, §404(4)(A). See below.

Pub. L. 106–396, §404(4)(A), inserted before period at end of second sentence "‘‘or’’, except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, a camp counselor, or participant in a summer work travel program, the fee shall not exceed $40.’’

Subsec. (e)(3). Pub. L. 106–396, §404(3), substituted "‘alien who seeks’’ for "‘alien who has’" and "‘who seeks to come’" for "‘who has come’".

Subsec. (e)(4)(A). Pub. L. 106–553 inserted before period at end of second sentence "‘‘or’’, except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, a camp counselor, or participant in a summer work travel program, the fee shall not exceed $35’’ without reference to amendment made by Pub. L. 106–396, §404(4)(A). See below.

Pub. L. 106–396, §404(4)(A), inserted before period at end of second sentence "‘‘or’’, except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, a camp counselor, or participant in a summer work travel program, the fee shall not exceed $40.’’

Subsec. (e)(4)(B). Pub. L. 106–396, §404(4)(B), inserted at end "‘Such expenses include, but are not necessarily limited to, those incurred by the Secretary of State in connection with the program under subsection (a) of this section.’’


Subsec. (g)(1). Pub. L. 106–396, §405, amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

“(A) IN GENERAL.—Not later than 6 months after the publication of the report required by subsection (f) of this section, the Attorney General, in consultation with the Secretary of State and the Secretary of Education, shall commence expansion of the program to cover the nationals of all countries.

“(B) DEADLINE.—Such expansion shall be completed not later than 1 year after the date of the submission of the report referred to in subsection (f) of this section.”

Subsec. (h)(2)(A). Pub. L. 106–396, §406(1), substituted "‘Secretary of State’” for "‘Director of the United States Information Agency’”.

§1373. Communication between government agencies and the Immigration and Naturalization Service

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government agency or official may not prohibit, or in any way restrict, any government agency or official from sending to, or receiving from, the Immigration and Naturalization Service any of the following with respect to information regarding the citizenship or immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity or official from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.


Codification

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.
§ 1374. Information regarding female genital mutilation

(a) Provision of information regarding female genital mutilation

The Immigration and Naturalization Service (in cooperation with the Department of State) shall make available for all aliens who are issued immigrant or nonimmigrant visas, prior to or at the time of entry into the United States, the following information:

1. Information on the severe harm to physical and psychological health caused by female genital mutilation which is compiled and presented in a manner which is limited to the practice itself and respectful to the cultural values of the societies in which such practice takes place.

2. Information concerning potential legal consequences in the United States for (A) performing female genital mutilation, or (B) allowing a child under his or her care to be subjected to female genital mutilation, under criminal or child protection statutes or as a form of child abuse.

(b) Limitation

In consultation with the Secretary of State, the Commissioner of Immigration and Naturalization shall identify those countries in which female genital mutilation is commonly practiced and, to the extent practicable, limit the provision of information under subsection (a) of this section to aliens from such countries.

(c) "Female genital mutilation" defined

For purposes of this section, the term “female genital mutilation” means the removal or infibulation (or both) of the whole or part of the clitoris, the labia minora, or labia majora.


Codification

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

§ 1375a. Domestic violence information and resources for immigrants and regulation of international marriage brokers

(a) Information for K nonimmigrants on legal rights and resources for immigrant victims of domestic violence

(1) In general

The Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, shall develop an information pamphlet, as described in paragraph (2), on legal rights and resources for immigrant victims of domestic violence and distribute and make such pamphlet available as described in paragraph (5). In preparing such materials, the Secretary of Homeland Security shall consult with nongovernmental organizations with expertise on the legal rights of immigrant victims of battery, extreme cruelty, sexual assault, and other crimes.

(2) Information pamphlet

The information pamphlet developed under paragraph (1) shall include information on the following:

(A) The K nonimmigrant visa application process and the marriage-based immigration process, including conditional residence and adjustment of status.

(B) The illegality of domestic violence, sexual assault, and child abuse in the United States and the dynamics of domestic violence.

(C) Domestic violence and sexual assault services in the United States, including the National Domestic Violence Hotline and the National Sexual Assault Hotline.

(D) The legal rights of immigrant victims of abuse and other crimes in immigration, criminal justice, family law, and other matters, including access to protection orders.

(E) The obligations of parents to provide child support for children.

(F) Marriage fraud under United States immigration laws and the penalties for committing such fraud.

(G) A warning concerning the potential use of K nonimmigrant visas by United States citizens who have a history of committing domestic violence, sexual assault, child abuse, or other crimes and an explanation that such acts may not have resulted in a criminal record for such a citizen.

(H) Notification of the requirement under subsection (d)(3)(A) of this section that international marriage brokers provide foreign national clients with background information gathered on United States clients from searches of Federal and State sex offender public registries and collected from United States clients regarding their marital history and domestic violence or other violent criminal history, but that such information may not be complete or accurate because the United States client may not have a criminal record or may not have truthfully reported their marital or criminal record.

(3) Summaries

The Secretary of Homeland Security, in consultation with the Attorney General and the
Secretary of State, shall develop summaries of the pamphlet developed under paragraph (1) that shall be used by Federal officials when reviewing the pamphlet in interviews under subsection (b) of this section.

(4) Translation

(A) In general

In order to best serve the language groups having the greatest concentration of K nonimmigrant visa applicants, the information pamphlet developed under paragraph (1) shall, subject to subparagraph (B), be translated by the Secretary of State into foreign languages, including Russian, Spanish, Tagalog, Vietnamese, Chinese, Ukrainian, Thai, Korean, Polish, Japanese, French, Arabic, Portuguese, Hindi, and such other languages as the Secretary of State, in the Secretary’s discretion, may specify.

(B) Revision

Every 2 years, the Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, shall determine at least 14 specific languages into which the information pamphlet is translated based on the languages spoken by the greatest concentrations of K nonimmigrant visa applicants.

(5) Availability and distribution

The information pamphlet developed under paragraph (1) shall be made available and distributed as follows:

(A) Mailings to K nonimmigrant visa applicants

(i) The pamphlet shall be mailed by the Secretary of State to each applicant for a K nonimmigrant visa at the same time that the instruction packet regarding the visa application process is mailed to such applicant. The pamphlet so mailed shall be in the primary language of the applicant or in English if no translation into the applicant’s primary language is available.

(ii) The Secretary of Homeland Security shall provide to the Secretary of State, for inclusion in the mailing under clause (i), a copy of the petition submitted by the petitioner for such applicant under subsection (d) or (r) of section 1184 of this title.

(iii) The Secretary of Homeland Security shall provide to the Secretary of State any criminal background information the Secretary of Homeland Security possesses with respect to a petitioner under subsection (d) or (r) of section 1184 of this title. The Secretary of State, in turn, shall share any such criminal background information that is in government records or databases with the K nonimmigrant visa applicant who is the beneficiary of the petition. The visa applicant shall be informed that such criminal background information is based on available records and may not be complete. The Secretary of State also shall provide for the disclosure of such criminal background information to the visa applicant at the consular interview in the primary language of the visa applicant. Nothing in this clause shall be construed to authorize the Secretary of Homeland Security to conduct any new or additional criminal background check that is not otherwise conducted in the course of adjudicating such petitions.

(B) Consular access

The pamphlet developed under paragraph (1) shall be made available to the public at all consular posts. The summaries described in paragraph (3) shall be made available to foreign service officers at all consular posts.

(C) Posting on Federal websites

The pamphlet developed under paragraph (1) shall be posted on the websites of the Department of State and the Department of Homeland Security, as well as on the websites of all consular posts processing applications for K nonimmigrant visas.

(D) International marriage brokers and victim advocacy organizations

The pamphlet developed under paragraph (1) shall be made available to any international marriage broker, government agency, or nongovernmental advocacy organization.

(6) Deadline for pamphlet development and distribution

The pamphlet developed under paragraph (1) shall be distributed and made available (including in the languages specified under paragraph (4) not later than 120 days after January 5, 2006.

(b) Visa and adjustment interviews

(1) Fianc(e)és, spouses and their derivatives

During an interview with an applicant for a K nonimmigrant visa, a consular officer shall—

(A) provide information, in the primary language of the visa applicant, on protection orders or criminal convictions collected under subsection (d)(3)(A)(iii) of this section;

(B) provide a copy of the pamphlet developed under subsection (a)(1) of this section in English or another appropriate language and provide an oral summary, in the primary language of the visa applicant, of that pamphlet; and

(C) ask the applicant, in the primary language of the applicant, whether an international marriage broker has facilitated the relationship between the applicant and the United States petitioner; and, if so, obtain the identity of the international marriage broker from the applicant and confirm that the international marriage broker provided to the applicant the information and materials required under subsection (d)(3)(A)(iii) of this section.

(2) Family-based applicants

The pamphlet developed under subsection (a)(1) of this section shall be distributed directly to applicants for family-based immigration petitions at all consular and adjustment interviews for such visas. The Department of State or Department of Homeland Security officer conducting the interview shall review the summary of the pamphlet with the applicant
orally in the applicant’s primary language, in addition to distributing the pamphlet to the applicant in English or another appropriate language.

(c) Confidentiality
In fulfilling the requirements of this section, no official of the Department of State or the Department of Homeland Security shall disclose to a nonimmigrant visa applicant the name or contact information of any person who was granted a protection order or restraining order against the petitioner or who was a victim of a crime of violence perpetrated by the petitioner, but shall disclose the relationship of the person to the petitioner.

(d) Regulation of international marriage brokers
(1) Prohibition on marketing children
An international marriage broker shall not provide any individual or entity with the personal contact information, photograph, or general information about the background or interests of any individual under the age of 18.

(2) Requirements of international marriage brokers with respect to mandatory collection of background information
(A) In general
(i) Search of sex offender public registries
Each international marriage broker shall search the National Sex Offender Public Registry or State sex offender public registry, as required under paragraph (3)(A)(i).

(ii) Collection of background information
Each international marriage broker shall also collect the background information listed in subparagraph (B) about the United States client to whom the personal contact information of a foreign national client would be provided.

(B) Background information
The international marriage broker shall collect a certification signed (in written, electronic, or other form) by the United States client accompanied by documentation or an attestation of the following background information about the United States client:

(i) Any temporary or permanent civil protection order or restraining order issued against the United States client.

(ii) Any Federal, State, or local arrest or conviction of the United States client for homicide, murder, manslaughter, assault, battery, domestic violence, rape, sexual assault, abusive sexual contact, sexual exploitation, incest, child abuse or neglect, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or stalking.

(iii) Any Federal, State, or local arrest or conviction of the United States client for—

(I) solely, principally, or incidentally engaging in prostitution;

(II) a direct or indirect attempt to procure prostitutes or persons for the purpose of prostitution; or

(III) receiving, in whole or in part, of the proceeds of prostitution.

(iv) Any Federal, State, or local arrest or conviction of the United States client for offenses related to controlled substances or alcohol.

(v) Marital history of the United States client, including whether the client is currently married, whether the client has previously been married and how many times, how previous marriages of the client were terminated and the date of termination, and whether the client has previously sponsored an alien to whom the client was engaged or married.

(vi) The ages of any of the United States client’s children who are under the age of 18.

(vii) All States and countries in which the United States client has resided since the client was 18 years of age.

(3) Obligation of international marriage brokers with respect to informed consent
(A) Limitation on sharing information about foreign national clients
An international marriage broker shall not provide any United States client or representative with the personal contact information of any foreign national client unless and until the international marriage broker has—

(i) performed a search of the National Sex Offender Public Registry, or of the relevant State sex offender public registry for any State not yet participating in the National Sex Offender Public Registry in which the United States client has resided during the previous 20 years, for information regarding the United States client;

(ii) collected background information about the United States client required under paragraph (2);

(iii) provided to the foreign national client—

(I) in the foreign national client’s primary language, a copy of any records retrieved from the search required under paragraph (2)(A)(i) or documentation confirming that such search retrieved no records;

(II) in the foreign national client’s primary language, a copy of the background information collected by the international marriage broker under paragraph (2)(B); and

(III) in the foreign national client’s primary language (or in English or other appropriate language if there is no translation available into the client’s primary language), the pamphlet developed under subsection (a)(1) of this section; and

(iv) received from the foreign national client a signed, written consent, in the foreign national client’s primary language, to release the foreign national client’s personal contact information to the specific United States client.

(B) Confidentiality
In fulfilling the requirements of this paragraph, an international marriage broker
shall disclose the relationship of the United States client to individuals who were issued a protection order or restraining order as described in clause (i) of paragraph (2)(B), or of any other victims of crimes as described in clauses (ii) through (iv) of such paragraph, but shall not disclose the name or location information of such individuals.

(C) Penalty for misuse of information

A person who knowingly discloses, uses, or causes to be used any information obtained by an international marriage broker as a result of the obligations imposed on it under paragraph (2) and this paragraph for any purpose other than the disclosures required under this paragraph shall be fined in accordance with title 18 or imprisoned not more than 1 year, or both. These penalties are in addition to any other civil or criminal liability under Federal or State law which a person may be subject to for the misuse of that information, including to threaten, intimidate, or harass any individual. Nothing in this section shall prevent the disclosure of such information to law enforcement or pursuant to a court order.

(4) Limitation on disclosure

An international marriage broker shall not provide the personal contact information of any foreign national client to any person or entity other than a United States client. Such information shall not be disclosed to potential United States clients or individuals who are being recruited to be United States clients or representatives.

(5) Penalties

(A) Federal civil penalty

(i) Violation

An international marriage broker that violates (or attempts to violate) paragraph (1), (2), (3), or (4) is subject to a civil penalty of not less than $5,000 and not more than $25,000 for each such violation.

(ii) Procedures for imposition of penalty

A penalty may be imposed under clause (i) by the Attorney General only after notice and an opportunity for an agency hearing on the record in accordance with subchapter II of chapter 5 of title 5 (popularly known as the Administrative Procedure Act).

(B) Federal criminal penalty

In circumstances in or affecting interstate or foreign commerce, an international marriage broker that, within the special maritime and territorial jurisdiction of the United States, violates (or attempts to violate) paragraph (1), (2), (3), or (4) shall be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

(C) Additional remedies

The penalties and remedies under this subsection are in addition to any other penalties or remedies available under law.

(6) Nonpreemption

Nothing in this subsection shall preempt—

(A) any State law that provides additional protections for aliens who are utilizing the services of an international marriage broker; or

(B) any other or further right or remedy available under law to any party utilizing the services of an international marriage broker.

(7) Effective date

(A) In general

Except as provided in subparagraph (B), this subsection shall take effect on the date that is 60 days after January 5, 2006.

(B) Additional time allowed for information pamphlet

The requirement for the distribution of the pamphlet developed under subsection (a)(6) of this section shall not apply until 30 days after the date of its development and initial distribution under subsection (a)(6) of this section.

(e) Definitions

In this section:

(1) Crime of violence

The term “crime of violence” has the meaning given such term in section 16 of title 18.

(2) Domestic violence

The term “domestic violence” has the meaning given such term in section 3 of this Act.

(3) Foreign national client

The term “foreign national client” means a person who is not a United States citizen or national or an alien lawfully admitted to the United States for permanent residence and who utilizes the services of an international marriage broker. Such term includes an alien residing in the United States who is in the United States as a result of utilizing the services of an international marriage broker and any alien recruited by an international marriage broker or representative of such broker.

(4) International marriage broker

(A) In general

The term “international marriage broker” means a corporation, partnership, business, individual, or other legal entity, whether or not organized under any law of the United States, that charges fees for providing dating, matrimonial, matchmaking services, or social referrals between United States citizens or nationals or aliens lawfully admitted to the United States as permanent residents and foreign national clients by providing personal contact information or otherwise facilitating communication between individuals.

(B) Exceptions

Such term does not include—

(i) a traditional matchmaking organization of a cultural or religious nature that operates on a nonprofit basis and otherwise operates in compliance with the laws of the countries in which it operates, including the laws of the United States; or

—See References in Text note below.
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(11) an entity that provides dating services if its principal business is not to provide international dating services between United States citizens or United States residents and foreign nationals and it charges comparable rates and offers comparable services to all individuals it serves regardless of the individual’s gender or country of citizenship.

(5) **K nonimmigrant visa**

The term “K nonimmigrant visa” means a nonimmigrant visa under clause (i) or (ii) of section 1101(a)(15)(K) of this title.

(6) **Personal contact information**

(A) In general

The term “personal contact information” means information, or a forum to obtain such information, that would permit individuals to contact each other, including—

(1) the name or residential, postal, electronic mail, or instant message address of an individual;
(2) the telephone, pager, cellphone, or fax number, or voice message mailbox of an individual; or
(3) the provision of an opportunity for an in-person meeting.

(B) Exception

Such term does not include a photograph or general information about the background or interests of a person.

(7) **Representative**

The term “representative” means, with respect to an international marriage broker, the person or entity acting on behalf of such broker. Such a representative may be a recruiter, agent, independent contractor, or other international marriage broker or other person conveying information about or to a United States client or foreign national client, whether or not the person or entity receives remuneration.

(8) **State**

The term “State” includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(9) **United States**

The term “United States”, when used in a geographic sense, includes all the States.

(10) **United States client**

The term “United States client” means a United States citizen or other individual who resides in the United States and who utilizes the services of an international marriage broker, if a payment is made or a debt is incurred to utilize such services.

(f) **GAO study and report**

(1) **Study**

The Comptroller General of the United States shall conduct a study—

(A) on the impact of this section and section 832\(^1\) on the K nonimmigrant visa process, including specifically—

(i) annual numerical changes in petitions for K nonimmigrant visas;

(ii) the annual number (and percentage) of such petitions that are denied under subsection (d)(2) or (r) of section 1184 of this title, as amended by this Act;

(iii) the annual number of waiver applications submitted under such a subsection, the number (and percentage) of such applications granted or denied, and the reasons for such decisions;

(iv) the annual number (and percentage) of cases in which the criminal background information collected and provided to the applicant as required by subsection (a)(5)(A)(iii) of this section contains one or more convictions;

(v) the annual number and percentage of cases described in clause (iv) that were granted or were denied waivers under section 1184(d)(2) of this title, as amended by this Act;

(vi) the annual number of fiancée and spousal K nonimmigrant visa petitions or family-based immigration petitions filed by petitioners or applicants who have previously filed other fiancée or spousal K nonimmigrant visa petitions or family-based immigration petitions;

(vii) the annual number of fiancée and spousal K nonimmigrant visa petitions or family-based immigration petitions filed by petitioners or applicants who have concurrently filed other fiancée or spousal K nonimmigrant visa petitions or family-based immigration petitions; and

(viii) the annual and cumulative number of petitioners and applicants tracked in the multiple filings database established under paragraph (4) of section 1184(r) of this title, as added by this Act;

(2) **Report**

Not later than 2 years after January 5, 2006, the Comptroller General shall submit to the

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Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report setting forth the results of the study conducted under paragraph (1).

(3) Data collection

The Secretary of Homeland Security and the Secretary of State shall collect and maintain the data necessary for the Comptroller General of the United States to conduct the study required by paragraph (1).


REFERENCES IN TEXT

Section 3 of this Act, referred to in subsec. (e)(2), is section 3 of Pub. L. 109–162, which enacted sections 3796gg–2 and 13925 of Title 42, The Public Health and Welfare, amended sections 3796gg–3, 3796hh–4, 10429, 13975, and 14039 of Title 42, repealed former section 3796gg–2 of Title 42, and amended provisions set out as a note under section 3796gg–2 of Title 42.

Section 832, referred to in subsec. (f)(1)(A), is section 832 of Pub. L. 109–162, which amended section 1184 of this title and enacted provisions set out as notes under section 1184 of this title.


CONCILIATION

Section was enacted as part of the International Marriage Broker Regulation Act of 2005, and also as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, and not as part of the Immigration and Nationality Act which comprises this chapter.

Section is comprised of section 833 of Pub. L. 109–162. Subsec. (g) of section 833 of Pub. L. 109–162 repealed section 1375 of this title.

§ 1375b. Protections for domestic workers and other nonimmigrants

(a) Information pamphlet

(1) Development and distribution

The Secretary of State, in consultation with the Secretary of Homeland Security, the Attorney General, and the Secretary of Labor, shall develop an information pamphlet on legal rights and resources for aliens applying for employment- or education-based nonimmigrant visas.

(2) Consultation

In developing the information pamphlet under paragraph (1), the Secretary of State shall consult with nongovernmental organizations with expertise on the legal rights of workers and victims of severe forms of trafficking in persons.

(b) Contents

The information pamphlet developed under subsection (a) shall include information concerning items such as—

(1) the nonimmigrant visa application processes, including information about the portability of employment;

(2) the legal rights of employment- or education-based nonimmigrant visa holders under Federal immigration, labor, and employment law;

(3) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States;

(4) the legal rights of immigrant victims of trafficking in persons and worker exploitation, including—

(A) the right of access to immigrant and labor rights groups;

(B) the right to seek redress in United States courts;

(C) the right to report abuse without retaliation;

(D) the right of the nonimmigrant to relinquish possession of his or her passport to his or her employer;

(E) the requirement of an employment contract between the employer and the nonimmigrant; and

(F) an explanation of the rights and protections included in the contract described in subparagraph (E); and

(5) information about nongovernmental organizations that provide services for victims of trafficking in persons and worker exploitation, including—

(A) anti-trafficking in persons telephone hotlines operated by the Federal Government;

(B) the Operation Rescue and Restore hotline; and

(C) a general description of the types of victim services available for individuals subject to trafficking in persons or worker exploitation.

(c) Translation

(1) In general

To best serve the language groups having the greatest concentration of employment-based nonimmigrant visas, the Secretary of State shall translate the information pamphlet developed under subsection (a) into all relevant foreign languages, to be determined by the Secretary based on the languages spoken by the greatest concentrations of employment- or education-based nonimmigrant visa applicants.

(2) Revision

Every 2 years, the Secretary of State, in consultation with the Attorney General and the Secretary of Homeland Security, shall determine the specific languages into which the information pamphlet will be translated based on the languages spoken by the greatest concentrations of employment- or education-based nonimmigrant visa applicants.

(d) Availability and distribution

(1) Posting on Federal websites

The information pamphlet developed under subsection (a) shall be posted on the websites of the Department of State, the Department of Homeland Security, the Department of Justice, the Department of Labor, and all United States consular posts processing applications for employment- or education-based nonimmigrant visas.
(2) Other distribution

The information pamphlet developed under subsection (a) shall be made available to any—

(A) government agency;

(B) nongovernmental advocacy organization; or

(C) foreign labor broker doing business in the United States.

(3) Deadline for pamphlet development and distribution

Not later than 180 days after December 23, 2008, the Secretary of State shall distribute and make available the information pamphlet developed under subsection (a) in all the languages referred to in subsection (c).

(e) Responsibilities of consular officers of the Department of State

(1) Interviews

A consular officer conducting an interview of an alien for an employment-based nonimmigrant visa shall—

(A)(i) confirm that the alien has received, read, and understood the contents of the pamphlet described in subsections (a) and (b); and

(ii) if the alien has not received, read, or understood the contents of the pamphlet described in subsections (a) and (b), distribute and orally disclose to the alien the information described in paragraphs (2) and (3) in a language that the alien understands; and

(B) offer to answer any questions the alien may have regarding the contents of the pamphlet described in subsections (a) and (b).

(2) Legal rights

The consular officer shall disclose to the alien—

(A) the legal rights of employment-based nonimmigrants under Federal immigration, labor, and employment laws;

(B) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States; and

(C) the legal rights of immigrant victims of trafficking in persons, worker exploitation, and other related crimes, including—

(i) the right of access to immigrant and labor rights groups;

(ii) the right to seek redress in United States courts; and

(iii) the right to report abuse without retaliation.

(3) Victim services

In carrying out the disclosure requirement under this subsection, the consular officer shall disclose to the alien the availability of services for victims of human trafficking and worker exploitation in the United States, including victim services complaint hotlines.

(f) Definitions

In this section:

(1) Employment- or education-based nonimmigrant visa

The term ‘employment- or education-based nonimmigrant visa’ means—

(A) a nonimmigrant visa issued under subparagraph (A)(iii), (G)(v), (H), or (J) of section 1101(a)(15) of this title; and

(B) any nonimmigrant visa issued to a personal or domestic servant who is accompanying or following to join an alien.

(2) Severe forms of trafficking in persons

The term “severe forms of trafficking in persons” has the meaning given in the term in section 7102 of title 22.

(3) Secretary

The term “Secretary” means the Secretary of State.

(4) Abusing and exploiting

The term “abusing and exploiting” means any conduct which would constitute a violation of section 1466A, 1589, 1591, 1592, 2251, 2251A of title 18.


Codification

Section was enacted as part of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, and not as part of the Immigration and Nationality Act which comprises this chapter.

§ 1375c. Protections, remedies, and limitations on issuance for A–3 and G–5 visas

(a) Limitations on issuance of A–3 and G–5 visas

(1) Contract requirement

Notwithstanding any other provision of law, the Secretary of State may not issue—

(A) an A–3 visa unless the applicant is employed, or has signed a contract to be employed containing the requirements set forth in subsection (d)(2), by an officer of a diplomatic mission or consular post; or

(B) a G–5 visa unless the applicant is employed, or has signed a contract to be employed by an employee in an international organization.

(2) Suspension requirement

Notwithstanding any other provision of law, the Secretary shall suspend, for such period as the Secretary determines necessary, the issuance of A–3 visas or G–5 visas to applicants seeking to work for officials of a diplomatic mission or an international organization, if the Secretary determines that there is credible evidence that 1 or more employees of such mission or international organization have abused or exploited 1 or more nonimmigrants holding an A–3 visa or a G–5 visa, and that the diplomatic mission or international organization tolerated such actions.

(3) Action by diplomatic missions or international organizations

The Secretary may suspend the application of the limitation under paragraph (2) if the Secretary determines and reports to the appropriate congressional committees that a mechanism is in place to ensure that such abuse or exploitation does not reoccur with respect to any alien employed by an employee of such mission or institution.

1 So in original. Probably should be “(b)(2),’.”
(b) Protections and remedies for A–3 and G–5 nonimmigrants employed by diplomats and staff of international organizations

(1) In general

The Secretary may not issue or renew an A–3 visa or a G–5 visa unless—

(A) the visa applicant has executed a contract with the employer or prospective employer containing provisions described in paragraph (2); and

(B) a consular officer has conducted a personal interview with the applicant outside the presence of the employer or any recruitment agent in which the officer reviewed the terms of the contract and the provisions of the pamphlet required under section 1375b of this title.

(2) Mandatory contract

The contract between the employer and domestic worker required under paragraph (1) shall include—

(A) an agreement by the employer to abide by all Federal, State, and local laws in the United States;

(B) information on the frequency and form of payment, work duties, weekly work hours, holidays, sick days, and vacation days; and

(C) an agreement by the employer not to withhold the passport, employment contract, or other personal property of the employee.

(3) Training of consular officers

The Secretary shall provide appropriate training to consular officers on the fair labor standards described in the pamphlet required under section 1375b of this title, trafficking in persons, and the provisions of this section.

(4) Record keeping

(A) In general

The Secretary shall maintain records on the presence of nonimmigrants holding an A–3 visa or a G–5 visa in the United States, including—

(i) information about when the nonimmigrant entered and permanently exited the country of residence;

(ii) the official title, contact information, and immunity level of the employer; and

(iii) information regarding any allegations of employer abuse received by the Department of State.

(c) Protection from removal during legal actions against former employers

(1) Remaining in the United States to seek legal redress

(A) Effect of complaint filing

Except as provided in subparagraph (B), if a nonimmigrant holding an A–3 visa or a G–5 visa working in the United States files a civil action under section 1595 of title 18 or a civil action regarding a violation of any of the terms contained in the contract or violation of any other Federal, State, or local law in the United States governing the terms and conditions of employment of the non-immigrant that are associated with acts covered by such section, the Attorney General and the Secretary of Homeland Security shall permit the nonimmigrant to remain legally in the United States for time sufficient to fully and effectively participate in all legal proceedings related to such action.

(B) Exception

An alien described in subparagraph (A) may be deported before the conclusion of the legal proceedings related to a civil action described in such subparagraph if such alien is—

(i) inadmissible under paragraph (2)(A)(i)(II), (2)(B), (2)(C), (2)(E), (2)(H), (2)(I), (3)(A)(i), (3)(A)(iii), (3)(B), (3)(C), or (3)(F) of section 1182(a) of this title; or

(ii) deportable under paragraph (2)(A)(ii), (2)(A)(iii), (4)(A)(i), (4)(A)(iii), (4)(B), or (4)(C) of section 1227(a) of this title.

(C) Failure to exercise due diligence

If the Secretary of Homeland Security, after consultation with the Attorney General, determines that the nonimmigrant holding an A–3 visa or a G–5 visa has failed to exercise due diligence in pursuing an action described in subparagraph (A), the Secretary may terminate the status of the A–3 or G–5 nonimmigrant.

(2) Authorization to work

The Attorney General and the Secretary of Homeland Security shall authorize any nonimmigrant described in paragraph (1) to engage in employment in the United States during the period the nonimmigrant is in the United States pursuant to paragraph (1).

(d) Study and report

(1) Investigation report

(A) In general

Not later than 180 days after December 23, 2008, and every 2 years thereafter for the following 10 years, the Secretary shall submit a report to the appropriate congressional committees on the implementation of this section.

(B) Contents

The report submitted under subparagraph (A) shall include—

(i) an assessment of the actions taken by the Department of State and the Department of Justice to investigate allegations of trafficking or abuse of nonimmigrants holding an A–3 visa or a G–5 visa; and

(ii) the results of such investigations.

(2) Feasibility of oversight of employees of diplomats and representatives of other institutions report

Not later than 180 days after December 23, 2008, the Secretary shall submit a report to the appropriate congressional committees on the feasibility of—

(A) establishing a system to monitor the treatment of nonimmigrants holding an A–3 visa or a G–5 visa who have been admitted to the United States;

(B) a range of compensation approaches, such as a bond program, compensation fund,
or insurance scheme, to ensure that such nonimmigrants receive appropriate compensation if their employers violate the terms of their employment contracts; and

(C) with respect to each proposed compensation approach described in subparagraph (B), an evaluation and proposal describing the proposed processes for—

(i) adjudicating claims of rights violations;

(ii) determining the level of compensation; and

(iii) administering the program, fund, or scheme.

(e) Assistance to law enforcement investigations

The Secretary shall cooperate, to the fullest extent possible consistent with the United States obligations under the Vienna Convention on Diplomatic Relations, done at Vienna, April 18, 1961, (23 U.S.T. 3229),2 with any investigation by United States law enforcement authorities of crimes related to abuse or exploitation of a nonimmigrant holding an A–3 visa or a G–5 visa.

(f) Definitions

In this section:

(1) A–3 visa

The term “A–3 visa” means a nonimmigrant visa issued pursuant to section 1101(a)(15)(A)(iii) of this title.

(2) G–5 visa

The term “G–5 visa” means a nonimmigrant visa issued pursuant to section 1101(a)(15)(G)(v) of this title.

(3) Secretary

The term “Secretary” means the Secretary of State.

(4) Appropriate congressional committees

The term “appropriate congressional committees” means—

(A) the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives; and

(B) the Committee on Foreign Relations and the Committee on the Judiciary of the Senate.


Codification

Section was enacted as part of the Immigration and Nationality Act which comprises this chapter.

Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1377. Collection of data on detained asylum seekers

(a) In general

The Attorney General shall regularly collect data on a nation-wide1 basis with respect to asylum seekers in detention in the United States, including the following information:

(1) The number of detainees.

(2) An identification of the countries of origin of the detainees.

(3) The percentage of each gender within the total number of detainees.

(4) The number of detainees listed by each year of age of the detainees.

(5) The location of each detainee by detention facility.

(6) With respect to each facility where detainees are held, whether the facility is also used to detain criminals and whether any of the detainees are held in the same cells as criminals.

(7) The number and frequency of the transfers of detainees between detention facilities.

(8) The average length of detention and the number of detainees by category of the length of detention.

(9) The rate of release from detention of detainees for each district of the Immigration and Naturalization Service.

(10) A description of the disposition of cases.

(b) Annual reports

Beginning October 1, 1999, and not later than October 1 of each year thereafter, the Attorney General shall submit to the Committee on the Judiciary of each House of Congress a report setting forth the data collected under subsection (a) of this section for the fiscal year ending September 30 of that year.

(c) Availability to public

Copies of the data collected under subsection (a) of this section shall be made available to members of the public upon request pursuant to such regulations as the Attorney General shall prescribe.

§ 1376. Data on nonimmigrant overstay rates

(a) Collection of data

Not later than the date that is 180 days after April 27, 1998, the Attorney General shall implement a program to collect data, for each fiscal year, regarding the total number of aliens within each of the classes of nonimmigrant aliens described in section 1101(a)(15) of this title whose authorized period of stay in the United States terminated during the previous fiscal year, but who remained in the United States notwithstanding such termination.

(b) Annual report

Not later than June 30, 1999, and not later than June 30 of each year thereafter, the Attorney General shall submit an annual report to the Congress providing numerical estimates, for each country for the preceding fiscal year, of the number of aliens from the country who are described in subsection (a) of this section.


Codification

Section was enacted as part of the Immigration and Nationality Act which comprises this chapter.

Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

1 So in original. Probably should be “nationwide”.

2 So in original. Probably should be “April 18, 1961 (23 U.S.T. 3229)”.

1 So in original. Probably should be “April 18, 1961 (23 U.S.T. 3229)”.

3 So in original. Probably should be “April 18, 1961 (23 U.S.T. 3229)”.

4 So in original. Probably should be “April 18, 1961 (23 U.S.T. 3229)”.
§ 1378. Collection of data on other detained aliens

(a) In general

The Attorney General shall regularly collect data on a nationwide basis on aliens being detained in the United States by the Immigration and Naturalization Service other than the aliens described in section 1377 of this title, including the following information:

(1) The number of detainees who are criminals and the number of detainees who are noncriminal aliens who are not seeking asylum.

(2) An identification of the ages, gender, and countries of origin of detainees within each category described in paragraph (1).

(3) The types of facilities, whether facilities of the Immigration and Naturalization Service or other Federal, State, or local facilities, in which each of the categories of detainees described in paragraph (1) are held.

(b) Length of detention, transfers, and dispossession

With respect to detainees who are criminal aliens and detainees who are noncriminal aliens who are not seeking asylum, the Attorney General shall also collect data concerning—

(1) the number and frequency of transfers between detention facilities for each category of detainee;

(2) the average length of detention of each category of detainee;

(3) for each category of detainee, the number of detainees who have been detained for the same length of time, in 3-month increments;

(4) for each category of detainee, the rate of release from detention for each district of the Immigration and Naturalization Service; and

(5) for each category of detainee, the disposition of detention, including whether detention ended due to deportation, release on parole, or any other release.

(c) Criminal aliens

With respect to criminal aliens, the Attorney General shall also collect data concerning—

(1) the number of criminal aliens apprehended under the immigration laws and not detained by the Attorney General; and

(2) a list of crimes committed by criminal aliens after the decision was made not to detain them, to the extent this information can be derived by cross-checking the list of criminal aliens not detained with other databases accessible to the Attorney General.

(d) Annual reports

Beginning on October 1, 1999, and not later than October 1 of each year thereafter, the Attorney General shall submit to the Committee on the Judiciary of each House of Congress a report setting forth the data collected under subsections (a), (b), and (c) of this section for the fiscal year ending September 30 of that year.

(e) Availability to public

Copies of the data collected under subsections (a), (b), and (c) of this section shall be made available to members of the public upon request pursuant to such regulations as the Attorney General shall prescribe.

§ 1379. Technology standard to confirm identity

(1) In general

The Attorney General and the Secretary of State jointly, through the National Institute of Standards and Technology (NIST), and in consultation with the Secretary of the Treasury and other Federal law enforcement and intelligence agencies the Attorney General or Secretary of State deems appropriate and in consultation with Congress, shall within 15 months after October 26, 2001, develop and certify a technology standard, including appropriate biometric identifier standards, that can be used to verify the identity of persons applying for a United States visa or such persons seeking to enter the United States pursuant to a visa for the purposes of conducting background checks, confirming identity, and ensuring that a person has not received a visa under a different name or such person seeking to enter the United States pursuant to a visa.

(2) Interoperable

The technology standard developed pursuant to paragraph (1), shall be the technological basis for a cross-agency, cross-platform electronic system that is a cost-effective, efficient, fully interoperable means to share law enforcement and intelligence information necessary to confirm the identity of such persons applying for a United States visa or such person seeking to enter the United States pursuant to a visa.

(3) Accessible

The electronic system described in paragraph (2), once implemented, shall be readily and easily accessible to—
(A) all consular officers responsible for the issuance of visas;
(B) all Federal inspection agents at all United States border inspection points; and
(C) all law enforcement and intelligence officers as determined by regulation to be responsible for investigation or identification of aliens admitted to the United States pursuant to a visa.

(4) Report
Not later than one year after October 26, 2001, and every 2 years thereafter, the Attorney General and the Secretary of State shall jointly, in consultation with the Secretary of Treasury, report to Congress describing the development, implementation, efficacy, and privacy implications of the technology standard and electronic database system described in this section.

(5) Funding
There is authorized to be appropriated to the Secretary of State, the Attorney General, and the Director of the National Institute of Standards and Technology such sums as may be necessary to carry out the provisions of this section.


Codification
Section was enacted as part of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 or USA PATRIOT Act, and not as part of the Immigration and Nationality Act which comprises this chapter.

Amendments
Par. (4). Pub. L. 107–173, § 201(c)(5)(B), substituted “one year” for “18 months”.

REPORT ON THE INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM FOR PORTS OF ENTRY AND OVERSEAS CONSULAR POSTS

“(a) In General.—The Attorney General, in consultation with the appropriate heads of other Federal agencies, including the Secretary of State, Secretary of the Treasury, and the Secretary of Transportation, shall report to Congress on the feasibility of enhancing the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation and other identification systems in order to better identify a person who holds a foreign passport or a visa and may be wanted in connection with a criminal investigation in the United States or abroad, before the issuance of a visa to that person or the entry or exit from the United States by that person.

“(b) Authorization of Appropriations.—There is authorized to be appropriated not less than $2,000,000 to carry out this section.

§ 1380. Maintenance of statistics by the Department of Homeland Security
(a) In general
The Department of Homeland Security shall maintain statistics regarding petitions filed, approved, extended, and amended with respect to nonimmigrants described in section 1101(a)(15)(L) of this title, including the number of such nonimmigrants who are classified on the basis of specialized knowledge and the number of nonimmigrants who are classified on the basis of specialized knowledge in order to work primarily at offsite locations.

(b) Applicability
Subsection (a) of this section shall apply to petitions filed on or after the effective date of this subtitle.


References in Text

§ 1381. Secretary of Labor report
Not later than January 31 of each year, the Secretary of Labor shall report to the Committees on the Judiciary of the Senate and the House of Representatives on the investigations undertaken based on—

(1) the authorities described in clauses (i) and (ii) of section 1182(n)(2)(G) of this title; and
(2) the expenditures by the Secretary of Labor described in section 1356(v)(2)(D) of this title.


Codification
Section was enacted as part of the H–1B Visa Reform Act of 2001, and also as part of the L–1 Visa and H–1B Visa Reform Act and the Consolidated Appropriations Act, 2005, and not as part of the Immigration and Nationality Act which comprises this chapter.

Effective Date
Section effective 180 days after Dec. 8, 2004, see section 417 of Pub. L. 108–447, set out as an Effective Date of 2004 Amendment note under section 1184 of this title.

§ 1381i. Secretary of Labor report
Not later than January 31 of each year, the Secretary of Labor shall report to the Committees on the Judiciary of the Senate and the House of Representatives on the investigations undertaken based on—

(1) the authorities described in clauses (i) and (ii) of section 1182(n)(2)(G) of this title; and
(2) the expenditures by the Secretary of Labor described in section 1356(v)(2)(D) of this title.


Codification
Section was enacted as part of the H–1B Visa Reform Act of 2001, and also as part of the L–1 Visa and H–1B Visa Reform Act and the Consolidated Appropriations Act, 2005, and not as part of the Immigration and Nationality Act which comprises this chapter.

Effective Date
Section effective 90 days after Dec. 8, 2004, see section 430 of Pub. L. 108–447, set out as an Effective Date of 2004 Amendment note under section 1182 of this title.

Subchapter III—Nationality and Naturalization
Part I—Nationality at Birth andCollective 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 period or periods to which this subsection applies to persons born on or after December 24, 1952.
(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.

AMENDMENTS
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 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. (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, in 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.
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 467 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 provisions 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 on the basis of a claimant’s descent from an individual described in section 301(b) 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 U.S.C. App. 1951 et seq.) or under section 14 of the Refugee Relief Act of 1983 (former 50 U.S.C. App. 1971).”

**Applicability of Transmission Requirements**

Section 101(d) of Pub. L. 103-416, as amended by Pub. L. 104-208, div. C, title VI, §671(b)(1), Sept. 30, 1996, 110 Stat. 3009-721, 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 the application of any provision of law relating to residence or physical presence in the United States for purposes of transmitting United States citizenship to any person whose claim is based on the amendment made by subsection (a) (amending this section) or through whom such a claim is derived.”

**Admission of Alaska as State**

comes 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


Section, Pub. L. 85–316, §16, Sept. 11, 1957, 71 Stat. 644, provided that absentee from the United States for 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.)

§ 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.

§ 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.


ADMISSION OF ALASKA AS STATE
Alaska Statehood provisions as not repealing, amending, or modifying the provisions of this section, 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.

§ 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.


ADMISSION OF HAWAII AS STATE
Hawaii Statehood provisions as not repealing, amending, or modifying the provisions of this section, see section 29 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.

§ 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, citizens or subjects of any foreign country;
§ 1407. Person 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: (1) All inhabitants of the island of Guam on or after 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 rights of sovereignty; (2) All persons born in the island of Guam who resided in Guam on or after 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; and (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 citizenship, has taken no affirmative steps to preserve or acquire foreign nationality.

(b) All persons born in the island of Guam who resided in Guam on or after 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.

(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 citizenship, has taken no affirmative steps to preserve or acquire foreign nationality.

§ 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 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 period of 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.

References in Text

This chapter, referred to in subsec. (c), was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

§ 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 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;

(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.

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.

References in Text

This chapter, referred to in subsec. (c), was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.
son 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."

§ 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.


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, as amended 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


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


PART II—NATURALIZATION 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
§ 1421

(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, to choose in the manner and under the conditions prescribed in this subchapter and

(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.
of 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, 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 service, training or service obtained before, on, or after such date.

"(f) FILIPINO WAR VETERANS.—Section 405 [enacting provisions formerly 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.”

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.

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, on issuance of Proc. No. 3289, 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,
§ 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.


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).


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 55 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’”.

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. 102–322 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)).”

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related...
§ 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 or part of the government of the United States; 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 organization; (E) 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, 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 chapter shall not be construed as declaring that any of the organizations referred to in this section or in any other section of this chapter 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.

(e) A person may be naturalized under this subchapter without regard to the prohibitions in subsections (a)(2) and (c) of this section if the person—

(1) is otherwise eligible for naturalization;

(2) is within the class described in subsection (a)(2) of this section solely because of past membership in, or past affiliation with, a party or organization described in that subsection;

(3) does not fall within any of the classes described in that subsection; and

(4) is determined by the Director of Central Intelligence, in consultation with the Secretary of Defense when Department of Defense activities are relevant to the determination, and with the concurrence of the Attorney General and the Secretary of Homeland Security, to have made a contribution to the national security or to the national intelligence mission of the United States.


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.

This chapter, referred to in subsec. (b), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS


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 (B) 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”.


1988—Subsec. (a)(2)(D). Pub. L. 100–525 substituted “party of” for “party or”.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 1551 of this title.

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 401 of Title 50, War and National Defense.

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 1351 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 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 that 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.

(1) No person, except as otherwise provided in this subsection, shall be ineligible for citizenship under this section or otherwise because of an exemption from training or service in the Armed Forces of a foreign country of which the alien was a national.

(2) Subsection (c) does not apply to an alien who has been subject to the provisions of subsection (a).

(3) In no case shall an alien be ineligible for citizenship under subsections (a) and (c) for a period exceeding nine years from the date of the filing of the application or the date of discharge from service in the Armed Forces.

(4) The provisions of section 406 of this title (relating to expatriation) do not apply to an alien who has been subject to subsection (c).

1990—Subsec. (a). Pub. L. 101–649, § 404(1), inserted “but subject to subsection (c) of this section” after “section 405(b)”.


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 121 of this title.

§ 1427. Requirements of naturalization

(a) Residence

No person, except as otherwise provided in this subsection, 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 admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to

1 See References in Text note below.
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 clauses (i) through (v) of section 1158(b)(2)(A) 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.


AMENDMENTS

2005—Subsec. (g), Pub. L. 109–149, §518, temporarily added subsec. (g) reading as follows:

"(1) The continuous residence requirement under subsection (a) of this section may be reduced to 3 years for an applicant for naturalization if—"

"(A) the applicant is the beneficiary of an approved petition for classification under section 1154(a)(1)(B) of this title;

"(B) the applicant has been approved for adjustment of status under section 1255(a) of this title; and

"(C) such reduction is necessary for the applicant to represent the United States at an international event.

"(2) The Secretary of Homeland Security shall adjudicate an application for naturalization under this section not later than 30 days after the submission of such application if the applicant—"

"(A) requests such expedited adjudication in order to represent the United States at an international event; and

"(B) demonstrates that such expedited adjudication is related to such representation."

"(3) An applicant is ineligible for expedited adjudication under paragraph (2) if the Secretary of Homeland Security determines that such expedited adjudication poses a risk to national security. Such a determination by the Secretary shall not be subject to review.

"(4)(A) In addition to any other fee authorized by law, the Secretary of Homeland Security shall charge and collect a $1,000 premium processing fee from each applicant described in this subsection to offset the additional costs incurred to expedite the processing of applications under this subsection.

"(B) The fee collected under subparagraph (A) shall be deposited as offsetting collections in the Immigration Examinations Fee Account." See Termination Date of 2005 Amendment note below.

Subsec. (a), Pub. L. 101–649, §407(c)(2), substituted references to applicant and application for references to petitioner and petition wherever appearing.

Subsec. (b), Pub. L. 101–649, §407(c)(3), substituted “the Attorney General” for “the court” in first par. and subpar. (2) of second par., and “date of any hearing under section 147(a) of this title” for “date of final hearing” in first par.

Amendment by Pub. L. 101–649, §407(c)(2), 407(c)(3), substituted references to applicant, applicant’s, and application for references to petitioner, petitioner’s, and petition wherever appearing.
§ 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 married to such alien during the time the alien participated in the conduct of United States intelligence activities and who—

"(1) has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least one year prior to naturalization; and

"(2) is not described in clauses (i) through (iv) of section 211(b)(11) of such Act [§ 1211(b)(11)]

"(e) ADMINISTRATION OF OATH.—An applicant for naturalization under this section may be administered the oath of allegiance under section 337(a) of the Immigration and Nationality Act [§ 1437(a)] by the Attorney General or 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.

"(d) DEFINITIONS.—For purposes of this section—

"(1) the term 'child' means a child as defined in subparagraphs (A) through (E) of section 101(b)(1) of the Immigration and Nationality Act [§ 1101(b)(1)], without regard to age or marital status; and

"(2) the term 'spouse' means the wife or husband of a deceased alien referred to in subsection (b) who was married to such alien during the time the alien participated in the conduct of United States intelligence activities."
person has established his eligibility for naturalization as required by this subchapter.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 161, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Section 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

1996—Pub. L. 104–208 substituted "removal" for "deportation" wherever appearing and "canceling" for "suspending".

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.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1430. Married persons and employees of certain nonprofit organizations

(a) Any person whose spouse is a citizen of the United States, or any person who obtained status as a lawful permanent resident by reason of his or her status as a spouse or child of a United States citizen who battered him or her or subjected him or her to extreme cruelty, 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 (except in the case of a person who has been battered or subjected to extreme cruelty by a United States citizen spouse or parent), 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, child, or parent of a United States citizen, whose citizen spouse, parent, or child dies during a period of honorable service in an active duty status in the Armed Forces of the United States and who, in the case of a surviving spouse, was living in marital union with the citizen spouse at the time of his death, may be nat-
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. For purposes of this subsection, the terms “United States citizen” and “citizen spouse” include a person granted posthumous citizenship under section 1440–1 of this title.

(e)(1) In the case of a person lawfully admitted for permanent residence in the United States who is the spouse of a member of the Armed Forces of the United States, is authorized to accompany such member and reside abroad with the member pursuant to the member’s official orders, and is so accompanying and residing with the member in marital union, such residence and physical presence abroad shall be treated, for purposes of subsection (a) and section 1427(a) of this title, as residence and physical presence in—

(A) the United States; and

(B) any State or district of the Department of Homeland Security in the United States.

(2) Notwithstanding any other provision of law, a spouse described in paragraph (1) shall be eligible for naturalization proceedings overseas pursuant to section 1443a of this title.


**AMENDMENTS**


**EFFECTIVE DATE OF 2008 AMENDMENT**

Pub. L. 110–181, div. A, title VI, § 674(d), Jan. 28, 2008, 122 Stat. 186, provided that: “The amendments made by this section [amending this section and sections 1433 and 1443a of this title] shall take effect on the date of enactment of this Act [Jan. 28, 2008] and apply to any application for naturalization or issuance of a certificate of citizenship pending on or after such date.”

**EFFECTIVE DATE OF 2003 AMENDMENT**


**ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS**

For abolition of Immigration and Naturalization Service, transfer of functions, and transfer of related references, see note set out under section 1551 of this title.

**REQUIREMENTS FOR CITIZENSHIP FOR STAFF OF GEORGE C. MARSHALL EUROPEAN CENTER FOR SECURITY STUDIES**


“(a) For purposes of section 319(c) of the Immigration and Nationality Act (8 U.S.C. 1430(c)), the George C. Marshall European Center for Security Studies, located in Garmisch, Federal Republic of Germany, shall be considered to be an organization described in clause (1) of such 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.”

§ 1431. Children born outside the United States and residing permanently in the United States; conditions under which citizenship automatically acquired

(a) A child born outside the United States automatically becomes a citizen of the United States if: (A) The child is a national of the United States; (B) The child is a citizen of the United States; (C) The child is a citizen of a country that is a treaty nation; (D) The child is a citizen of a country that is a national state; (E) The child is a citizen of a country that is a recognized state; (F) The child is a citizen of a country that is a member state; (G) The child is a citizen of a country that is a state party; (H) The child is a citizen of a country that is a state signatory; (I) The child is a citizen of a country that is a state ratifier; (J) The child is a citizen of a country that is a state acceded; (K) The child is a citizen of a country that is a state annexed; (L) The child is a citizen of a country that is a state endorsed; (M) The child is a citizen of a country that is a state registered; (N) The child is a citizen of a country that is a state associated; (O) The child is a citizen of a country that is a state connected; (P) The child is a citizen of a country that is a state connected to; (Q) The child is a citizen of a country that is a state connected with; (R) The child is a citizen of a country that is a state connected to or with; (S) The child is a citizen of a country that is a state connected to or with a country.
States when all of the following conditions have been fulfilled:

1. At least one parent of the child is a citizen of the United States, whether by birth or naturalization.

2. The child is under the age of eighteen years.

3. The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

(b) Subsection (a) of this section shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 1101(b)(1) of this title.


AMENDMENTS

2000—Pub. L. 106-395 amended section catchline and text generally. Prior to amendment, text read as follows:

“(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 was a United States citizen, 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.”


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, §9(w).

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 2000 AMENDMENT

Pub. L. 106-395, title I, §104, Oct. 30, 2000, 114 Stat. 1633, provided that: “The amendments made by this title (amending this section and section 1433 of this title and repealing section 1432 of this title) shall take effect 120 days after the date of the enactment of this Act (Oct. 30, 2000) and shall apply to individuals who satisfy the requirements of section 320 or 322 of the Immigration and Nationality Act (8 U.S.C. 1431, 1433), as in effect on such effective date.”

EFFECTIVE DATE OF 1988 AMENDMENT


EFFECTIVE DATE OF 1981 AMENDMENT


EFFECTIVE DATE OF REPEAL

Repeal effective 120 days after Oct. 30, 2000, see section 104 of Pub. L. 106-395, set out as an Effective Date of 2000 Amendment note under section 1431 of this title.

§1433. Children born and residing outside the United States; conditions for acquiring certificate of citizenship

(a) Application by citizen parents; requirements

A parent who is a citizen of the United States (or, if the citizen parent has died during the preceding 5 years, a citizen grandparent or citizen legal guardian) may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 1431 of this title. The Attorney General shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:

1. At least one parent (or, at the time of his or her death, was) is a citizen of the United States, whether by birth or naturalization.

2. The United States citizen parent—

(A) has (or, at the time of his or her death, had) 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; or

(B) has (or, at the time of his or her death, had) a citizen parent who 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.

3. The child is under the age of eighteen years.

4. The child is residing outside of the United States in the legal and physical custody of the applicant (or, if the citizen parent is deceased, an individual who does not object to the application).

5. The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Attainment of citizenship status; receipt of certificate

Upon approval of the application (which may be filed from 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

Subsections (a) and (b) of this section shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 1101(b)(1) of this title.

(d) Children of Armed Forces members

In the case of a child of a member of the Armed Forces of the United States who is authorized to accompany such member and reside abroad with the member pursuant to the member’s official orders, and is so accompanying and residing with the member—

(1) any period of time during which the member of the Armed Forces is residing abroad pursuant to official orders shall be treated, for purposes of subsection (a)(2)(A), as physical presence in the United States;

(2) subsection (a)(5) shall not apply; and

(3) the oath of allegiance described in subsection (b) may be subscribed to abroad pursuant to section 1443a of this title.

References in Text

This chapter, referred to in subsection (b), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Amendments


Subsec. (a)(1). Pub. L. 107–273, § 11030B(2), inserted “(or, at the time of his or her death, had)” after “(A) has”.

Subsec. (a)(2)(A). Pub. L. 107–273, § 11030B(3)(A), inserted “(or, at the time of his or her death, had)” after “(A) has”.

Subsec. (a)(2)(B). Pub. L. 107–273, § 11030B(3)(B), inserted “(or, at the time of his or her death, had)” after “(B) has”.


1999—Subsec. (a)(4). Pub. L. 106–139 substituted “16 years (except to the extent that the child is described in clause (ii) of subparagraph (E) or (F) of section 1101(b)(1) of this title)” for “16 years” and “either of such subparagraphs” for “subparagraph (E) or (F) of section 1101(b)(1) of this title”.

1994—Pub. L. 103–166 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.


1988—Pub. L. 100–525 substituted “a child adopted only if the child” for “a child adopted while under the age of sixteen years who”.

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”.

1978—Subsec. (b). Pub. L. 96–417 substituted provisions making subsec. (a) of this section inapplicable to adopted children.

Effective Date of 2008 Amendment

Amendment by Pub. L. 110–181 effective Jan. 28, 2008, and applicable to any application for naturalization or issuance of a certificate of citizenship pending on or after such date, see section 770(d) of Pub. L. 110–181, set out as a note under section 1430 of this title.

Effective Date of 2000 Amendment

Amendment by Pub. L. 106–395 effective 120 days after Oct. 30, 2000, and applicable to individuals who satisfy the requirements of this section or section 1431 of this title as in effect on such effective date, see section 194 of Pub. L. 106–395, set out as a note under section 1431 of this title.

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

Effective Date of 1981 Amendment

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.

Application of 1994 Amendment
Section 102(e) of Pub. L. 103–416, as added by Pub. L. 104–208, div. C, title VI, § 671(b)(2), Sept. 30, 1996, 110 Stat. 3009–721, which provided that in applying amendment made by subsection (a), amending this section, to children born before Nov. 14, 1986, any reference in matter inserted by such amendment to “five years, at least two of which” was deemed a reference to “10 years, at least 5 of which”, was repealed by Pub. L. 105–38, § 1, Aug. 8, 1997, 111 Stat. 1115, effective as if included in the enactment of Pub. L. 103–416.


§ 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 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; 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.

(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.

(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 fall-
ure 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 to 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.


REFERENCES IN TEXT
Section 317(a) and (b) of the Nationality Act of 1940, referred to in subsec. (a) and (c)(1), which was classified to section 717(a) and (b) of this title, was repealed by section 406(a)(1) of act June 27, 1952. See subsecs. (a) and (c) of this section.

AMENDMENTS
Subsec. (a)(2). Pub. L. 101–649, § 407(c)(7), (d)(6)(A)(i), substituted references to applicant and application for references to petitioner and petition, and substituted period for semicolon at end.
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”.
1966—Subsec. (a)(4). Pub. L. 90–252 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].’’

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.

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 the 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 subsequently 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 319 of the Immigration and Nationality Act [section 1448 of this title], 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], out of which 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(1) of this title], unless he shall first take an oath before any naturalization court specified in subsection (a) of section 319 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 an 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 1421, 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 319 of the Immigration and Nationality Act [section 1448(1) 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 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 sub-
section (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.

§ 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.


AMENDMENTS
1990—Pub. L. 101–649 substituted "applications" for "petitions".

§ 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.


AMENDMENTS
1990—Pub. L. 101–649 substituted "applying" for "petitioning".

§ 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 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.


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.

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.
§ 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 one year, 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 Secretary of Homeland Security, 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); and

(4) notwithstanding any other provision of law, no fee shall be charged or collected from the applicant for filing the application, or for the issuance of a certificate of naturalization upon being granted 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.

(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.

(f) Revocation

Citizenship granted pursuant to this section may be revoked in accordance with section 1451 of this title if the person is separated from the Armed Forces under other than 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.

(g) Processing and adjudication of applications

Not later than 6 months after receiving an application for naturalization filed by a current member of the Armed Forces under subsection (a), section 1440(a) of this title, or section 1440–1 of this title, by the spouse of such member under section 1450(b) of this title, or by a surviving spouse or child under section 1450(d) of this title, United States Citizenship and Immigration Services shall—

(1) process and adjudicate the application, including completing all required background checks to the satisfaction of the Secretary of Homeland Security; or

(2) provide the applicant with—

(A) an explanation for its inability to meet the processing and adjudication deadline under this subsection; and
(h) Annual report

The Director of United States Citizenship and Immigration Services shall submit an annual report to the Subcommittee on Immigration, Border Security, and Refugees and the Subcommittee on Homeland Security of the Senate and the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and the Subcommittee on Homeland Security of the House of Representatives that identifies every application filed under subsection (a), subsection (b) or (d) of section 1430 of this title, section 1440(a) of this title, or section 1440–1 of this title that is not processed and adjudicated within 1 year after it was filed due to delays in conducting required background checks.

(Aug. 24, 2003.)

§ 1440. Naturalization through active-duty service in the Armed Forces during World War I, World War II, Korean 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 honor-
ably as a member of the Select Reserve of the Ready Reserve or 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 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; and

(4) notwithstanding any other provision of law, no fee shall be charged or collected from the applicant for filing a petition for naturalization or for the issuance of a certificate of naturalization upon citizenship being granted to the applicant, 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.

(c) Revocation

Citizenship granted pursuant to this section may be revoked in accordance with section 1451 of this title if the person is separated from the Armed Forces under other than honorable conditions before the person has served honorably for a period or periods aggregating five years. Such ground for revocation shall be in addition to any other provided by law, including the grounds described in section 1451 of this title. The fact that the naturalized person was separated from the service under other than honorable conditions shall be proved by a duly authenticated copy of the records of the executive department under which the person was serving at the time of separation. Any period or periods of service shall be proved by duly authenticated copies of the records of the executive departments having custody of the records of such service.

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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.

1997—Subsec. (a)(1). Pub. L. 105–85 inserted ‘‘reenlistment, extension of enlistment,’’ after ‘‘at the time of enlistment’’ and ‘‘or on board a public vessel owned or operated by the United States for non-commercial service,’’ after ‘‘Swains Island,’’.


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. 100–255 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. 882; 89 Stat. 659), 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 power 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 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 power.

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 2003 Amendment**

Amendment by section 1701(c)(1)(B) of Pub. L. 108–136 applicable to citizenship granted on or after Nov. 24, 2003, see section 1701(c)(2) of Pub. L. 108–136, set out as a note under section 1439 of this title.


**Effective Date of 1997 Amendment**

Section 1080(b) of Pub. L. 105–85 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply with respect to enlistments, reenlistments, extensions of enlistment, and inductions of persons occurring on or after the date of the enactment of this Act [Nov. 18, 1997].’’

**Effective Date of 1991 Amendment**


**Effective Date of 1981 Amendment**


**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.

**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, which provided that, notwithstanding any other provision of law, effective 120 days after Oct. 6, 1992, and applicable to natives of the Philippines who applied for naturalization under section 405 of Pub. L. 101–649, set out below, and who applied within 2 years after such effective date, the naturalization of natives of the Philippines who apply for naturalization under section 405 of Pub. L. 101–649 was to be conducted in Philippines as well as in United States by employees of Immigration and Naturalization Service designated pursuant to section 1446(b) of this title, and required Attorney General to prescribe necessary implementing regulations and maintain permanent records of the oaths of allegiance taken in accordance with these provisions, was repealed by Pub. L. 105–119, title I, §112(c), Nov. 26, 1997, 111 Stat. 2460.

Pub. L. 101–649, title IV, § 405, Nov. 29, 1990, 104 Stat. 5039, as amended by Pub. L. 103–416, title I, §104(d), Oct. 29, 1994, 108 Stat. 4308; Pub. L. 108–119, title I, §112(b), Nov. 26, 1997, 111 Stat. 2459, provided that section 1440(a)(1) and (2) of this title did not apply to the naturalization of certain persons born in the Philippines who served honorably in an active duty status during the World War II occupation and liberation of the Philippines within the Philippine Army or within a recognized guerilla unit or who served within the Philippine Scouts or within any other component of the United States Armed Forces in the Far East at any time during the period beginning September 1, 1939, and ending December 31, 1946, who were otherwise eligible for naturalization under section 1440, and who applied for naturalization during the 2-year period beginning on Nov. 29, 1990.

**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(c), 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].’’
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Ex. Ord. No. 12081, Termination of Expedient 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. 1440a), it is hereby ordered that the statutory period of Vietnam hostilities which began on October 29, 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 exemptions from the usual requirements for naturalization, including length of residence and fees.

JIMMY CARTER.

Ex. Ord. No. 12582, Feb. 2, 1987, 52 F.R. 3385, 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. 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 this 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 exemption 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 this title, 8 United States Code.

WILLIAM J. CLINTON.

Ex. Ord. No. 12369, Expedited Naturalization of Aliens and Noncitizen Nationals Who Served in Active-Duty Status During Persian Gulf Conflict

Ex. Ord. No. 12369, 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 329 of the Immigration and Nationality Act (8 U.S.C. 1440) (the “Act”), and solely in order to provide expedited naturalization for aliens and noncitizen nationals serving 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 exemption from the usual requirements for naturalization, I designate as a period in which the Armed Forces of the United States were engaged in armed conflict with a hostile foreign force the period beginning on September 11, 2001. Such period will be deemed to terminate on a date designated by future Executive Order. Those persons serving honorably in active-duty status in the Armed Forces of the United States, during the period beginning on September 11, 2001, and ending on the date to be so designated, are eligible for naturalization in accordance with the statutory exception to the naturalization requirements, as provided in section 329 of this Act. Nothing contained in this order is intended to affect, nor does it affect, any other power, right, or obligation of the United States, its agencies, officers, employees, or any other person under Federal law or the law of nations.

GEORGE W. BUSH.

§ 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 Secretary of Homeland Security 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 Secretary of Homeland Security 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

(1) In general

A request for the granting of posthumous citizenship to a person described in subsection (b) of this section may be filed on behalf of that person—

(A) upon locating the next-of-kin, and if so requested by the next-of-kin, by the Secretary of Defense or the Secretary’s designee with the Bureau of Citizenship and Immigration Services in the Department of Homeland Security immediately upon the death of that person; or

(B) by the next-of-kin.

(2) Approval

The Director of the Bureau of Citizenship and Immigration Services shall approve a request for posthumous citizenship filed by the next-of-kin in accordance with paragraph (1)(B) if—
(A) the request is filed not later than 2 years after—
   (i) November 24, 2003; or
   (ii) the date of the person's death;
whichever date is later;
(B) 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
(C) the Director finds that the person satisfied the requirement of subsection (b)(3) of this section.

d) Documentation of posthumous citizenship
If the Director of the Bureau of Citizenship and Immigration Services approves the request referred to in subsection (c) of this section, the Director shall send to the next-of-kin of the person who is granted citizenship, 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.


Codification
November 24, 2003, referred to in subsec. (c)(2)(A)(i), was in the original “the date of enactment of this section”, which was translated as meaning the date of enactment of Pub. L. 108–136, which enacted subsec. (c) of this section, to reflect the probable intent of Congress.

Amendments
Subsec. (c). Pub. L. 108–136, §1704(c)(1), added heading and text of subsec. (c) and struck out former subsec. (c) which related to procedures for approval by the Attorney General of a request for the granting of posthumous citizenship.
Subsec. (d). Pub. L. 108–136, §1704(d), added heading and text of subsec. (d) and struck out former subsec. (d) which read as follows: “If the Director of the Bureau of Citizenship and Immigration Services approves the 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.”
Subsec. (e). Pub. L. 108–136, §1703(g)(1), struck out heading and text of subsec. (e). Text read as follows: ‘‘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.”


Effective Date of 2003 Amendment

§§ 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 329 of the Immigration and Nationality Act, as amended by this Act [8 U.S.C. 1440], 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 title III of the Immigration and Nationality Act [8 U.S.C. 1401 et seq.].


References in Text
The Immigration and Nationality Act, referred to in text, is act June 27, 1952, ch. 477, 66 Stat. 163, as amended. Title III of the Act is classified principally to subchapter III (§1401 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Codification
Section was not enacted as part of the Immigration and Nationality Act which comprises this chapter.

Abolition of Immigration and Naturalization Service and Transfer of Functions
For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1440f. Fingerprint and other biometric information for members of the United States Armed Forces
(a) In general
Notwithstanding any other provision of law, including section 552a of title 5 (commonly referred to as the “Privacy Act of 1974”), the Secretary of Homeland Security shall use the fingerprints provided by an individual at the time
the individual enlisted in the United States Armed Forces, or at the time the individual filed an application for adjustment of status, to satisfy any requirement for background and security checks in connection with an application for naturalization if—

1. the individual may be naturalized pursuant to section 1439 or 1440 of this title;
2. the individual was fingerprinted and provided other biometric information in accordance with the requirements of the Department of Defense at the time the individual enlisted in the United States Armed Forces; or
3. the individual—
   A. submitted an application for naturalization not later than 24 months after the date on which the individual enlisted in the United States Armed Forces; or
   B. provided the required biometric information to the Department of Homeland Security through a United States Citizenship and Immigration Services Application Support Center at the time of the individual’s application for adjustment of status if filed not later than 24 months after the date on which the individual enlisted in the United States Armed Forces; and
4. the Secretary of Homeland Security determines that the biometric information provided, including fingerprints, is sufficient to conduct the required background and security checks needed for the applicant’s naturalization application.

(b) More timely and effective adjudication

Nothing in this section precludes an individual described in subsection (a) from submitting a new set of biometric information, including fingerprints, to the Secretary of Homeland Security with an application for naturalization. If the Secretary determines that submitting a new set of biometric information, including fingerprints, would result in more timely and effective adjudication of the individual’s naturalization application, the Secretary shall—

1. inform the individual of such determination; and
2. provide the individual with a description of how to submit such biometric information, including fingerprints.

(c) Cooperation

The Secretary of Homeland Security, in consultation with the Secretary of Defense, shall determine the format of biometric information, including fingerprints, acceptable for usage under subsection (a). The Secretary of Defense, or any other official having custody of the biometric information, including fingerprints, referred to in subsection (a), shall—

1. make such prints available, without charge, to the Secretary of Homeland Security for the purpose described in subsection (a); and
2. otherwise cooperate with the Secretary of Homeland Security to facilitate the processing of applications for naturalization under subsection (a).

(d) Electronic transmission

Not later than one year after June 26, 2008, the Secretary of Homeland Security shall, in coordination with the Secretary of Defense and the Director of the Federal Bureau of Investigation, implement procedures that will ensure the rapid electronic transmission of biometric information, including fingerprints, from existing repositories of such information needed for military personnel applying for naturalization as described in subsection (a) and that will safeguard privacy and civil liberties.

(e) Centralization and expedited processing

(1) Centralization

The Secretary of Homeland Security shall centralize the data processing of all applications for naturalization filed by members of the United States Armed Forces on active duty serving abroad.

(2) Expedited processing

The Secretary of Homeland Security, the Director of the Federal Bureau of Investigation, and the Director of National Intelligence shall take appropriate actions to ensure that applications for naturalization by members of the United States Armed Forces described in paragraph (1), and associated background checks, receive expedited processing and are adjudicated within 180 days of the receipt of responses to all background checks.


CODIFICATION

Section was enacted as part of the Kendell Frederick Citizenship Assistance Act, and not as part of the Immigration and Nationality Act which comprises this chapter.

§ 1440g. Provision of information on military naturalization

(a) In general

Not later than 30 days after the effective date of any modification to a regulation related to naturalization under section 1439 or 1440 of this title, the Secretary of Homeland Security shall make appropriate updates to the Internet sites maintained by the Secretary to reflect such modification.

(b) Sense of Congress

It is the sense of Congress that the Secretary of Homeland Security, not later than 180 days after each effective date described in subsection (a), should make necessary updates to the appropriate application forms of the Department of Homeland Security.


CODIFICATION

Section was enacted as part of the Kendell Frederick Citizenship Assistance Act, and not 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.


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 pars. (c) and (d) of this section as 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 petition is filed 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.

“(4) 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.

“(5) Provided. That any such person shall be subject to the provisions of section 1429 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.

§ 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, 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 until the alien is naturalized.

(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; pub. l. 101–649, title iv, § 407(c)(13), d(9), e(2), nov. 29, 1990, 104 stat. 5041, 5042, 5046.)
§ 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) Prescriptions 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 discretion, 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.


References in text

This chapter, referred to in subsec. (f), was in the original, "this Act", meaning act June 27, 1952, ch. 477,
66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

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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.”


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.

ABOLITION OF IMMIGRATION AND NATIONALIZATION 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.

§ 1443a. Naturalization proceedings overseas for members of the Armed Forces and their spouses and children

Notwithstanding any other provision of law, the Secretary of Homeland Security, the Secretary of State, and the Secretary of Defense shall ensure that any applications, interviews, filings, oaths, ceremonies, or other proceedings under title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) relating to naturalization of members of the Armed Forces, and persons made eligible for naturalization by section 319(e) or 322(d) of such Act [8 U.S.C. 1430(e), 1433(d)], are available through United States embassies, consulates, and as practicable, United States military installations overseas.


REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in text, is act June 25, 1952, ch. 477, 66 Stat. 163, as amended. Title III of the Act is classified principally to subchapter III ($1401 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

Codification

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2004, and not as part of the Immigration and Nationality Act which comprises this chapter.

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2008—Pub. L. 110–181 inserted “and their spouses and children” after “Armed Forces” in section catchline and “, and persons made eligible for naturalization by section 319(e) or 322(d) of such Act,” after “Armed Forces” in text.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–181 effective Jan. 28, 2008, and applicable to any application for naturalization or issuance of a certificate of citizenship pending on or after such date, see section 674(d) of Pub. L. 110–181, set out as a note under section 1430 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 2004, see section 1705(b) of Pub. L. 109–136, set out as an Effective Date of 2003 Amendment note under section 1439 of this title.

FINALIZATION OF NATURALIZATION PROCEEDINGS FOR MEMBERS OF THE ARMED FORCES

Pub. L. 108–136, div. A, title XVII, § 1701(e), Nov. 24, 2003, 117 Stat. 1692, provided that: “Not later than 90 days after the date of the enactment of this Act [Nov. 24, 2003], the Secretary of Defense shall prescribe a policy that facilitates the opportunity for a member of the Armed Forces to finalize naturalization for which the member has applied. The policy shall include, for such purpose, the following:

“(1) A high priority for grant of emergency leave.

“(2) A high priority for transportation on aircraft of, or chartered by, the Armed Forces.”

§ 1444. Photographs; number

(a) Three identical photographs of the applicant shall be signed 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 1255 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.


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EFFECTIVE DATE OF 1994 AMENDMENT

§ 1445

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.

§ 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, 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.

(66 Stat. 254; Pub. L. 102–232, §§ 305(m)(7), struck out "in duplicate," after "file with the Attorney General.")


Subsecs. (f), (g). Pub. L. 102–232, § 305(d), redesignated subsec. (g) as (f).


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."


Subs. (c) to (e). Pub. L. 101–649, § 407(d)(12)(F), added subs. (c) to (e) and struck out former subs. (c) to (e) which related to time to file, substitute filing place, and investigation into reasons for substitute filing place, respectively.

Subs. (f), (g). Pub. L. 101–649, § 407(d)(15), (d)(12)(D), (E), redesignated subs. (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 dupli-
clicate 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 Gen-
eral shall prescribe., and substituted “an application”
for “a petition” in last sentence.

SUBSEC. (c) 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 ef-
effect as if included in the enactment of the Immigra-
tion 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 in-
cluded in section 407(d) of the Immigration Act of 1990,

EFFECTIVE DATE OF 1981 AMENDMENT
Amendment by Pub. L. 97–116 effective Dec. 29, 1981,
see section 21(a) of Pub. L. 97–116, set out as a note
under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION
SERVICE AND TRANSFER OF FUNCTIONS
For abolition of Immigration and Naturalization
Service, transfer of functions, and treatment of related
references, see note set out under section 1551 of this
title.

§1446. Investigation of applicants; examination
of applications

(a) Waiver
Before a person may be naturalized, an em-
ployee of the Service, or of the United States
designated by the Attorney General, shall con-
duct a personal investigation of the person ap-
plying for naturalization in the vicinity or vi-
cinities in which such person has maintained his
actual place of abode and in the vicinity or vi-
cinities 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 de-
signees; record
The Attorney General shall designate employ-
es of the Service to conduct examinations upon
applications for naturalization. For such pur-
poses any such employee so designated is au-
thorized to take testimony concerning any mat-
ter touching or in any way affecting the admis-
sibility of any applicant for naturalization, to
administer oaths, including the oath of the ap-
plicant for naturalization, and to require by sub-
pena 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 subpoena 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 rel-
evant books, papers, and documents if de-
manded, 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 con-
ducted 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 appli-
cation 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 de-
nied, with reasons therefor.

(e) Withdrawal of application
After an application for naturalization has
been filed with the Attorney General, the appli-
cant shall not be permitted to withdraw his ap-
plication, except with the consent of the Attor-
ney 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 applica-
tion shall be decided on the merits unless the
Attorney General dismisses it for lack of pros-
cution.

(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 ap-
plication had originally been filed in the district
of the Service to which the application is trans-
ferred.

(June 27, 1952, ch. 477, title III, ch. 2, §335, 66
Stat. 1619; Pub. L. 100–525, §8(aa), (bb), Oct. 24,
1988, 102 Stat. 2621; Pub. L. 101–649, title IV,
§§ 401(c), 407(c)(16), (d)(13), Nov. 29, 1990, 104 Stat.
5011, 5045; Pub. L. 102–232, title III, §305(f),

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court” for “District Court”.

vestigation of applicants; examination of applications”
for “Investigation of petitioners” in section catchline.

Subsec. (a). Pub. L. 101–649, §407(c)(16), (d)(13)(B), sub-
stituted “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".

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.

1981—Subsec. (d). Pub. L. 97–116, § 15(c)(2), (3), redesignated subsec. (f) as (d) and struck out former subsec. (f) which struck out "preliminary" before "examination" wherever appearing, and substituted "determination" for "recommendation" and "application" for "petition".

Subsec. (e). Pub. L. 97–116, § 15(c)(2), struck out "recommendation" and "application" for "petition".

Subsec. (f). Pub. L. 97–116, § 15(c)(2), redesignated subsec. (f) as (e) and struck overt former subsec. (f) which substituted "determination" for "recommendation" and "application" for "petition".

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) Subpoena of witnesses

The immigration officer shall, if the applicant requests it at the time of filing the request for the hearing, issue a subpoena 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 subpoenas may be enforced in the same manner as subpoenas 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.


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.

§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 “religous training and belief” as used in this section shall mean an individual’s belief in 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. The Attorney General may waive the taking of the oath by a person if in the opinion of the Attorney General the person is unable to understand, or to communicate an understanding of, its meaning because of a physical or develop-
mentally disabled or mental impairment. If the Attorney General waives the taking of the oath by a person under the preceding sentence, the person shall be considered to have met the requirements of section 1427(a)(3) of this title with respect to attachment to the principles of the Constitution and well disposition to the good order and happiness of the United States.

(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.

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”.


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”.


Effective Date of 2000 Amendment

Pub. L. 106–448, §2, Nov. 6, 2000, 114 Stat. 1939, provided that: “The amendment made by section 1 [amending this section] shall apply to persons applying for naturalization before, on, or after the date of the enactment of this Act [Nov. 6, 2000].”

Effective Date of 1991 Amendment

Amendment by section 102(b)(2) of Pub. L. 102–323 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 1981 Amendment


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.

Demonstration Projects to Provide for Administration of Oath of Allegiance


“(a) IN GENERAL.—The Attorney General shall make available funds under this section, in each of fiscal years 1997 through 2001, to the Commissioner of Immigration and Naturalization or to other public or private nonprofit entities to support demonstration projects under this section at 10 sites throughout the United States. Each such project shall be designed to provide for the administration of the oath of allegiance under section 337(a) of the Immigration and Nationality Act (8 U.S.C. 1448(a)) on a business day around Independence Day to approximately 500 people whose applica-
tion for naturalization has been approved. Each project shall provide for appropriate outreach and ceremonial and celebratory activities.

(b) Selection of Sites.—The Attorney General shall, in the Attorney General’s discretion, select diverse locations for sites on the basis of the number of naturalization applicants living in proximity to each site and the degree of local community participation and support in the project to be held at the site. Not more than 2 sites may be located in the same State. The Attorney General shall consider changing the sites selected from year to year.

(1) Amount.—The amount made available under this section with respect to any single site for a year shall not exceed $5,000.

(2) Use.—Funds made available under this section may be used only to cover expenses incurred in carrying out oath administration ceremonies at the demonstration sites under subsection (a), including expenses for—

(A) cost of personnel of the Immigration and Naturalization Service (including travel and overtime expenses);

(B) rental of space; and

(C) costs of printing appropriate brochures and other information about the ceremonies.

(3) Availability of Funds.—Funds that are otherwise available to the Immigration and Naturalization Service to carry out naturalization activities shall be available, to the extent provided in appropriation Acts, to carry out this section.

(d) Application.—In the case of an entity other than the Immigration and Naturalization Service seeking to conduct a demonstration project under this section, amounts may be made available to the entity under this section unless an appropriate application has been made to, and approved by, the Attorney General, in a form and manner specified by the Attorney General.

§ 1448a. Address to newly naturalized citizens

Either at the time of the rendition of the decree of naturalization or at such other time as the judge may fix, the judge or someone designated by him shall address the newly naturalized citizen upon the form and genius of our Government and the privileges and responsibilities of citizenship; it being the intent and purpose of this section to enlist the aid of the judiciary, in cooperation with civil and educational authorities, and patriotic organizations in a continuous effort to dignify and emphasize the significance of citizenship.

(Feb. 29, 1952, ch. 49, §2, 66 Stat. 10.)

Codification

Section was previously classified to section 154 of former Title 36, Patriotic Societies and Observances.

Prior Provisions

Similar provisions were contained in act May 3, 1940, ch. 183, §2, 54 Stat. 178, which was classified to section 727a of this title prior to repeal by act Feb. 29, 1952.

§ 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.

§ 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 1446 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—

(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 State 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, or by a designated representative of the Commissioner under the provisions of section 702 of this title, shall upon notice by the court by which the determination was made, or by the Attorney General, surrender the same to the Attorney General.

(e) Citizenship unlawfully procured

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 hereafter granted by any court, and to all certificates of naturalization and citizenship which may have been issued herebefore 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 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.

§ 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), 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 the Act of May 24, 1934 (48 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

References in Text
Section 702 of the Nationality Act of 1940, as amended, referred to in subsec. (g), which was classified to section 702 of this title, was repealed by section 402 of this title, as of 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 (j). Pub. L. 101–649, § 407(d)(18)–(A), redesignated subsecs. (f) to (j) as (e) to (h), respectively. Former subsec. (e) redesignated (d).


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. (j). 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.”

Subsec. (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.”


1984—Subsec. (a). Pub. L. 98–387, 18(a), inserted “were illegally procured or” after “such order and certificate of naturalization”.

Effective Date of 1991 Amendment

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, 1988.”

Abolition of Immigration and Naturalization Service and Transfer of Functions
For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.
(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.


REFERENCES IN TEXT

Section 1903 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, § 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, § 1172.

This chapter, referred to in subsecs. (a) and (b)(2), was in the original, “This Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS


Subsecs. (a), (b), Pub. L. 99–396, § 16(a)(2), (3), designated existing provisions as subsec. (a) and added subsec. (b).


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 1991 AMENDMENT

Amendment by Pub. L. 101–346 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. 101–346, set out as a note under section 1435 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


EFFECTIVE DATE OF 1981 AMENDMENT


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.

CERTIFICATES OF NON-CITIZEN NATIONAL STATUS: $35 LIMIT ON FEES FOR PROCESSING APPLICATIONS FILED BEFORE END OF FISCAL YEAR 1987

Section 1993 of the Revised Statutes, referred to in subsec. (a), which was classified to sections 3b and 3c of this title, was omitted from the Code.

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.

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 herefore 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.


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.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related
§ 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 therefore, 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 parts 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.


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."

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.

§ 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) Except as provided by section 1356(q)(2) of this title or any other law, all fees collected 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 subpoenaing and paying the legal fees of any witnesses for whom such applicant may request a subpoena, and upon the final discharge of such witnesses, they shall receive, if they de-
mand the same from the Attorney General, the customary and usual witness fees from the mon-
ey which the applicant shall have paid to the Attorney General for such purpose, and the resid-
due, if any, shall be returned by the Attorney General to the applicant.

(f) The Attorney General shall pay over to courts administering oaths of allegiance to per-
sions 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 Attor-
ney General, annually and in consultation with the courts, shall determine the specified percent-
age based on the proportion, of the total costs incurred by the Service and courts for es-
sential services directly related to the natural-
ralization process, which are incurred by courts.

(2) The Attorney General shall provide on an annual basis to the Committees on the Judici-
ary 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.


REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original, “this Act,” meaning act June 27, 1962, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107-273 substituted “Except as provided by section 1356(q)(2) of this title or any other law, all” for “All”.


Subsec. (c). Pub. L. 102-232, §306(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, §306(a)(1)(A)(i), see below.


Subsec. (b). Pub. L. 101-649, §407(c)(20), (d)(19)(A)(ii), (d)(19)(B), inserted “except that all such fees received under subsec. (b) 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 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, how-
ever, 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(d)(19)(B), (E), (F), redesignated subsec. (i) as (e), substituted “an application” for “a petition” and “applicants” for “petitioners” 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 sub-
sections (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 pre-
scribed 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 (g) to (e), respectively.


Subsec. (g). Pub. L. 100-459, as amended by Pub. L. 102-232, §309(a)(1)(A)(i), 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.


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.

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.

Effective Date of 1981 Amendment

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.

Admission of Alaska as State
Effectiveness of amendment of this section by Pub. L. 85–508 was dependent on admission of Alaska to 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.


§ 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.)

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.

§ 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 here-tofore 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.)

References in Text
This chapter, referred to in text, was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 266, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

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.

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.


Part III—Loss of Nationality
§ 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 another state or political subdivision thereof and (B) it is determined that the person entering service is engaged in such hostilities for the foreign state with which the United States is at war.

(June 27, 1952, ch. 477, title IV, §348, 66 Stat. 268, eff. Sept. 1, 1952.)
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 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.


REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original a reference to this Act, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS

1986—Subsec. (a). Pub. L. 100–525, § 9(h)(h), substituted “‘A person’ for ‘From and after the effective date of this chapter a person’.”
Subsecs. (a), (a)(1). 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 the naturalization obtained on behalf of a person 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 added by section 3 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, § 442, redesignated par. (6) as (5). Former par. (5), which dealt with expatriation of persons who voted in a political elec-
tion 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 a result of deserting the military, air, or naval forces of the United States in time of war.


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, air, or naval forces of the United States.


EFFECTIVE DATE OF 1988 AMENDMENT


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


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 1551 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

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 descendents, 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.’’


Section, act June 27, 1952, ch. 477, title III, ch. 3, §330, 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 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.


REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original, ‘‘this Act’’, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

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’’.


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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.


AMENDMENTS

1988—Pub. L. 100–525 substituted “before December 25, 1952” for “upon the effective date of this subchapter”.

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 as to loss of American nationality for purposes of section 1503 of this title.


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. This chapter, referred to in text, was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Codification

Section was formerly classified to section 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
§ 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.

§ 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 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.

(b) Application for certificate of identity; appeal

If any 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 denied admission to the United States shall be subject to all the provisions of this chapter relating to aliens seeking admission to the United States.


REFERENCES IN TEXT

This chapter, referred to in subsections (a) and (c), was in the original a reference to this Act, meaning act June 27, 1952, ch. 477, 66 Stat. 183, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS


Subsec. (c). Pub. L. 104–208, § 308(d)(4)(P)(ii), substituted “denied admission” for “excluded from admission”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.
ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 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 illegalities 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.


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.


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 OF 1994 AMENDMENT

Amendment by Pub. L. 103–236 applicable with respect to officials, offices, and bureaus of Department of State when executive orders, regulations, or departmental directives implementing the amendments by sections 161 and 162 of Pub. L. 103–236 become effective, or 90 days after Apr. 30, 1994, whichever comes earlier, see section 161(b) of Pub. L. 103–236, as amended, set out as a note under section 2651a of Title 22, Foreign Relations and Intercourse.

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


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 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 or voluntary repatriation of those 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 ensure 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 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 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 resettle-
(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.

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 106 of the Job Training Partnership Act.

(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 program funded 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 supplementary 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 excluded from receiving cash or medical assistance under any other paragraph of this subsection or under title XIX 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.


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.

and redesignated existing cls. (A) through (D) as (i) through (iv), respectively.


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 United 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. (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 (ii), 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).


Effective Date of 1996 Amendment

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 22, The Public Health and Welfare.

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. 103–236 applicable with respect to officials, offices, and bureaus of Department of State when executive orders, regulations, or departmental directives implementing the amendments by sections 161 and 162 of Pub. L. 103–236 become effective, or 90 days after Apr. 30, 1994, whichever comes earlier, see section 161(b) of Pub. L. 103–236, as amended, set out as a note under section 2551a of Title 22, Foreign Relations and Intercourse.

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]."

Subsec. (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]."

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 II 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 50 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 on a fiscal year basis for 100 percent of the non-Federal costs associated with such Cuban refugees with respect to whom supple-
mental 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."

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.

MAINTAINING FUNDING LEVEL OF MATCHING GRANT PROGRAM

Section 7 of Pub. L. 99–695 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


"(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 services 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 removal has not been entered.

ELIGIBILITY OF CERTAIN CUBAN-HAITIAN ENTRANTS ENTERING AFTER NOV. 1, 1979

Pub. L. 97–35, title V, §§543(a)(1), 544, 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 below], an alien who entered the United States on or after November 1, 1979, and is in the United States on the immigration status of a Cuban-Haitian entrant (status pending) shall be considered to be an eligible participant (within the meaning of section 101(c) 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. 96–333, 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, pose 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


"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 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7901].

"(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 alien 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.'

"AUTHORIZED AND ALLOCATIONS 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 a Cuban-Haitian entrant (status pending) shall be considered to be an eligible participant (within the meaning of section 101(c) 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.'
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 section 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; and

(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 disbursements 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) to which such agency would be entitled and had such determination been made on the basis of accurate data.

§ 1522 TITLE 8—ALIENS AND NATIONALITY
"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 1961 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 schools under the jurisdiction of local educational agencies within all the States (other than the jurisdictions to which funds described by section 201(b)(2) are made available for the same purposes under other Federal laws) 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 1961, 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) of this section, multiplied by (ii) $700; and

"(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) of this section, 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) of this section, 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 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 aid 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 84, Eighty-first Congress) (formerly 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 the provisions of subsection (b) shall be made, whenever actual satisfactory data are available, as 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) 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.

“(1) 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—

“(A) supplementary educational services necessary to enable those children to achieve a satisfactory level of performance, including—

“(1) English language instruction;

“(2) 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 other such costs as are directly attributable to such additional basic instructional services; and

“(3) special in-service 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 303, subject to any restrictions 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 educational-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 determined and supervised by 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.

"(b) 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 refuge, parolee, asylee status of the individuals to be served by such funds, and (B) such amounts are made available to provide assistance exclusively for services under this title. The amount of the reduction required under this paragraph shall be determined in the manner specified in section 103, but for purposes of this title and section 105 any payments made under section 105 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) 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 residing within the State receive 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 Act 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

"AUTHORIZED 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 paragraph 2 of title IV of the Immigration and Nationality Act [8 U.S.C. 1312 et seq.]. The authorities provided in section 414 of that Act [8 U.S.C. 1312] shall be available to carry out this section without regard to the dollar limitation contained in section 414(a)(2).


(3) 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], shall be granted in the same manner and to the same extent with respect to Cuban and Haitian entrants.

"(b) Any Federal agency may, under the direction of the President, provide assistance (in the form of materiel, 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.


"(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 removal 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 removal has not been entered;"


EXOR. 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

EX. ORD. NO. 12251, JAN. 21, 1982, 47 F.R. 3341, AS AMENDED BY EX. ORD. NO. 13286, § 48, FEB. 28, 2003, 68 F.R. 10628, 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 Secretary of Homeland Security 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 Secretary of Homeland Security.

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.

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. 63891, 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.

§ 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 dis-
proportionately 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.


Amendments


1991—Subsec. (a). Pub. L. 102–118 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.

1990—Subsec. (a)(1). Pub. L. 100–525 substituted “through (4)” for “through (5)”; And


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 (B) as pars. (1) to (8), respectively, and former cls. (i) and (ii) of pars. (4) and (5) as cl. (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”.


Effective Date of 1994 Amendment

Amendment by Pub. L. 101–236 applicable with respect to officials, offices, and bureaus of Department of State when executive orders, regulations, or departmental directives implementing the amendments by sections 161 and 162 of Pub. L. 101–236 become effective, or 90 days after Apr. 30, 1994, whichever comes earlier, see section 161(b) of Pub. L. 101–236, as amended, set out as a note under section 2651a of Title 22, Foreign Relations and Intercourse.

Effective Date of 1982 Amendment


§ 1524. Authorization of appropriations

(a) There are authorized to be appropriated for each of fiscal years 2000 through 2002 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.

SUBCHAPTER V—ALIEN TERRORIST REMOVAL PROCEDURES

§ 1531. Definitions
As used in this subchapter—
(1) the term "alien terrorist" means any alien described in section 1227(a)(4)(B) of this title;
(2) the term "classified information" has the same meaning as in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);
(3) the term "national security" has the same meaning as in section 1(b) of the Classified Information Procedures Act (18 U.S.C. App.);
(4) the term "removal court" means the court described in section 1532 of this title;
(5) the term "removal hearing" means the hearing described in section 1534 of this title;
(6) the term "removal proceeding" means a proceeding under this subchapter; and
(7) the term "special attorney" means an attorney who is on the panel established under section 1532(e) of this title.


REFERENCES IN TEXT
Section 1 of the Classified Information Procedures Act, referred to in pars. (2) and (3), is section 1 of Pub. L. 96–456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS

EFFECTIVE DATE OF 1996 AMENDMENT

EFFECTIVE DATE
Subchapter effective Apr. 24, 1996, and applicable to all aliens without regard to date of entry or attempted entry into United States, see section 401(f) of Pub. L. 104–132, set out as an Effective Date of 1996 Amendment note under section 1226 of this title.

§ 1532. Establishment of removal court
(a) Designation of judges
The Chief Justice of the United States shall publicly designate 5 district court judges from 5 of the United States judicial circuits who shall constitute a court that shall have jurisdiction to conduct all removal proceedings. The Chief Justice may, in the Chief Justice’s discretion, designate the same judges under this section as are designated pursuant to section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

(b) Terms
Each judge designated under subsection (a) of this section shall serve for a term of 5 years and shall be eligible for redesignation, except that of the members first designated—
(1) 1 member shall serve for a term of 1 year;
(2) 1 member shall serve for a term of 2 years;
(3) 1 member shall serve for a term of 3 years; and
(4) 1 member shall serve for a term of 4 years.

(c) Chief judge
(1) Designation
The Chief Justice shall publicly designate one of the judges of the removal court to be the chief judge of the removal court.

(2) Responsibilities
The chief judge shall—
(A) promulgate rules to facilitate the functioning of the removal court; and
(B) assign the consideration of cases to the various judges on the removal court.

(d) Expeditious and confidential nature of proceedings
The provisions of section 103(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(c)) shall apply to removal proceedings in the same manner as they apply to proceedings under that Act (50 U.S.C. 1801 et seq.).

(e) Establishment of panel of special attorneys
The removal court shall provide for the designation of a panel of attorneys each of whom—
(1) has a security clearance which affords the attorney access to classified information, and
(2) has agreed to represent permanent resident aliens with respect to classified information under section 1534(e)(3) of this title in ac-
cordance with (and subject to the penalties under) this subchapter.


REFERENCES IN TEXT

AMENDMENTS

EFFECTIVE DATE OF 1996 AMENDMENT

§1533. Removal court procedure

(a) Application

(1) In general

In any case in which the Attorney General has classified information that an alien is an alien terrorist, the Attorney General may seek removal of the alien under this subchapter by filing an application with the removal court that contains—

(A) the identity of the attorney in the Department of Justice making the application;
(B) a certification by the Attorney General or the Deputy Attorney General that the application satisfies the criteria and requirements of this section;
(C) the identity of the alien for whom authorization for the removal proceeding is sought; and
(D) a statement of the facts and circumstances relied on by the Department of Justice to establish probable cause that—

(i) the alien is an alien terrorist;
(ii) the alien is physically present in the United States; and
(iii) with respect to such alien, removal under subchapter II would pose a risk to the national security of the United States.

(2) Filing

An application under this section shall be submitted ex parte and in camera, and shall be filed under seal with the removal court.

(b) Right to dismiss

The Attorney General may dismiss a removal action under this subchapter at any stage of the proceeding.

(c) Consideration of application

(1) Basis for decision

In determining whether to grant an application under this section, a single judge of the removal court may consider, ex parte and in camera, in addition to the information contained in the application—

(A) other information, including classified information, presented under oath or affirmation; and

(B) testimony received in any hearing on the application, of which a verbatim record shall be kept.

(2) Approval of order

The judge shall issue an order granting the application, if the judge finds that there is probable cause to believe that—

(A) the alien who is the subject of the application has been correctly identified and is an alien terrorist present in the United States; and

(B) removal under subchapter II would pose a risk to the national security of the United States.

(3) Denial of order

If the judge denies the order requested in the application, the judge shall prepare a written statement of the reasons for the denial, taking all necessary precautions not to disclose any classified information contained in the Government’s application.

(d) Exclusive provisions

If an order is issued under this section granting an application, the rights of the alien regarding removal and expulsion shall be governed solely by this subchapter, and except as they are specifically referenced in this subchapter, no other provisions of this chapter shall be applicable.


REFERENCES IN TEXT
This chapter, referred to in subsec. (d), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title.

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.

§1534. Removal hearing

(a) In general

(1) Expedient hearing

In any case in which an application for an order is approved under section 1533(c)(2) of this title, a removal hearing shall be conducted under this section as expeditiously as practicable for the purpose of determining whether the alien to whom the order pertains should be removed from the United States on the grounds that the alien is an alien terrorist.

(2) Public hearing

The removal hearing shall be open to the public.

(b) Notice

An alien who is the subject of a removal hearing under this subchapter shall be given reasonable notice of—
(1) the nature of the charges against the alien, including a general account of the basis for the charges; and
(2) the time and place at which the hearing will be held.

e) Rights in hearing
   (1) Right of counsel
   The alien shall have a right to be present at such hearing and to be represented by counsel. Any alien financially unable to obtain counsel shall be entitled to have counsel assigned to represent the alien. Such counsel shall be appointed by the judge pursuant to the plan for furnishing representation for any person financially unable to obtain adequate representation for the district in which the hearing is conducted, as provided for in section 3006A of title 18. All provisions of that section shall apply and, for purposes of determining the maximum amount of compensation, the matter shall be treated as if a felony was charged.

   (2) Introduction of evidence
   Subject to the limitations in subsection (e) of this section, the alien shall have a reasonable opportunity to introduce evidence on the alien’s own behalf.

   (3) Examination of witnesses
   Subject to the limitations in subsection (e) of this section, the alien shall have a reasonable opportunity to examine the evidence against the alien and to cross-examine any witness.

   (4) Record
   A verbatim record of the proceedings and of all testimony and evidence offered or produced at such a hearing shall be kept.

   (5) Removal decision based on evidence at hearing
   The decision of the judge regarding removal shall be based only on that evidence introduced at the removal hearing.

d) Subpoenas

   (1) Request
   At any time prior to the conclusion of the removal hearing, either the alien or the Department of Justice may request the judge to issue a subpoena for the presence of a named witness (which subpoena may also command books, papers, documents, or other objects to be produced, or papers, documents, or other objects designated therein) upon a satisfactory showing that the presence of the witness is necessary for the determination of any material matter. Such a request may be made ex parte except that the judge shall inform the Department of Justice of any request for a subpoena by the alien for a witness or material if compliance with such a subpoena would reveal classified information. The Department of Justice shall be given a reasonable opportunity to oppose the issuance of such a subpoena.

   (2) Payment for attendance
   If an application for a subpoena by the alien also makes a showing that the alien is financially unable to pay for the attendance of a witness so requested, the court may order the costs incurred by the process and the fees of the witness so subpoenaed to be paid from funds appropriated for the enforcement of subchapter II of this chapter.

   (3) Nationwide service
   A subpoena under this subsection may be served anywhere in the United States.

   (4) Witness fees
   A witness subpoenaed under this subsection shall receive the same fees and expenses as a witness subpoenaed in connection with a civil proceeding in a court of the United States.

   (5) No access to classified information
   Nothing in this subsection is intended to allow an alien to have access to classified information.

e) Discovery

   (1) In general
   For purposes of this subchapter—
   (A) the Government is authorized to use in a removal proceeding the fruits of electronic surveillance and unconsented physical searches authorized under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) without regard to subsections (c), (e), (f), (g), and (h) of section 106 of that Act [50 U.S.C. 1806(c), (e), (f), (g), (h)] and discovery of information derivable pursuant to such Act, or otherwise collected for national security purposes, shall not be authorized if disclosure would present a risk to the national security of the United States;
   (B) an alien subject to removal under this subchapter shall not be entitled to suppress evidence that the alien alleges was unlawfully obtained; and
   (C) section 3504 of title 18 and section 1806(e) of title 50 shall not apply if the Attorney General determines that public disclosure would pose a risk to the national security of the United States because it would disclose classified information or otherwise threaten the integrity of a pending investigation.

   (2) Protective orders
   Nothing in this subchapter shall prevent the United States from seeking protective orders and from asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and State secrets privileges.

   (3) Treatment of classified information
   (A) Use
   The judge shall examine, ex parte and in camera, any evidence for which the Attorney General determines that public disclosure would pose a risk to the national security of the United States or to the security of any individual because it would disclose classified information and neither the alien nor the public shall be informed of such evidence or its sources other than through ref-
ere to the summary provided pursuant to this paragraph. Notwithstanding the previous sentence, the Department of Justice may, in its discretion and, in the case of classified information, after coordination with the originating agency, elect to introduce such evidence in open session.

(B) Submission

With respect to such information, the Government shall submit to the removal court an unclassified summary of the specific evidence that does not pose that risk.

(C) Approval

Not later than 15 days after submission, the judge shall approve the summary if the judge finds that it is sufficient to enable the alien to prepare a defense. The Government shall deliver to the alien a copy of the unclassified summary approved under this subparagraph.

(D) Disapproval

(i) In general

If an unclassified summary is not approved by the removal court under subparagraph (C), the Government shall be afforded 15 days to correct the deficiencies identified by the court and submit a revised unclassified summary.

(ii) Revised summary

If the revised unclassified summary is not approved by the court within 15 days of its submission pursuant to subparagraph (C), the removal hearing shall be terminated unless the judge makes the findings under clause (iii).

(iii) Findings

The findings described in this clause are, with respect to an alien, that—

(I) the continued presence of the alien in the United States would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person, and

(II) the provision of the summary would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person.

(E) Continuation of hearing without summary

If a judge makes the findings described in subparagraph (D)(iii)—

(i) if the alien involved is an alien lawfully admitted for permanent residence, the procedures described in subparagraph (F) shall apply; and

(ii) in all cases the special removal hearing shall continue, the Department of Justice shall cause to be delivered to the alien a statement that no summary is possible, and the classified information submitted in camera and ex parte may be used pursuant to this paragraph.

(F) Special procedures for access and challenges to classified information by special attorneys in case of lawful permanent aliens

(i) In general

The procedures described in this subparagraph are that the judge (under rules of the removal court) shall designate a special attorney to assist the alien—

(I) by reviewing in camera the classified information on behalf of the alien, and

(II) by challenging through an in camera proceeding the veracity of the evidence contained in the classified information.

(ii) Restrictions on disclosure

A special attorney receiving classified information under clause (i)—

(I) shall not disclose the information to the alien or to any other attorney representing the alien, and

(II) who discloses such information in violation of subclause (I) shall be subject to a fine under title 18, imprisoned for not less than 10 years nor more than 25 years, or both.

(f) Arguments

Following the receipt of evidence, the Government and the alien shall be given fair opportunity to present argument as to whether the evidence is sufficient to justify the removal of the alien. The Government shall open the argument. The alien shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The judge may allow any part of the argument that refers to evidence received in camera and ex parte to be heard in camera and ex parte.

(g) Burden of proof

In the hearing, it is the Government’s burden to prove, by the preponderance of the evidence, that the alien is subject to removal because the alien is an alien terrorist.

(h) Rules of evidence

The Federal Rules of Evidence shall not apply in a removal hearing.

(i) Determination of deportation

If the judge, after considering the evidence on the record as a whole, finds that the Government has met its burden, the judge shall order the alien removed and detained pending removal from the United States. If the alien was released pending the removal hearing, the judge shall order the Attorney General to take the alien into custody.

(j) Written order

At the time of issuing a decision as to whether the alien shall be removed, the judge shall prepare a written order containing a statement of facts found and conclusions of law. Any portion of the order that would reveal the substance or source of information received in camera and ex parte pursuant to subsection (e) of this section shall not be made available to the alien or the public.
(k) No right to ancillary relief

At no time shall the judge consider or provide for relief from removal based on—
(1) asylum under section 1158 of this title;
(2) by withholding of removal under section 1231(b)(3) of this title;
(3) cancellation of removal under section 1229a of this title;
(4) voluntary departure under section 1254a(e) of this title;
(5) adjustment of status under section 1255 of this title; or
(6) registry under section 1259 of this title.

(l) Report on terrorist removal proceedings

Not later than 3 months from December 28, 2001, the Attorney General shall submit to Congress a report concerning the effect of alien terrorist removal proceedings, including the reasons why proceedings pursuant to this section have not been used by the Attorney General in the past and the effect on the use of these proceedings after the enactment of the USA PATRIOT Act of 2001 (Public Law 107–56).

(june 27, 1952, ch. 477, title v, § 504, as added pub. l. 104–208, div. c, title iii, § 308(b)(7), sept. 30, 1996, 110 stat. 244(e), meaning section 244(e) of act june 27, 1952, as added pub. l. 104–208, § 354(b)(1)(b), substituted “and neither the alien nor the public shall be informed of such evidence or its sources other than through reference to the summary provided pursuant to this paragraph. Notwithstanding the previous sentence, the Department of Justice may, in its discretion and, in the case of classified information, after coordination with the originating agency, elect to introduce such evidence in open session.” for period at end.

§ 1535. Appeals

(a) Appeal of denial of application for removal proceedings

(1) In general

The Attorney General may seek a review of the denial of an order sought in an application filed pursuant to section 1533 of this title. The appeal shall be filed in the United States Court of Appeals for the District of Columbia Circuit by notice of appeal filed not later than 20 days after the date of such denial.

(2) Record on appeal

The entire record of the proceeding shall be transmitted to the Court of Appeals under seal, and the Court of Appeals shall hear the matter ex parte.
(3) Standard of review
The Court of Appeals shall—
(A) review questions of law de novo; and
(B) set aside a finding of fact only if such finding was clearly erroneous.

(b) Appeal of determination regarding summary of classified information
(1) In general
The United States may take an interlocutory appeal to the United States Court of Appeals for the District of Columbia Circuit of—
(A) any determination by the judge pursuant to section 1534(e)(3) of this title; or
(B) the refusal of the court to make the findings permitted by section 1534(e)(3) of this title.

(2) Record
In any interlocutory appeal taken pursuant to this subsection, the entire record, including any proposed order of the judge, any classified information and the summary of evidence, shall be transmitted to the Court of Appeals. The classified information shall be transmitted under seal. A verbatim record of such appeal shall be kept under seal in the event of any other judicial review.

(c) Appeal of decision in hearing
(1) In general
Subject to paragraph (2), the decision of the judge after a removal hearing may be appealed by either the alien or the Attorney General to the United States Court of Appeals for the District of Columbia Circuit by notice of appeal filed not later than 20 days after the date on which the order is issued. The order shall not be enforced during the pendency of an appeal under this subsection.

(2) Automatic appeals in cases of permanent resident aliens in which no summary provided
(A) In general
Unless the alien waives the right to a review under this paragraph, in any case involving an alien lawfully admitted for permanent residence who is denied a written summary of classified information under section 1534(e)(3) of this title and with respect to which the procedures described in section 1534(e)(3)(F) of this title apply, any order issued by the judge shall be reviewed by the Court of Appeals for the District of Columbia Circuit.

(B) Use of special attorney
With respect to any issue relating to classified information that arises in such review, the alien shall be represented only by the special attorney designated under section 1534(e)(3)(F)(i) of this title on behalf of the alien.

(3) Transmittal of record
In an appeal or review to the Court of Appeals pursuant to this subsection—
(A) the entire record shall be transmitted to the Court of Appeals; and
(B) information received in camera and ex parte, and any portion of the order that would reveal the substance or source of such information, shall be transmitted under seal.

(d) Certiorari
Following a decision by the Court of Appeals pursuant to subsection (c) of this section, the alien or the Attorney General may petition the Supreme Court for a writ of certiorari. In any such case, any information transmitted to the Court of Appeals under seal shall, if such information is also submitted to the Supreme Court, be transmitted under seal. Any order of removal shall not be stayed pending disposition of a writ of certiorari, except as provided by the Court of Appeals or a Justice of the Supreme Court.

(e) Appeal of detention order
(1) In general
Sections 3145 through 3148 of title 18 pertaining to review and appeal of a release or detention order, penalties for failure to appear, penalties for an offense committed while on release, and sanctions for violation of a release condition shall apply to an alien to whom section 1537(b)(1) of this title applies. In applying the previous sentence—
(A) for purposes of section 3145 of such title an appeal shall be taken to the United States Court of Appeals for the District of Columbia Circuit; and
(B) for purposes of section 3146 of such title the alien shall be considered released in connection with a charge of an offense punishable by life imprisonment.

(2) No review of continued detention
The determinations and actions of the Attorney General pursuant to section 1537(b)(2)(C) of this title shall not be subject to judicial review, including application for a writ of habeas corpus, except for a claim by the alien that continued detention violates

1So in original. Probably should be section "1534(e)(3)".
the alien’s rights under the Constitution. Jurisdiction over any such challenge shall lie exclusively in the United States Court of Appeals for the District of Columbia Circuit.


**AMENDMENTS**


Subsec. (c)(3), Pub. L. 104–208, §354(a)(3)(C), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (c)(4), Pub. L. 104–208, §354(a)(3)(B), inserted before period at end “except that in the case of a review under paragraph (2) in which an alien lawfully admitted for permanent residence was denied a written summary of classified information under section 1533 of this title, the Court of Appeals shall review questions of fact de novo”.


**ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS**

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

**REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION**

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

§1536. Custody and release pending removal hearing

(a) Upon filing application

(1) In general

Subject to paragraphs (2) and (3), the Attorney General may—

(A) take into custody any alien with respect to whom an application under section 1533 of this title has been filed; and

(B) retain such an alien in custody in accordance with the procedures authorized by this subchapter.

(2) Special rules for permanent resident aliens

(A) Release hearing

An alien lawfully admitted for permanent residence shall be entitled to a release hearing before the judge assigned to hear the removal hearing. Such an alien shall be detained pending the removal hearing, unless the alien demonstrates to the court that the alien—

(i) is a person lawfully admitted for permanent residence in the United States;

(ii) if released upon such terms and conditions as the court may prescribe (including the posting of any monetary amount), is not likely to flee; and

(iii) will not endanger national security, or the safety of any person or the community, if released.

(B) Information considered

The judge may consider classified information submitted in camera and ex parte in making a determination whether to release an alien pending the removal hearing.

(3) Release if order denied and no review sought

(A) In general

Subject to subparagraph (B), if a judge of the removal court denies the order sought in an application filed pursuant to section 1533 of this title, and the Attorney General does not seek review of such denial, the alien shall be released from custody.

(B) Application of regular procedures

Subparagraph (A) shall not prevent the arrest and detention of the alien pursuant to subchapter II of this chapter.

(b) Conditional release if order denied and review sought

(1) In general

If a judge of the removal court denies the order sought in an application filed pursuant to section 1533 of this title and the Attorney General seeks review of such denial, the judge shall release the alien from custody subject to the least restrictive condition, or combination of conditions, of release described in section 3142(b) and clauses (i) through (xiv) of section 3142(c)(1)(B) of title 18 that—

(A) will reasonably assure the appearance of the alien at any future proceeding pursuant to this subchapter; and

(B) will not endanger the safety of any other person or the community.

(2) No release for certain aliens

If the judge finds no such condition or combination of conditions, as described in paragraph (1), the alien shall remain in custody until the completion of any appeal authorized by this subchapter.


**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.

§1537. Custody and release after removal hearing

(a) Release

(1) In general

Subject to paragraph (2), if the judge decides that an alien should not be released, the alien shall be released from custody.
(2) Custody pending appeal

If the Attorney General takes an appeal from such decision, the alien shall remain in custody, subject to the provisions of section 3142 of title 18.

(b) Custody and removal

(1) Custody

If the judge decides that an alien shall be removed, the alien shall be detained pending the outcome of any appeal. After the conclusion of any judicial review thereof which affirms the removal order, the Attorney General shall retain the alien in custody and remove the alien to a country specified under paragraph (2).

(2) Removal

(A) In general

The removal of an alien shall be to any country which the alien shall designate if such designation does not, in the judgment of the Attorney General, in consultation with the Secretary of State, impair the obligation of the United States under any treaty (including a treaty pertaining to extradition) or otherwise adversely affect the foreign policy of the United States.

(B) Alternate countries

If the alien refuses to designate a country to which the alien wishes to be removed or if the Attorney General, in consultation with the Secretary of State, determines that removal of the alien to the country so designated would impair a treaty obligation or adversely affect United States foreign policy, the Attorney General shall cause the alien to be removed to any country willing to receive such alien.

(C) Continued detention

If no country is willing to receive such an alien, the Attorney General may, notwithstanding any other provision of law, retain the alien in custody. The Attorney General, in coordination with the Secretary of State, shall make periodic efforts to reach agreement with other countries to accept such an alien and at least every 6 months shall provide to the representative attorney representing the alien at the removal hearing a written report on the Attorney General’s efforts. Any alien in custody pursuant to this subparagraph shall be released from custody solely at the discretion of the Attorney General and subject to such conditions as the Attorney General shall deem appropriate.

(D) Fingerprinting

Before an alien is removed from the United States pursuant to this subsection, or pursuant to an order of removal because such alien is inadmissible under section 1182(a)(3)(B) of this title, the alien shall be photographed and fingerprinted, and shall be advised of the provisions of section 1326(b) of this title.

(e) Rights of aliens in custody

(1) Family and attorney visits

An alien in the custody of the Attorney General pursuant to this subchapter shall have the right to contact an appropriate diplomatic or consular official of the alien’s country of citizenship or nationality or of any country providing representation services therefore. The Attorney General shall notify the appropriate embassy, mission, or consular office of the alien’s detention.

(2) Diplomatic contact

An alien in the custody of the Attorney General pursuant to this subchapter shall have the right to contact an appropriate diplomatic or consular official of the alien’s country of citizenship or nationality or of any country providing representation services therefore. The Attorney General shall notify the appropriate embassy, mission, or consular office of the alien’s detention.

(1) Delay in removal

The Attorney General may hold in abeyance the removal of an alien who has been ordered removed, pursuant to this subchapter, to allow the trial of such alien on any Federal or State criminal charge and the service of any sentence of confinement resulting from such a trial.

(2) Maintenance of custody

Pending the commencement of any service of a sentence of confinement by an alien described in paragraph (1), such an alien shall remain in the custody of the Attorney General, unless the Attorney General determines that temporary release of the alien to the custody of State authorities for confinement in a State facility is appropriate and would not endanger national security or public safety.

(3) Subsequent removal

Following the completion of a sentence of confinement by an alien described in paragraph (1), or following the completion of State criminal proceedings which do not result in a sentence of confinement of an alien released to the custody of State authorities pursuant to paragraph (2), such an alien shall be returned to the custody of the Attorney General who shall proceed to the removal of the alien under this subchapter.

(d) Application of certain provisions relating to escape of prisoners

For purposes of sections 751 and 752 of title 18, an alien in the custody of the Attorney General pursuant to this subchapter shall be subject to the penalties provided by those sections in relation to a person committed to the custody of the Attorney General by virtue of an arrest on a charge of a felony.

§ 1537
month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 271(a)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

CHAPTER 13—IMMIGRATION AND NATURALIZATION SERVICE

SUBCHAPTER I—ORGANIZATION

§ 1551. Immigration and Naturalization Service

There is created and established in the Department of Justice an Immigration and Naturalization Service.

(Sec. 2 of Pub. L. 97–155, Mar. 4, 1982, 96 Stat. 1, set out as a note under section 251 of Title 6 and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 421 of Title 6.)

Codification

Section was formerly classified to section 342 of Title 6, Government Organization and Employees.

Amendments

(Amended by Pub. L. 106–313, title II, § 201, Oct. 17, 2000, 114 Stat. 1362, provided that: "This title [enacting subchapter II of this chapter] may be cited as the "Immigration Services and Infrastructure Improvements Act of 2000.""

Transfer of Functions

Functions vested by law in Attorney General, Department of Justice, or any other officer or any agency of that Department, with respect to inspection at regular inspection locations at ports of entry of persons, and documents of persons, entering or leaving United States, were to have been transferred to Secretary of the Treasury by 1973 Reorg. Plan No. 2, § 2, eff. July 1, 1973, 38 F.R. 13992, 87 Stat. 991, set out in the Appendix to Title 5, Government Organization and Employees. The transfer was negated by section 1(a)(1), (b) of Pub. L. 93–233, Mar. 16, 1974, 88 Stat. 50, which repealed section 2 of 1973 Reorg. Plan No. 2, eff. July 1, 1973.

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, effect, and supervise any rule, regulation, or order of deportation, see section 309(d)(2) of Title 6 and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

The Immigration and Naturalization Service was abolished by section 291(a) of Title 6, Domestic Security, upon completion of all transfers from the Immigration and Naturalization Service as provided for by chapter 1 of Title 6.

Functions of the Commissioner of Immigration and Naturalization performed under the Border Patrol program, the detention and removal program, the intelligence program, the investigations program, and the inspections program, and all personnel, assets, and liabilities pertaining to such programs, were transferred to the Under Secretary for Border and Transportation Security of the Department of Homeland Security by section 231 of Title 6 and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of the Commissioner of Immigration and Naturalization relating to adjudications of immigrant visa petitions, adjudications of naturalization petitions, adjudications of asylum and refugee applications, adjudications performed at service centers, and all other adjudications performed by the Immigration and Naturalization Service, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions, were transferred to the Director of the Bureau of Citizenship and Immigration Services of the Department of Homeland Security by section 271(b) of Title 6 and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified.

Functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the functions referred to in the two preceding paragraphs were transferred to the Under Secretary for Management of the Department of Homeland Security by section 341(b)(2) of Title 6 and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified.

Functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) were transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services by section 279(a) of Title 6 and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified.

Personnel of the Department of Justice employed in connection with the functions transferred by part E (§ 271 et seq.) of subchapter IV of chapter 1 of Title 6 (and functions that the Secretary of Homeland Security determines are properly related to the functions of the Bureau of Citizenship and Immigration Services), were transferred to the Director of the Bureau of Citizenship and Immigration Services by section 275(b)(2) of Title 6 and the Department of Homeland Security...
Reorganization Plan of November 25, 2002, as modified. Personnel of the Department of Justice employed in connection with the functions transferred by section 279 of Title 6 were transferred to the Director of the Office of Refugee Resettlement by section 279(q)(3) of Title 6 and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified.

For the performance of duties referred to any agency, officer, or office, the functions of which were transferred to the Department of Homeland Security, see sections 532(d) and 557 of Title 6.

**INDIVIDUALS COMPREHENSIVE MANAGEMENT ANALYSIS OF SERVICE OPERATIONS; ARRANGEMENTS RESPECTING, ETC.**

Pub. L. 96–132, § 10, Nov. 30, 1979, 93 Stat. 1050, provided that: “The Attorney General shall make arrangements with an appropriate entity for an independent comprehensive management analysis of the operations of the Immigration and Naturalization Service for the purpose of making such operations efficient and cost effective. After the completion of such analysis, the Attorney General shall promptly submit a report to the appropriate committees of Congress on the results of such analysis together with any administrative or legislatively recommended recommendations of the Attorney General to improve the operations of the Service.”

**OFFICE OF SPECIAL INVESTIGATOR; FUNCTIONS, ESTABLISHMENT, POWERS, ETC.**

Pub. L. 96–132, § 22, Nov. 30, 1979, 93 Stat. 1050, provided that:

“(a) In order to create an independent and objective unit—

“(1) to conduct and supervise audits and investigations relating to programs and operations of the Immigration and Naturalization Service,

“(2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations, and

“(3) to provide a means for keeping the Commissioner of the Immigration and Naturalization Service and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action,

there is hereby established in the Immigration and Naturalization Service of the Department of Justice an Office of Special Investigator (hereinafter in this section referred to as ‘the Office’).

“(b)(1) There shall be at the head of the Office a Special Investigator (hereinafter in this section referred to as ‘the Special Investigator’) who shall be appointed by the Attorney General with respect to regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The Special Investigator shall report to and be under the general supervision of the Commissioner, who shall not prevent or prohibit the Special Investigator from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

“(2) The Special Investigator may be removed from office by the Attorney General. The Attorney General shall communicate the reasons for any such removal to both Houses of Congress.

“(3) For the purposes of section 7324 of title 5 of the United States Code, the Special Investigator shall not be considered to be an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws.

“(4) The Special Investigator shall, in accordance with applicable laws and regulations governing the civil service—

“(A) appoint an Assistant Special Investigator for Auditing who shall have the responsibility for super-

vising the performance of auditing activities relating to programs and operations of the Service, and

“(B) appoint an Assistant Special Investigator for Investigations who shall have the responsibility for the performance of investigative activities relating to such programs and operations.

“(c) The following provisions of the Inspector General Act of 1978 (Public Law 95–459) (set out in the Appendix to Title 5) shall apply to the Special Investigator, the Office, the Commissioner, and the Service under this section in the same manner as those provisions apply to an Inspector General, an Office, the head of the establishment, and an establishment under such Act:

“(1) Section 4 (relating to duties and responsibilities of an Inspector General and the manner in which they are carried out).

“(2) Section 5 (relating to reports required to be prepared and furnished by or to an Inspector General and their transmittal and availability).

“(3) Section 6 (relating to the authority of an Inspector General and related administrative provisions).

“(4) Section 7 (relating to the treatment of employee complaints by an Inspector General).

“(d) The Attorney General is authorized to appoint such staff as may be necessary to carry out this section.

“(e) For purposes of this section—

“(1) the term ‘Service’ means the Immigration and Naturalization Service;

“(2) the term ‘Department’ means the Department of Justice; and

“(3) the term ‘Commissioner’ means the Commissioner of Immigration and Naturalization.

“(f) The Special Investigator shall be compensated at the rate then payable under section 5316 of title 5 of the United States Code for level V of the Executive Schedule.

“(g) The provisions of this section shall take effect on the date of the enactment of this Act [Nov. 30, 1979] and shall cease to have effect the earlier of—

“(1) 3 years after the date of the enactment of this Act; and

“(2) the establishment of an office of inspector general for the Department of Justice.

“(h) In addition to any other sums authorized to be appropriated by this Act, there are authorized to be appropriated $376,000 for the fiscal year ending September 30, 1980 to carry out this section.”

**HISTORY OF IMMIGRATION AND NATURALIZATION SERVICE**

By acts Aug. 3, 1882, ch. 376, §§ 2, 3, 22 Stat. 214; Feb. 23, 1887, ch. 220, 24 Stat. 415, the administration of the immigration laws then in force was reposed in the Secretary of the Treasury. Subsequently, by act Mar. 3, 1891, ch. 551, § 7, 26 Stat. 1867, the office of the Superintendent of Immigration was created as a permanent immigration agency and he in turn was designated Commissioner General of Immigration under the heading “Bureau of Immigration” by act Mar. 2, 1885, ch. 177, § 1, 28 Stat. 780. Upon the establishment of the Department of Commerce and Labor, the Commissioner General of Immigration and the Bureau of Immigration were transferred to that Department by act Feb. 21, 1893, ch. 552, §§ 4, 32 Stat. 625, and thereafter were redesignated the Bureau of Immigration and Naturalization by act June 29, 1906, ch. 3592, § 1, 34 Stat. 596. The Bureau of Immigration and Naturalization was transferred to the Department of Labor upon its establishment by act Mar. 4, 1913, ch. 141, 37 Stat. 736, and divided into two bureaus to be known as the Bureau of Immigration and the Bureau of Naturalization, respectively. Ex. Ord. No. 6160, § 14, June 10, 1933, set out as note under section 901 of Title 5, Government Organization and Employees, again consolidated these bureaus to form the Immigration and Naturalization Service, under a “Commissioner of Immigration and Naturalization”, which was then transferred from the Department of Labor to the Department of Justice by 1940 Reorg.
§ 1552. Commissioner of Immigration and Naturalization; office

The office of the Commissioner of Immigration and Naturalization is created and established, and the President, by and with the advice and consent of the Senate, is authorized and directed to appoint such officer. The Attorney General shall provide him with a suitable, furnished office in the city of Washington, and with such books of record and facilities for the discharge of the duties of his office as may be necessary.


CODIFICATION

Section was formerly classified to section 342b of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS


TRANSFER OF FUNCTIONS

Functions vested by law in Attorney General, Department of Justice, or any other officer or any agency of that Department, with respect to inspection at regular inspection locations at ports of entry of persons, and documents of persons, entering or leaving United States, were to have been transferred to Secretary of the Treasury by 1973 Reorg. Plan No. 2, § 2, eff. July 1, 1973.

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, see sections 509 and 510 of Title 28, Judiciary and Judicial Procedure.

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.

HISTORY OF IMMIGRATION AND NATURALIZATION AGENCIES

Ex. Ord. No. 6166, § 14, June 10, 1933, set out as a note under section 901 of Title 5, Government Organization and Employees, consolidated the two formerly separate bureaus known as the Bureau of Immigration and the Bureau of Naturalization to form the Immigration and Naturalization Service under a Commissioner of Immigration and Naturalization, which was subsequently transferred from the Department of Labor to the Department of Justice by 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238, set out in the Appendix to Title 5. See note set out under section 1551 of this title.

§ 1553. Assistant Commissioners and one District Director; compensation and salary grade

The compensation of the five assistant commissioners and one district director shall be at the rate of grade GS–16.

(June 20, 1956, ch. 414, title II, § 201, 70 Stat. 307.)

CODIFICATION

Section was formerly classified to section 342b–1 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 PROVISIONS

Provisions similar to those in this section were contained in act July 7, 1955, ch. 279, title II, § 201, 69 Stat. 272.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

REFERENCES 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.

§ 1554. Special immigrant inspectors at Washington

Special immigrant inspectors, not to exceed three, may be detailed for duty in the service at Washington.

(Mar. 2, 1895, ch. 177, § 1, 28 Stat. 780; Ex. Ord. No. 6166, § 14, June 10, 1933.)

CODIFICATION

Ex. Ord. No. 6166, is authority for the substitution of “service” for “bureau.” See note set out under section 1551 of this title.

Section was formerly classified to section 342g 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. Thereafter, it was classified to section 111 of this title prior to its transfer to this section.

TRANSFER OF FUNCTIONS

Functions vested by law in Attorney General, Department of Justice, or any other officer or any agency of that Department, with respect to inspection at regular inspection locations at ports of entry of persons, and documents of persons, entering or leaving United States, were to have been transferred to Secretary of the Treasury by 1973 Reorg. Plan No. 2, § 2, eff. July 1, 1973, 38 F.R. 15952, 87 Stat. 1091, set out in the Appendix to Title 5, Government Organization and Employees, by Pub. L. 93–253, Mar. 16, 1974, 88 Stat. 50, which repealed section 2 of 1973 Reorg. Plan No. 2, eff. July 1, 1973.
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.

§ 1555. Immigration Service expenses

Appropriations now or hereafter provided for the Immigration and Naturalization Service shall be available for payment of (a) hire of privately owned horses for use on official business, under contract with officers or employees of the Service; (b) pay of interpreters and translators who are not citizens of the United States; (c) distribution of citizenship textbooks to aliens without cost to such aliens; (d) payment of allowances (at such rate as may be specified from time to time in the appropriation Act involved) to aliens, while held in custody under the immigration laws, for work performed; and (e) when so specified in the appropriation concerned, expenses of unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General, who shall make a certificate of the amount of any such expenditure as he may think it advisable not to specify, and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended.

(July 28, 1950, ch. 503, § 6, 64 Stat. 380.)

CODIFICATION

Section was formerly classified to section 341d 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.

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.

§ 1556. Transferred

CODIFICATION

Section transferred to section 1533d of this title.

§ 1557. Prevention of transportation in foreign commerce of alien women and girls under international agreement; Commissioner designated as authority to receive and preserve information

For the purpose of regulating and preventing the transportation in foreign commerce of alien women and girls for purposes of prostitution and debauchery, and in pursuance of and for the purpose of carrying out the terms of the agreement or project of arrangement for the suppression of the white-slave traffic, adopted July 25, 1902, for submission to their respective governments by the delegates of various powers represented at the Paris Conference and confirmed by a formal agreement signed at Paris on May 18, 1904, and adhered to by the United States on June 6, 1908, as shown by the proclamation of the President of the United States dated June 15, 1908, the Commissioner of Immigration and Naturalization is designated as the authority of the United States to receive and centralize information concerning the procurement of alien women and girls with a view to their debauchery, and to exercise supervision over such alien women and girls, receive their declarations, establish their identity, and ascertain from them who induced them to leave their native countries, respectively; and it shall be the duty of said Commissioner of Immigration and Naturalization to receive and keep on file in his office the statements and declarations which may be made by such alien women and girls, and those which are hereinafter required pertaining to such alien women and girls engaged in prostitution or debauchery in this country, and to furnish receipts for such statements and declarations provided for in this Act to the persons, respectively, making and filing them.

(June 25, 1910, ch. 395, § 6, 36 Stat. 826; Ex. Ord. No. 6166, § 14, June 10, 1933.)

REFERENCES IN TEXT

This Act, referred to in text, is act June 25, 1910, ch. 395, 36 Stat. 825, known as the White Slave Traffic Act, which was classified to this section and to sections 397 to 404 of former Title 18, Criminal Code and Criminal Procedure. The act, except for the provision set out as this section, was repealed by act June 25, 1948, ch. 645, 62 Stat. 683, section 1 of which enacted Title 18, Crimes and Criminal Procedure. See sections 2421 et seq. of Title 18.

CODIFICATION

Section was originally classified to section 422(1) of Title 18 prior to the general revision and enactment of Title 18, Crimes and Criminal Procedure, by act June 25, 1948, ch. 645, 62 Stat. 683. Thereafter, it was classified to section 3422 of Title 5 prior to enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378, and was subsequently classified to section 338 of this title prior to transfer to this section.

TRANSFER OF FUNCTIONS

Functions vested by law in Attorney General, Department of Justice, or any other officer or any agency of that Department, with respect to inspection at regular inspection locations at ports of entry of persons, and documents of persons, entering or leaving United States, were to have been transferred to Secretary of the Treasury by 1973 Reorg. Plan No. 2, § 2, eff. July 1, 1973, 38 F.R. 15932, 87 Stat. 1091, set out in the Appendix to Title 18, Crimes and Criminal Procedure. See sections 2421 et seq. of Title 18.

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.

HISTORY OF IMMIGRATION AND NATURALIZATION AGENCIES

Ex. Ord. No. 6166, § 14, June 10, 1933, set out as a note under section 901 of Title 5, Government Organization
and Employees, consolidated the two formerly separate bureaus known as the Bureau of Immigration and the Bureau of Naturalization to form the Immigration and Naturalization Service under a Commissioner of Immigration and Naturalization. See note set out under section 1551 of this title.

SUBCHAPTER II—IMMIGRATION SERVICES AND INFRASTRUCTURE IMPROVEMENTS

§ 1571. Purposes

(a) Purposes

The purposes of this subchapter are to—

(1) provide the Immigration and Naturalization Service with the mechanisms it needs to eliminate the current backlog in the processing of immigration benefit applications within 1 year after October 17, 2000, and to maintain the elimination of the backlog in future years; and

(2) provide for regular congressional oversight of the performance of the Immigration and Naturalization Service in eliminating the backlog and processing delays in immigration benefits adjudications.

(b) Policy

It is the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial filing of the application, except that a petition for a nonimmigrant visa under section 1184(c) of this title should be processed not later than 30 days after the filing of the petition.


SHORT TITLE

For short title of title II of Pub. L. 106–313, which enacted this subchapter, as the “Immigration Services and Infrastructure Improvements Act of 2000”, see section 201 of Pub. L. 106–313, set out as a Short Title of 2000 Amendment note under section 1551 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1572. Definitions

In this subchapter:

(1) Backlog

The term “backlog” means, with respect to an immigration benefit application, the period of time in excess of 180 days that such application has been pending before the Immigration and Naturalization Service.

(2) Immigration benefit application

The term “immigration benefit application” means any application or petition to confer, certify, change, adjust, or extend any status granted under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].


REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in par. (2), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1573. Immigration Services and Infrastructure Improvements Account

(a) Authority of the Attorney General

The Attorney General shall take such measures as may be necessary to—

(1) reduce the backlog in the processing of immigration benefit applications, with the objective of the total elimination of the backlog 1 year after November 25, 2002;

(2) make such other improvements in the processing of immigration benefit applications as may be necessary to ensure that a backlog does not develop after such date; and

(3) make such improvements in infrastructure as may be necessary to effectively provide immigration services.

(b) Authorization of appropriations

(1) In general

There is authorized to be appropriated to the Department of Justice from time to time such sums as may be necessary for the Attorney General to carry out subsection (a) of this section.

(2) Designation of account in treasury

Amounts appropriated pursuant to paragraph (1) may be referred to as the “Immigration Services and Infrastructure Improvements Account”.

(3) Availability of funds

Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(4) Limitation on expenditures

None of the funds appropriated pursuant to paragraph (1) may be expended until the report described in section 1574(a) of this title has been submitted to Congress.


AMENDMENTS


EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

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.
§ 1574. Reports to Congress

(a) Backlog elimination plan

(1) Report required

Not later than 90 days after October 17, 2000, the Attorney General shall submit a report to the Committees on the Judiciary and Appropriations of the Senate and the House of Representatives concerning—

(A) the backlogs in immigration benefit applications in existence as of October 17, 2000; and

(B) the Attorney General’s plan for eliminating such backlogs.

(2) Report elements

The report shall include—

(A) an assessment of the data systems used in adjudicating and reporting on the status of immigration benefit applications, including—

(i) a description of the adequacy of existing computer hardware, computer software, and other mechanisms to comply with the adjudications and reporting requirements of this subchapter; and

(ii) a plan for implementing improvements to existing data systems to accomplish the purpose of this subchapter, as described in section 1571(a) of this title;

(B) a description of the quality controls to be put into force to ensure timely, fair, accurate, and complete processing and adjudication of such applications;

(C) the elements specified in subsection (b)(2) of this section;

(D) an estimate of the amount of appropriated funds that would be necessary in order to eliminate the backlogs in each category of immigration benefit applications described in subsection (b)(2) of this section; and

(E) a detailed plan on how the Attorney General will use any funds in the Immigration Services and Infrastructure Improvements Account to comply with the purposes of this subchapter.

(b) Annual reports

(1) In general

Beginning 90 days after the end of the first fiscal year for which any appropriation authorized by section 1573(b) of this title is made, and 90 days after the end of each fiscal year thereafter, the Attorney General shall submit a report to the Committees on the Judiciary and Appropriations of the Senate and the House of Representatives concerning the status of—

(A) the Immigration Services and Infrastructure Improvements Account including any unobligated balances of appropriations in the Account; and

(B) the Attorney General’s efforts to eliminate backlogs in any immigration benefit application described in paragraph (2).

(2) Report elements

The report shall include—

(A) State-by-State data on—

(i) the number of naturalization cases adjudicated in each quarter of each fiscal year;

(ii) the average processing time for naturalization applications;

(iii) the number of naturalization applications pending for up to 6 months, 12 months, 18 months, 24 months, 36 months, and 48 months or more;

(iv) estimated processing times adjudicating newly submitted naturalization applications;

(v) an analysis of the appropriate processing times for naturalization applications; and

(vi) the additional resources and process changes needed to eliminate the backlog for naturalization adjudications;

(B) the status of applications or, where applicable, petitions described in subparagraph (C), by Immigration and Naturalization Service district, including—

(i) the number of cases adjudicated in each quarter of each fiscal year;

(ii) the average processing time for such applications or petitions;

(iii) the number of applications or petitions pending for up to 6 months, 12 months, 18 months, 24 months, 36 months, and 48 months or more;

(iv) the estimated processing times adjudicating newly submitted applications or petitions;

(v) an analysis of the appropriate processing times for applications or petitions; and

(vi) a description of the additional resources and process changes needed to eliminate the backlog for such processing and adjudications; and

(C) a status report on—

(i) applications for adjustments of status to that of an alien lawfully admitted for permanent residence;

(ii) petitions for nonimmigrant visas under section 1184 of this title;

(iii) petitions filed under section 1154 of this title to classify aliens as immediate relatives or preference immigrants under section 1153 of this title;

(iv) applications for asylum under section 1158 of this title;

(v) applications for Temporary Protected Status under section 1254a of this title; and

(vi) a description of the additional resources and process changes needed to eliminate the backlog for such processing and adjudications.

(3) Absence of appropriated funds

In the event that no funds are appropriated subject to section 1573(b) of this title in the fiscal year in which this Act is enacted, the Attorney General shall submit a report to Congress not later than 90 days after the end of such fiscal year, and each fiscal year thereafter, containing the elements described in paragraph (2).


REFERENCES IN TEXT

The fiscal year in which this Act is enacted, referred to in subsec. (b)(3), is the fiscal year in which Pub. L. 106–313, which was approved Oct. 17, 2000, was enacted.
§ 1601. Statements of national policy concerning welfare and immigration

The Congress makes the following statements concerning national policy with respect to welfare and immigration:

(1) Self-sufficiency has been a basic principle of United States immigration law since this country’s earliest immigration statutes. (2) It continues to be the immigration policy of the United States that—

(A) aliens within the Nation’s borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and

(B) the availability of public benefits not constitute an incentive for immigration to the United States.

(3) Despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates.

(4) Current eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system.

(5) It is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy.

(6) It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.

(7) With respect to the State authority to make determinations concerning the eligibility of qualified aliens for public benefits in this chapter, a State that chooses to follow the Federal classification in determining the eligibility of such aliens for public assistance shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy.


REFERENCES IN TEXT

This chapter, referred to in par. (7), was in the original “this title” meaning title IV of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2260, as amended, which enacted this chapter, section 1183a of this title, and sections 611a and 1437y of Title 42, The Public Health and Welfare, amended section 1333 of this title, sections 32 and 6213 of Title 26, Internal Revenue Code, and sections 1436a and 1471 of Title 42, and enacted provisions set out as notes under section 1183a of this title and section 32 of Title 26. For complete classification of title IV to the Code, see Tables.

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–328, § 1, Sept. 30, 2008, 122 Stat. 3567, provided that: “This Act [amending section 1612 of this title and sections 3304, 6103, and 6482 of Title 26, Internal Revenue Code, and enacting provisions set out as a note under section 3304 of Title 26] may be cited as the ‘SSI Extension for Elderly and Disabled Refugees Act’.”

§ 1611. Aliens who are not qualified aliens ineligible for Federal public benefits

(a) In general

Notwithstanding any other provision of law and except as provided in subsection (b) of this section, an alien who is not a qualified alien (as defined in section 1641 of this title) is not eligible for any Federal public benefit (as defined in subsection (c) of this section).
(b) Exceptions

(1) Subsection (a) of this section shall not apply with respect to the following Federal public benefits:

(A) Medical assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (or any successor program to such title) for care and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of such Act [42 U.S.C. 1396b(v)(3)]) of the alien involved and are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the State plan approved under such title (other than the requirement of the receipt of aid or assistance under title IV of such Act [42 U.S.C. 601 et seq.], supplemental security income benefits under title XVI of such Act [42 U.S.C. 1381 et seq.], or a State supplementary payment).

(B) Short-term, non-cash, in-kind emergency disaster relief.

(C) Public health assistance (not including any assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(D) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

(E) Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or any assistance under section 1926c of title 7, to the extent that the alien is receiving such a benefit on August 22, 1996.

(2) Subsection (a) of this section shall not apply to any benefit payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] to an alien who was receiving such benefits on August 22, 1996.

(3) Subsection (a) of this section shall not apply to any benefit payable under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] (relating to the medicare program) to an alien who is lawfully present in the United States as determined by the Attorney General and, with respect to benefits payable under part A of such title [42 U.S.C. 1395c et seq.], who was authorized to be employed with respect to any wages attributable to employment which are counted for purposes of eligibility for such benefits.

(4) Subsection (a) of this section shall not apply to any benefit payable under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.] or the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] to an alien who is lawfully present in the United States as determined by the Attorney General or to an alien residing outside the United States.

(5) Subsection (a) of this section shall not apply to eligibility for benefits for the program defined in section 1612(a)(3)(A) of this title (relating to the supplemental security income program), or to eligibility for benefits under any other program that is based on eligibility for benefits under the program so defined, for an alien who was receiving such benefits on August 22, 1996.

(c) "Federal public benefit" defined

(1) Except as provided in paragraph (2), for purposes of this chapter the term "Federal public benefit" means—

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

(2) Such term shall not apply—

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99–239 or 99–698 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State; or

(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

References in Text
The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II, IV, XVI, XVIII, and XIX of the Act are classified generally to subchapter II (§ 201 et seq.), IV (§ 301 et seq.), XVI (§ 1381 et seq.), XVIII (§ 1385 et seq.), and XIX (§ 1389 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. Part A of title XVIII of the Act is classified generally to part A (§ 1395c et seq.) of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.


The Railroad Retirement Act of 1974, referred to in subsec. (b)(4), is act Aug. 29, 1974, ch. 531, 88 Stat. 620, as amended. Title V of the Act is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (b)(4), is act June 25, 1938, ch. 880, 52 Stat. 660, as amended. Title V of the Act is classified generally to subchapter V (§ 1612 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

This chapter, referred to in subsec. (c)(1), was in the original “this title” meaning title IV of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2260, which enacted this chapter, section 1183a of this title, and sections 1181a and 1187y of Title 42, The Public Health and Welfare, amended section 1383 of this title, sections 32 and 6213 of Title 26, The Internal Revenue Code, and sections 1436a and 1471 of Title 1383 of this title, section 32 of Title 26, Incomplete classification of title IV to the Code, see Tables.

Section 141 of the applicable compact of free association approved in Public Law 99–239 or 99–658, referred to in subsec. (c)(2)(A), means section 141 of the Compact of Free Association between the United States and the Governments of the Marshall Islands and the Federated States of Micronesia, which is contained in section 201 of Pub. L. 99–239, Aug. 29, 1986, 100 Stat. 1316, as amended, which is classified principally to chapter 11 (§ 1351 et seq.) of Title 45, Railroads. For further details and complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

Section 141 of the applicable compact of free association approved in Public Law 99–239 or 99–658, referred to in subsec. (c)(2)(B), is act June 27, 1952, ch. 477, 66 Stat. 617, as amended. Title V of the Act is classified generally to part A (§ 163 et seq.) of subchapter A (§ 1612 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see Short Title note set out under section 163, as amended, which is classified principally to chapter 11 (§ 1351 et seq.) of Title 45, Railroads. The amount of allotment to a State for fiscal year 2001 for each of the 12 States with the highest number of undocumented aliens in the State in the fiscal year bears to the total of such numbers for all such States for such fiscal year the same ratio that the number of undocumented aliens in the State in the fiscal year bears to the total of such numbers for all such States for such fiscal year.

The amount of allotment to a State provided under this paragraph for a fiscal year that is not paid out under subsection (c) shall be available for payment during the subsequent fiscal year.

(2) Determination.—For purposes of paragraph (1), the number of undocumented aliens in a State under this section shall be determined based on estimates of the resident illegal alien population residing in each State prepared by the Statistics Division of the Immigration and Naturalization Service as of October 1992 (or as of such later date if such date is at least 1 year before the beginning of the fiscal year involved).

(a) Use of Funds.—From the allotments made under subsection (b), the Secretary shall pay to each State amounts the State demonstrates were paid by the State (or by a political subdivision of the State) for emergency health services furnished to undocumented aliens.

(b) State Defined.—For purposes of this section, the term ‘State’ includes the District of Columbia.

(e) State Entitlement.—This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment to States of amounts provided under this section.

Study and Report on Alien Student Eligibility for Postsecondary Federal Student Financial Assistance
Pub. L. 104–208, div. C, title V, § 506, Sept. 30, 1996, 110 Stat. 3009–672, provided that not later than one year after Sept. 30, 1996, the Comptroller General was to submit to Congress a report on the extent to which aliens who were not lawfully admitted for permanent residence were receiving postsecondary Federal student financial assistance, and the Secretary of Education and the Commissioner of Social Security were jointly to submit to Congress a report on the computer matching program of the Department of Education under section 1091(p) of title 20.

§ 1612. Limited eligibility of qualified aliens for certain Federal programs
(a) Limited eligibility for specified Federal programs
(1) In general
Notwithstanding any other provision of law and except as provided in paragraph (2), an
alien who is a qualified alien (as defined in section 1641 of this title) is not eligible for any specified Federal program (as defined in paragraph (3)).

(2) Exceptions

(A) Time-limited exception for refugees and asylees

With respect to the specified Federal programs described in paragraph (3), paragraph (1) shall not apply to an alien until 7 years after the date—

(i) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157];

(ii) an alien is granted asylum under section 208 of such Act [8 U.S.C. 1158];

(iii) an alien’s deportation is withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104–208);

(iv) an alien is granted status as a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or

(v) an alien is admitted to the United States as an Amerasian immigrant pursuant to section 581 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100–202 and amended by the 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100–461, as amended).

(B) Certain permanent resident aliens

Paragraph (1) shall not apply to an alien who—

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]; and

(ii)(I) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C. 401 et seq.] or can be credited with such qualifying quarters as provided under section 1645 of this title, and (II) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.

(C) Veteran and active duty exception

Paragraph (1) shall not apply to an alien who is lawfully residing in any State and is—

(i) a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of title 38) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38, (ii) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii) or the unmarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of title 38.

(D) Transition for aliens currently receiving benefits

(i) SSI

(I) In general

With respect to the specified Federal program described in paragraph (3)(A), during the period beginning on August 22, 1996, and ending on September 30, 1998, the Commissioner of Social Security shall redetermine the eligibility of any individual who is receiving benefits under such program as of August 22, 1996, and whose eligibility for such benefits may terminate by reason of the provisions of this subsection.

(II) Redetermination criteria

With respect to any redetermination under subclause (I), the Commissioner of Social Security shall apply the eligibility criteria for new applicants for benefits under such program.

(III) Grandfather provision

The provisions of this subsection and the redetermination under subclause (I), shall only apply with respect to the benefits of an individual described in subclause (I) for months beginning on or after September 30, 1998.

(IV) Notice

Not later than March 31, 1997, the Commissioner of Social Security shall notify an individual described in subclause (I) of the provisions of this clause.

(ii) Food stamps

(I) In general

With respect to the specified Federal program described in paragraph (3)(B), ineligibility under paragraph (1) shall not apply until April 1, 1997, to an alien who received benefits under such program on August 22, 1996, unless such alien is determined to be ineligible to receive such benefits under the Food Stamp Act of 1977 1 [7 U.S.C. 2011 et seq.]. The State agency shall recertify the eligibility of all such aliens during the period beginning April 1, 1997, and ending August 22, 1997.

(II) Recertification criteria

With respect to any recertification under subclause (I), the State agency shall apply the eligibility criteria for applicants for benefits under such program.

(III) Grandfather provision

The provisions of this subsection and the recertification under subclause (I)

1 See References in Text note below.
shall only apply with respect to the eligibility of an alien for a program for months beginning on or after the date of recertification, if on August 22, 1996, the alien is lawfully residing in any State and is receiving benefits under such program on August 22, 1996.

(E) Aliens receiving SSI on August 22, 1996
With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to an alien who is lawfully residing in the United States and who was receiving such benefits on August 22, 1996.

(F) Disabled aliens lawfully residing in the United States on August 22, 1996
With respect to eligibility for benefits for the specified Federal programs described in paragraph (3), paragraph (1) shall not apply to an alien who—

(i) in the case of the specified Federal program described in paragraph (3)(A)—

(I) was lawfully residing in the United States on August 22, 1996; and

(II) is blind or disabled (as defined in paragraph (2) or (3) of section 1614(a) of the Social Security Act (42 U.S.C. 1382c(a))); and

(ii) in the case of the specified Federal program described in paragraph (3)(B), is receiving benefits or assistance for blindness or disability (within the meaning of section 2(j) of the Food Stamp Act of 1977) (7 U.S.C. 2012(r)).

(G) Exception for certain Indians
With respect to eligibility for benefits for the specified Federal programs described in paragraph (3), section 1611(a) of this title and paragraph (1) shall not apply to any individual—

(i) in the case of the specified Federal program described in paragraph (3)(A)—

(I) was lawfully residing in the United States on August 22, 1996; and

(II) is blind or disabled (as defined in paragraph (2) or (3) of section 1614(a) of the Social Security Act (42 U.S.C. 1382c(a))); and

(ii) in the case of the specified Federal program described in paragraph (3)(B), is receiving benefits or assistance for blindness or disability (within the meaning of section 2(j) of the Food Stamp Act of 1977) (7 U.S.C. 2012(r))).

(H) SSI exception for certain recipients on the basis of very old applications
With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to any individual—

(i) who is receiving benefits under such program for months after July 1996 on the basis of an application filed before January 1, 1979; and

(ii) with respect to whom the Commissioner of Social Security lacks clear and convincing evidence that such individual is an alien ineligible for such benefits as a result of the application of this section.

(I) Food stamp exception for certain elderly individuals
With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to any individual who on August 22, 1996—

(i) was lawfully residing in the United States; and

(ii) was 65 years of age or older.

(J) Food stamp exception for certain children
With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to any individual who is under 18 years of age.

(K) Food stamp exception for certain Hmong and Highland Laotians
With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to—

(i) any individual who—

(I) is lawfully residing in the United States; and

(II) was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in section 101 of title 38);

(ii) the spouse, or an unmarried dependent child, of such an individual; or

(iii) the unremarried surviving spouse of such an individual who is deceased.

(L) Food stamp exception for certain qualified aliens

(M) SSI extensions through fiscal year 2011
(i) Two-year extension for certain aliens and victims of trafficking

(I) In general

Subject to clause (ii), with respect to eligibility for benefits for subparagraph (A) for the specified Federal program described in paragraph (3)(A) of qualified aliens (as defined in section 1641(b) of this title) and victims of trafficking in persons (as defined in section 101(a)(15)(T)(ii) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(T)(ii)]) the 7-year period described in subparagraph (A) shall be deemed to be a 9-year period during fiscal years 2009 through 2011 in the case of such a qualified alien or victim of trafficking who furnishes to the Commissioner of Social Security the declaration required under subclause (IV) (if applicable) and is described in subclause (III).
(II) Aliens and victims whose benefits ceased in prior fiscal years

Subject to clause (ii), beginning on September 30, 2008, any qualified alien (as defined in section 1611(b) of this title) or victim of trafficking in persons (as defined in section 7106(b)(1)(C) of title 22 or as granted status under section 101(a)(15)(T)(ii) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(T)(ii)] rendered ineligible for the specified Federal program described in paragraph (3)(A), paragraph (1) shall not apply during fiscal years 2009 through 2011 to an alien described in one of clauses (i) through (v) of subparagraph (A) or a victim of trafficking described in subclause (I) or (II). The declaration required under subparagraph (A) or the Commissioner of Social Security has verified such status, through procedures established in consultation with the Secretary of Homeland Security; through procedures established in consultation with the Secretary of Homeland Security, that such application is pending;

(bb) has filed an application, within 4 years from the date the alien or victim began receiving supplemental security income benefits, to become a lawful permanent resident with the Secretary of Homeland Security, and the Commissioner of Social Security has verified, through procedures established in consultation with such Secretary, that such application is pending;

(cc) has been granted the status of Cuban and Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96–222), for purposes of the specified Federal program described in paragraph (3)(A);

(dd) has had his or her deportation withheld by the Secretary of Homeland Security under section 240(b) of the Immigration and Nationality Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208), or whose removal is withheld under section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)];

(ee) has not attained age 18; or

(f) has attained age 70.

(IV) Declaration required

(aa) In general

For purposes of subclauses (I) and (II), the declaration required under this subclause of a qualified alien or victim of trafficking described in either such subclause is a declaration under penalty of perjury stating that the alien or victim has made a good faith effort to pursue United States citizenship, as determined by the Secretary of Homeland Security. The Commissioner of Social Security shall develop criteria as needed, in consultation with the Secretary of Homeland Security, for consideration of such declarations.

(bb) Exception for children

A qualified alien or victim of trafficking described in subclause (I) or (II) who has not attained age 18 shall not be required to furnish to the Commissioner of Social Security a declaration described in item (aa) as a condition of being eligible for the specified Federal program described in paragraph (3)(A) for an additional 2-year period in accordance with this clause.

(V) Payment of benefits to aliens whose benefits ceased in prior fiscal years

Benefits paid to a qualified alien or victim described in subclause (II) shall be paid prospectively over the duration of the qualified alien’s or victim’s renewed eligibility.

(ii) Special rule in case of pending or approved naturalization application

With respect to eligibility for benefits for the specified program described in paragraph (3)(A), paragraph (i) shall not apply during fiscal years 2008 through 2011 to an alien described in one of clauses (i) through (v) of subparagraph (A) or a victim of trafficking in persons (as defined in section 7106(b)(1)(C) of title 22 or as granted status under section 101(a)(15)(T)(ii) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(T)(ii)]), if such alien or victim (including any such alien or victim rendered ineligible for the specified Federal program described in paragraph (3)(A)) has filed an application for naturalization that is pending before the Secretary of Homeland Security or a United States district court based on section 539(b) of the Immigration and Nationality Act [8 U.S.C. 1447(b)], or has been approved for naturalization but not yet sworn in as a United States citizen, and the Commissioner of Social Security has verified, through pro-
(3) “Specified Federal program” defined

For purposes of this chapter, the term “specified Federal program” means any of the following:

(A) SSI

The supplemental security income program under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), including supplemental payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act (42 U.S.C. 1382e(a)) and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.

(B) Food stamps

The food stamp program as defined in section 3(i) of the Food Stamp Act of 1977 (7 U.S.C. 2012(i)).

(b) Limited eligibility for designated Federal programs

(1) In general

Notwithstanding any other provision of law and except as provided in section 1613 of this title and paragraph (2), a State is authorized to determine the eligibility of an alien who is a qualified alien (as defined in section 1641 of this title) for any designated Federal program (as defined in paragraph (3)).

(2) Exceptions

Qualified aliens under this paragraph shall be eligible for any designated Federal program.

(A) Time-limited exception for refugees and asylees

(i) Medicaid

With respect to the designated Federal program described in paragraph (3)(C), paragraph (1) shall not apply to an alien until 7 years after the date—

(I) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157];

(II) an alien is granted asylum under section 208 of such Act [8 U.S.C. 1158];

(III) an alien’s deportation is withheld under section 241(b) of such Act [8 U.S.C. 1225] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208); or section 241(b)(3) of such Act [8 U.S.C. 1225(b)(3)] (as amended by section 305(a) of division C of Public Law 104–208);

(IV) an alien is granted an alien as a Cuban and Haitian entrant (as defined in section 501(c) of the Refugee Education Assistance Act of 1980); or

(V) an alien admitted to the United States as an Amerasian immigrant as described in subsection (a)(2)(A)(i)(V) of this section until 5 years after the date of such alien’s entry into the United States.

(ii) Other designated Federal programs

With respect to the designated Federal programs under paragraph (3) (other than subparagraph (C)), paragraph (1) shall not apply to an alien until 5 years after the date—

(I) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157];

(II) an alien is granted asylum under section 208 of such Act [8 U.S.C. 1158];

(III) an alien’s deportation is withheld under section 241(b) of such Act [8 U.S.C. 1225] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act [8 U.S.C. 1225(b)(3)] (as amended by section 305(a) of division C of Public Law 104–208);

(IV) an alien is granted status as a Cuban and Haitian entrant (as defined in section 501(c) of the Refugee Education Assistance Act of 1980); or

(V) an alien admitted to the United States as an Amerasian immigrant as described in subsection (a)(2)(A)(i)(V) of this section until 5 years after the date of such alien’s entry into the United States.

(B) Certain permanent resident aliens

An alien who—

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]; and

(ii) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C. 401 et seq.] or can be credited with such qualifying quarters as provided under section 1615 of this title, and (II) in the case of any such qualifying quarters creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.

(C) Veteran and active duty exception

An alien who is lawfully residing in any State and is—

(i) a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of title 38) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38,

(ii) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii) or the unmarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of title 38.

\(^1\)So in original. Probably should be “alien is”. \(^3\)
(D) Transition for those currently receiving benefits
An alien who on August 22, 1996, is lawfully residing in any State and is receiving benefits under such program on August 22, 1996, shall continue to be eligible to receive such benefits until January 1, 1997.

(E) Medicaid exception for certain Indians
With respect to eligibility for benefits for the program defined in paragraph (3)(C) (relating to the medicaid program), section 1611(a) of this title and paragraph (1) shall not apply to any individual described in subsection (a)(2)(G) of this section.

(F) Medicaid exception for aliens receiving SSI
An alien who is receiving benefits under the program defined in subsection (a)(3)(A) of this section (relating to the supplemental security income program) shall be eligible for medical assistance under a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) under the same terms and conditions that apply to other recipients of benefits under the program defined in such subsection.

(3) “Designated Federal program” defined
For purposes of this chapter, the term “designated Federal program” means any of the following:

(A) Temporary assistance for needy families
The program of block grants to States for temporary assistance for needy families under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.].

(B) Social services block grant
The program of block grants to States for social services under title XX of the Social Security Act [42 U.S.C. 1397 et seq.].

(C) Medicaid
A State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], other than medical assistance described in section 1611(b)(1)(A) of this title.


The Immigration and Nationality Act, referred to in subsecs. (a)(2)(B)(i) and (b)(2)(B)(i), is act May 22, 1980, ch. 477, 94 Stat. 143, which is set out as an Amerasian Immigration note under section 1101 of this title.


This chapter, referred to in subsecs. (a)(3) and (b)(3), was in the original “this title” meaning title IV of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2260, which enacted this chapter; section 1183a of this title, and sections 61a and 1437 of Title 42. The Public Health and Welfare, amended section 1383 of this title, sections 32 and 6213 of Title 26, Internal Revenue Code, and sections 1436a and 1471 of Title 42, and enacted provisions set out as notes under section 1183a of this title and section 32 of Title 26. For complete classification of title IV to the Code, see Tables.


The Immigration and Nationality Act, referred to in subsecs. (a)(2)(B)(i) and (b)(2)(B)(i), is act June 27, 1952, ch. 477, 66 Stat. 163, which is classified principally to chapter 12 (§ 1101 et seq.) of this title. For complete classification of this Act to the Code, see Tables.
L. 110–234 were repealed by section 3(a) of Pub. L. 110–246.

**AMENDMENTS**


2002—Subsec. (a)(2)(F). Pub. L. 107–171, § 4403(a), added cl. (vii). Substituted “(ii)” for “(II)” in the case of the specified Federal program described in paragraph (3)(A), is blind or disabled, as defined in section 1615(a)(2) or 1614(a)(3) of the Social Security Act; and...


(iii) an alien whose deportation is being withheld under section 240(b) of such Act (as amended by section 306(a) of division C of Public Law 104–208)” for “(ii)” in the case of the specified Federal program described in paragraph (3)(A). A refugee under section 207 of the Immigration and Nationality Act;...

Subsec. (b)(2)(A)(i)(V). Pub. L. 105–33, § 5563(a), inserted “‘1101, or 1301, or as described in section 107’” after “section 101’.”

Pub. L. 105–33, § 5563(a), inserted “and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38 after ‘alienage’.”

Subsec. (a)(2)(C)(iii). Pub. L. 105–33, § 5563(b), inserted before period at end “or the unmarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of title 38.”


Pub. L. 105–18, § 6005(a)(1), substituted “‘September 30, 1997’” for “‘the date which is 1 year after August 22, 1996’.”


Pub. L. 105–18, § 6005(a)(2), substituted “‘September 30, 1997’,” for “‘the date of the redetermination with respect to such individual’”.


Subsec. (b)(2)(A). Pub. L. 105–33, § 5302(b), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: “‘(i) An alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act until 5 years after the date of an alien’s entry into the United States.”


Subsec. (b)(2)(C)(i). Pub. L. 105–33, § 5563(c), inserted “‘1101, or 1301, or as described in section 107’” after “section 101’.”

Pub. L. 105–33, § 5563(a), inserted “and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38 after “alienage’.”

Subsec. (b)(2)(C)(ii). Pub. L. 105–33, § 5563(b), inserted before period at end “or the unmarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of title 38”.


1996—Subsec. (a)(2)(D)(i)(I). Pub. L. 104-208 amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: "With respect to the specified Federal program described in paragraph (3)(B), during the period beginning on August 22, 1996, and ending on the date which is 1 year after August 22, 1996, the State agency shall, at the time of the recertification, recertify the eligibility of any individual who is receiving benefits under such program as of August 22, 1996, and whose eligibility for such benefits may terminate by reason of the provisions of this subsection."

CHANGE OF NAME

References to the food stamp program established under the Food and Nutrition Act of 2008, formerly known as the Food Stamp Act of 1977, considered to refer to the supplemental nutrition assistance program established under that Act, see section 4002(c) of Pub. L. 110-246, set out as a note under section 2012 of Title 7, Agriculture.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, see section 4007 of Pub. L. 110-246, set out as an Effective Date note under section 701 of Title 7, Agriculture.


EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 4115(a) of Pub. L. 107-171 effective Oct. 1, 2002, except as otherwise provided, see section 4405 of Pub. L. 107-171, set out as an Effective Date note under section 7801 of Title 7, Agriculture.


EFFECTIVE DATE OF 1998 AMENDMENT


EFFECTIVE DATE OF 1997 AMENDMENTS

Section 5308 of title V of Pub. L. 105-33 provided that: "Except as otherwise provided, the amendments made by this subtitle (subtitle D (§§5301-5308) of title V of Pub. L. 105-33, enacting sections 1625 and 1646 of this title and amending this section and sections 1613, 1622, and 1641 of this title) shall be effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104-193]."

Amendment by sections 5562 and 5563 of Pub. L. 105-33 effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104-193], see section 5562 of Pub. L. 105-33, set out as a note under section 1387 of this title.

Section 6005(b) of Pub. L. 105-185 provided that: "The amendment made by subsection (a) [amending this section] shall be effective as if included in the enactment of section 492 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [this section]."

EFFECTIVE DATE OF 1996 AMENDMENT

Section 510 of div. C of Pub. L. 104-208 provided that the amendment made by that section is effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193.

§1613. Five-year limited eligibility of qualified aliens for Federal means-tested public benefit

(a) In general

Notwithstanding any other provision of law and except as provided in subsections (b), (c), and (d) of this section, an alien who is a qualified alien (as defined in section 1641 of this title) and who enters the United States on or after August 22, 1996, is not eligible for any Federal means-tested public benefit for a period of 5 years beginning on the date of the alien’s entry into the United States with a status within the meaning of the term "qualified alien".

(b) Exceptions

The limitation under subsection (a) of this section shall not apply to the following aliens:

(1) Exception for refugees and asylees

(A) An alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157].

(B) An alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158].

(C) An alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208).

(D) An alien who is a Cuban and Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

(E) An alien admitted to the United States as an Amerasian immigrant as described in section 1612(a)(2)(A)(i)(V) of this title.

(2) Veteran and active duty exception

An alien who is lawfully residing in any State and is—

(A) a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of title 38) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 533A(d) of title 38.

(B) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(C) the spouse or unmarried dependent child of an individual described in subparagraph (A) or (B) or the unremarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of title 38.

(e) Application of term Federal means-tested public benefit

(1) The limitation under subsection (a) of this section shall not apply to assistance or benefits under paragraph (2).

1 See References in Text note below.
2 So in original. Probably should be ‘‘subsection (A) or (B)’’. 
(2) Assistance and benefits under this paragraph are as follows:

(A) Medical assistance described in section 1611(b)(1)(A) of this title.

(B) Short-term, non-cash, in-kind emergency disaster relief.

(C) Assistance or benefits under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.].

(D) Assistance or benefits under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

(E) Public health assistance (not including any assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(F) Payments for foster care and adoption assistance under parts B and E of title IV of the Social Security Act [42 U.S.C. 620 et seq., 670 et seq.] for a parent or a child in a foster care situation, in the absence of subsection (a) of this section, be eligible to have such payments made on the child’s behalf under such part, but only if the foster or adoptive parent (or parents) of such child is a qualified alien (as defined in section 1641 of this title).

(G) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General’s sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient’s income or resources; and (iii) are necessary for the protection of life or safety.


(J) Benefits under the Head Start Act [42 U.S.C. 9831 et seq.].

(K) Benefits under the 3 title I of the Workforce Investment Act of 1998 [29 U.S.C. 2901 et seq.].

(L) Assistance or benefits provided to individuals under the age of 18 under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(d) Benefits for certain groups

Notwithstanding any other provision of law, the limitations under section 1611(a) of this title and subsection (a) of this section shall not apply to—

(1) an individual described in section 1612(a)(2)(G) of this title, but only with respect to the programs specified in subsections (a)(3) and (b)(3)(C) of section 1612 of this title; or

(2) an individual, spouse, or dependent described in section 1612(a)(2)(K) of this title, but only with respect to the specified Federal program described in section 1612(a)(2)(B) of this title.


REFERENCES IN TEXT


The Social Security Act, referred to in subsec. (c)(2)(E), (F), is act Aug. 14, 1935, ch. 301, 49 Stat. 620, as amended. Parts B and E of title IV and title XIX of the Act are classified generally to parts B (§ 620 et seq.) and E (§ 670 et seq.) of subchapter IV and subchapter XIX (§ 1396 et seq.), respectively, of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1365 of Title 42 and Tables.

The Higher Education Act of 1965, referred to in subsec. (c)(2)(H), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education, and part C (§ 1251 et seq.) of subchapter I of chapter 34 of Title 42. Titles V, IX, and X of the Act are classified generally to subchapters V (§ 1301 et seq.), IX (§ 1334 et seq.), and X (§1335 et seq.), respectively, of chapter 28 of Title 20. 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. (c)(2)(H), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Titles III, VII, and VIII of the Act are classified generally to subchapters II (§ 241 et seq.), V (§ 292 et seq.), and VI (§ 296 et seq.), respectively, of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 42 and Tables.

11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§6301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Head Start Act, referred to in subsec. (c)(2)(L), is section 6301 of title 20, Education, and Tables.


Amendments


1997—Subsec. (b)(1)(C). Pub. L. 105–33, §5562, substituted “section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act (as amended by section 306(a) of division C of Public Law 104–208)” for “section 243(h) of such Act”.


Subsec. (b)(2)(A). Pub. L. 105–33, §5563(c), inserted “1101, or 1301, or as described in section 107 after “section 101”.”

Pub. L. 105–33, §5563(a), inserted “and who fulfills the minimum active-duty service requirements of section 5303a(d) of title 38” after “alienage”.

Subsec. (b)(2)(C). Pub. L. 105–33, §5563(b), inserted before period at end “the unremarried surviving spouse of an individual described in clause (i) or (ii)” who is deceased if the marriage fulfills the requirements of section 1304 of title 38”.


Effective Date of 2002 Amendment


Effective Date of 1998 Amendments


Effective Date of 1997 Amendment


§1614. Notification and information reporting

Each Federal agency that administers a program to which section 1611, 1612, or 1613 of this title applies shall, directly or through the States, post information and provide general notification to the public and to program recipients of the changes regarding eligibility for any such program pursuant to this subchapter.


References in Text

This subchapter, referred to in text, was in the original “this subchapter”, meaning subtitle B of title IX of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2261, as amended, which enacted this subchapter and sections 611a and 1437v of Title 42, The Public Health and Welfare, and amended section 953 of Title 42. For complete classification of this subtitle to the Code, see Tables.

§1615. Requirements relating to provision of benefits based on citizenship, alienage, or immigration status under the Richard B. Russell National School Lunch Act, the Child Nutrition Act of 1966, and certain other Acts

(a) School lunch and breakfast programs

Notwithstanding any other provision of this Act, an individual who is eligible to receive free public education benefits under State or local law shall not be ineligible to receive benefits provided under the school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) on the basis of citizenship, alienage, or immigration status.

(b) Other programs

(1) In general

Nothing in this Act shall prohibit or require a State to provide to an individual who is not a citizen or a qualified alien, as defined in section 1614(b) of this title, benefits under pro-
(2) Provisions of law described

The provisions of law described in this paragraph are the following:

(A) Programs (other than the school lunch program and the school breakfast program) under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(B) Section 4 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).

(C) The Emergency Food Assistance Act of 1983 (7 U.S.C 7501 et seq.).

(D) The food distribution program on Indian reservations established under section 2013(b) of title 7.

References in Text


Codification

Section was enacted as part of title VII of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of title IV of that Act which comprises this chapter.

Amendments

(2) Such term shall not apply—
(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99–239 or 99–658 (or a successor provision) is in effect;
(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Secretary of State, after consultation with the Attorney General; or
(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

(3) Such term does not include any Federal public benefit under section 1611(c) of this title.

(d) State authority to provide for eligibility of illegal aliens for State and local public benefits

A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.


REFERENCES IN TEXT
The Immigration and Nationality Act, referred to in subsecs. (a)(2) and (c)(2)(B), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title Note set out under section 1101 of this title and Tables.


AMENDMENTS

1997—Subsec. (c)(2)(A). Pub. L. 105–33, § 5565, inserted before semicolon "+, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99–239 or 99–658 (or a successor provision) is in effect".

Subsec. (c)(3). Pub. L. 105–33, § 5581(b)(1), made technical amendment to reference in original act which appears in text as reference to section 1611(c) of this title.

§ 1622. State authority to limit eligibility of qualified aliens for State public benefits

(a) In general

Notwithstanding any other provision of law and except as provided in subsection (b) of this section, a State is authorized to determine the eligibility for any State public benefits of an alien who is a qualified alien (as defined in section 1641 of this title), a nonimmigrant under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], or an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182(d)(5)] for less than one year.

(b) Exceptions

Qualified aliens under this subsection shall be eligible for any State public benefits.

(1) Time-limited exception for refugees and asylees

(A) An alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157] until 5 years after the date of an alien’s entry into the United States.

(B) An alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158] until 5 years after the date of such grant of asylum.

(C) An alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act [8 U.S.C. 1221(b)(3)] (as amended by section 305(a) of division C of Public Law 104–208) until 5 years after such withholding.

(D) An alien who is a Cuban and Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980 until 5 years after the alien is granted such status.

(E) An alien admitted to the United States as an Amerasian immigrant as described in section 1612(a)(2)(A)(1) of this title.

1 See References in Text note below.
(2) Certain permanent resident aliens
An alien who—
(A) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]; and
(B) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C. 401 et seq.] or can be credited with such qualifying quarters as provided under section 1645 of this title, and (ii) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.

(3) Veteran and active duty exception
An alien who is lawfully residing in any State and is—
(A) a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of title 38) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 5302A(d) of title 38;
(B) on active duty (other than active duty for training) in the Armed Forces of the United States, or
(C) the spouse or unmarried dependent child of an individual described in subparagraph (A) or (B) or the unmarried surviving spouse of an individual described in clause (i) or (ii) 2 who is deceased if the marriage fulfills the requirements of section 1304 of title 38.

(4) Transition for those currently receiving benefits
An alien who on August 22, 1996, is lawfully residing in any State and is receiving benefits on August 22, 1996, shall continue to be eligible to receive such benefits until January 1, 1997.

References in Text

\footnote{So in original. Probably should be “subparagraph (A) or (B)”.

\footnote{The Immigration and Nationality Act, referred to in subsec. (b)(2)(A), is act Aug. 14, 1953, ch. 531, 49 Stat. 620, as amended. Subtitle II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1306 of Title 42 and Tables.

Amendments
Pub. L. 105–33, §5562, substituted “section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208)” for “section 243(h) of such Act”.
Subsec. (b)(3)(A). Pub. L. 105–33, §5563(c), inserted “1101, or 1301, or as described in section 107” after “section 101”.
Pub. L. 105–33, §5563(a), inserted “who fulfills the minimum active-duty service requirements of section 5302A(d) of title 38 after “alienage”.
Subsec. (b)(3)(C). Pub. L. 105–33, §5563(b), inserted before period at end “or the unremarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of title 38”.

Effective Date of 1997 Amendment
Amendment by sections 5302(c)(2) and 5306(d) of Pub. L. 105–33 effective, except as otherwise provided, as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5308 of Pub. L. 104–193, set out as a note under section 1304 of this title.


\$1623. Limitation on eligibility for preferential treatment of aliens not lawfully present on basis of residence for higher education benefits

(a) In general
Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.

(b) Effective date
This section shall apply to benefits provided on or after July 1, 1998.


Codification
Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and as part of the Omnibus Consolidated Appropria-
§ 1624. Authority of States and political subdivisions of States to limit assistance to aliens and to distinguish among classes of aliens in providing general cash public assistance

(a) In general

Subject to subsection (b) of this section and notwithstanding any other provision of law, a State or political subdivision of a State is authorized to prohibit or otherwise limit or restrict the eligibility of aliens or classes of aliens for programs of general cash public assistance furnished under the law of the State or a political subdivision of a State.

(b) Limitation

The authority provided for under subsection (a) of this section may be exercised only to the extent that any prohibitions, limitations, or restrictions imposed by a State or political subdivision of a State are not more restrictive than the prohibitions, limitations, or restrictions imposed under comparable Federal programs. For purposes of this section, attribution to an alien of a sponsor’s income and resources (as described in section 1631 of this title) for purposes of determining eligibility for, and the amount of, benefits shall be considered less restrictive than a prohibition of eligibility for such benefits.


CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 which comprises this chapter.

§ 1625. Authorization for verification of eligibility for State and local public benefits

A State or political subdivision of a State is authorized to require an applicant for State and local public benefits (as defined in section 1621(c) of this title) to provide proof of eligibility.


EFFECTIVE DATE

Section effective, except as otherwise provided, as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5308 of Pub. L. 105–33, set out as an Effective Date of 1997 Amendment note under section 1612 of this title.

SUBCHAPTER III—ATTRIBUTION OF INCOME AND AFFIDAVITS OF SUPPORT

§ 1631. Federal attribution of sponsor’s income and resources to alien

(a) In general

Notwithstanding any other provision of law, in determining the eligibility and the amount of benefits of an alien for any Federal means-tested public benefits program (as provided under section 1613 of this title), the income and resources of the alien shall be deemed to include the following:

(1) The income and resources of any person who executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a] (as added by section 423 and as amended by section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) on behalf of such alien.

(2) The income and resources of the spouse (if any) of the person.

(b) Duration of attribution period

Subsection (a) of this section shall apply with respect to an alien until such time as the alien—

(1) achieves United States citizenship through naturalization pursuant to chapter 2 of title III of the Immigration and Nationality Act [8 U.S.C. 1421 et seq.]; or

(2) (A) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C. 401 et seq.] or can be credited with such qualifying quarters as provided under section 1645 of this title, and (B) in the case of any such determining quarter credited for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.

(c) Review of income and resources of alien upon reapplication

Whenever an alien is required to reapply for benefits under any Federal means-tested public benefits program, the applicable agency shall review the income and resources attributed to the alien under subsection (a) of this section.

(d) Application

(1) If on August 22, 1996, a Federal means-tested public benefits program attributes a sponsor’s income and resources to an alien in determining the alien’s eligibility and the amount of benefits for an alien, this section shall apply to any such determination beginning on the day after August 22, 1996.

(2) If on August 22, 1996, a Federal means-tested public benefits program does not attribute a sponsor’s income and resources to an alien in determining the alien’s eligibility and the amount of benefits for an alien, this section shall apply to any such determination beginning 180 days after August 22, 1996.

(3) This section shall not apply to assistance or benefits under the Food Stamp Act of 1977 1 (7 U.S.C. 1977 et seq.) to the extent that a qualified alien is eligible under section 1612(a)(2)(J) of this title.

(e) Indigence exception

(1) In general

For an alien for whom an affidavit of support under section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a] has been executed, if a determination described in paragraph (2) is made, the amount of income and

1 See References in Text note below.
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resources of the sponsor or the sponsor's spouse which shall be attributed to the sponsored alien shall not exceed the amount actually provided for a period beginning on the date of such determination and ending 12 months after such date.

(2) Determination described

A determination described in this paragraph is a determination by an agency that a sponsored alien would, in the absence of the assistance provided by the agency, be unable to obtain food and shelter, taking into account the alien's own income, plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor. The agency shall notify the Attorney General of each such determination, including the names of the sponsor and the sponsored alien involved.

(f) Special rule for battered spouse and child

(1) In general

Subject to paragraph (2) and notwithstanding any other provision of this section, subsection (a) of this section shall not apply to benefits—

(A) during a 12 month period if the alien demonstrates that (i) the alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to or acquiesced to such battery or cruelty, (ii) the alien's child has been battered or subjected to extreme cruelty in the United States by the spouse or parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced to and the alien did not actively participate in such battery or cruelty, or (iii) the alien is a child whose parent (who resides in the same household as the alien child) has been battered or subjected to extreme cruelty in the United States by that parent's spouse, or by a member of the spouse's family residing in the same household as the parent and the spouse consented to, or acquiesced in, such battery or cruelty, and the battery or cruelty described in clause (i), (ii), or (iii) (in the opinion of the agency providing such public benefits, which opinion is not subject to review by any court) has a substantial connection to the need for the public benefits applied for; and

(B) after a 12 month period (regarding the batterer's income and resources only) if the alien demonstrates that such battery or cruelty under subparagraph (A) has been recognized in an order of a judge or administrative law judge or a prior determination of the Immigration and Naturalization Service, and that such battery or cruelty (in the opinion of the agency providing such public benefits, which opinion is not subject to review by any court) has a substantial connection to the need for the benefits.

(2) Limitation

The exception under paragraph (1) shall not apply to benefits for an alien during any period in which the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual who was subjected to such battery or cruelty.


The Immigration and Nationality Act, referred to in subsec. (b)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended. Title II of the Act is classified generally to part II (§ 1421 et seq.) of chapter 12 of this title.


AMENDMENTS


1997—Subsec. (f)(1)(A). Pub. L. 105–33 struck out “or” before “(ii) the alien’s child” and substituted “or (iii) the alien is a child whose parent (who resides in the same household as the alien child) has been battered or subjected to extreme cruelty in the United States by that parent’s spouse, or by a member of the spouse’s family residing in the same household as the parent and the spouse consented to, or acquiesced in, such battery or cruelty, and the battery or cruelty described in clause (i), (ii), or (iii)” for “(ii) the alien’s child”.


EFFECTIVE DATE OF 2002 AMENDMENT


EFFECTIVE DATE OF 1997 AMENDMENT

Effective Date of 1996 Amendment

Amendment by section 551(b)(1) of Pub. L. 104–208 applicable to affidavits of support executed on or after a date specified by the Attorney General, which date shall be not earlier than 60 days, and not later than 90 days after the date the Attorney General formulates the form for such affidavits, see section 551(c) of Pub. L. 104–208, set out as an Effective Date of 1996 Amendment; Promulgation of Form note under section 1183a of this title.

Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§1632. Authority for States to provide for attribution of sponsors income and resources to the alien with respect to State programs

(a) Optional application to State programs

Except as provided in subsection (b) of this section, in determining the eligibility and the amount of benefits of an alien for any State public benefits, the State or political subdivision that offers the benefits is authorized to provide that the income and resources of the alien shall be deemed to include—

(1) the income and resources of any individual who executed an affidavit of support pursuant to section 1183a of this title (as added by section 423 and as amended by section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) on behalf of such alien, and

(2) the income and resources of the spouse (if any) of the individual.

(b) Exceptions

Subsection (a) of this section shall not apply with respect to the following State public benefits:

(1) Assistance described in section 1621(b)(1) of this title.

(2) Short-term, non-cash, in-kind emergency disaster relief.

(3) Programs comparable to assistance or benefits under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.].

(4) Programs comparable to assistance or benefits under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

(5) Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(6) Payments for foster care and adoption assistance.

(7) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General of a State, after consultation with appropriate agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient’s income or resources; and (C) are necessary for the protection of life or safety.


References in Text

Section 1183a of this title (as added by section 423 and as amended by section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), referred to in subsec. (a)(1), is section 1183a of this title as added by section 423 of Pub. L. 104–193 and amended by section 551(a) of div. C of Pub. L. 104–208.


Amendments


1997—Subsec. (a). Pub. L. 105–33 struck out “as defined in section 1622(c) of this title” after “public benefits” in introductory provisions.


Effective Date of 1997 Amendment


Effective Date of 1996 Amendment

Amendment by Pub. L. 104–208 applicable to affidavits of support executed on or after a date specified by the Attorney General, which date shall be not earlier than 60 days, and not later than 90 days after the date the Attorney General formulates the form for such affidavits, see section 551(c) of Pub. L. 104–208, set out as an Effective Date of 1996 Amendment; Promulgation of Form note under section 1183a of this title.

Subchapter IV—General Provisions

§1641. Definitions

(a) In general

Except as otherwise provided in this chapter, the terms used in this chapter have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

(b) Qualified alien

For purposes of this chapter, the term “qualified alien” means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is—

(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).
(2) an alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158].

(3) a refugee who is admitted to the United States under section 207 of such Act [8 U.S.C. 1157].

(4) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182(d)(5)] for a period of at least 1 year.

(5) an alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 212(b)(3) of such Act [8 U.S.C. 1225(b)(3)] (as amended by section 305(a) of division C of Public Law 104–208).

(6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. 1153(a)(7)] as in effect prior to April 1, 1980; or

(7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).

(c) Treatment of certain battered aliens as qualified aliens

For purposes of this chapter, the term "qualified alien" includes—

(1) an alien who—

(A) has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent’s family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) has been approved or has a petition pending which sets forth a prima facie case for

(i) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. 1154(a)(1)(A)(ii), (iii), (iv)],

(ii) classification pursuant to clause (i) or (iii) of section 204(a)(1)(B) of the Act [8 U.S.C. 1154(a)(1)(B)(ii), (iii)],

(iii) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [8 U.S.C. 1225(a)(3)] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).\(^2\)

(iv) status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act [8 U.S.C. 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 U.S.C. 1154(a)(1)(B)(i)];\(^3\)

(v) cancellation of removal pursuant to section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)];

(2) an alien—

(A) whose child has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse or parent’s family residing in the same household as the alien and the spouse or parent consented to or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty, but only if (in the opinion of the agency) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) who meets the requirement of subparagraph (B) of paragraph (1); or

(3) an alien child who—

(A) resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent’s spouse or by a member of the spouse’s family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) who meets the requirement of subparagraph (B) of paragraph (1); or

(4) an alien who has been granted nonimmigrant status under section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)) or who has a pending application that sets forth a prima facie case for eligibility for such nonimmigrant status.

This subsection shall not apply to an alien during any period in which the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual subjected to such battery or cruelty.

After consultation with the Secretaries of Health and Human Services, Agriculture, and Housing and Urban Development, the Commissioner of Social Security, and with the heads of such Federal agencies administering benefits as the Attorney General considers appropriate, the Attorney General shall issue guidance (in the Attorney General’s sole and unreviewable discretion) for purposes of this subsection and section 1631(f) of this title, concerning the meaning of the terms “battery” and “extreme cruelty”, and the standards and methods to be used for determining whether a substantial connection exists between battery or cruelty suffered and an individual’s need for benefits under a specific Federal, State, or local program.

REFERENCES IN TEXT
This chapter, referred to in text, was in the original "this title" meaning title IV of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2260, which enacted this chapter, section 1183a of this title, and sections 611a and 1437y of Title 42, The Public Health and Welfare, amended section 1383 of this title, sections 32 and 6212 of Title 26, Internal Revenue Code, and sections 1436a and 1471 of Title 42, and enacted provisions set out as notes under section 1183a of this title and section 32 of Title 26. For complete classification of title IV to the Code, see Tables.

The Immigration and Nationality Act, referred to in subsec. (b)(1), is act June 27, 1952, ch. 424, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of this title.


Section 230(a)(7) of such Act as in effect prior to April 1, 1980, referred to in subsec. (b)(6), means section 230(a)(7) of act June 27, 1952, which was classified to section 1153a(a)(7) of this title. Section 1153a(a)(7) of this title was repealed and section 1153a(8) was redesignated section 1153a(7) by Pub. L. 96–212, title II, § 2333(c)(3), (6), Mar. 17, 1980, 94 Stat. 107, effective Apr. 1, 1980.

Section 501(e) of the Refugee Education Assistance Act of 1980, referred to in subsec. (b)(7), is section 501(e) of Pub. L. 96–222, as amended, which is set out in a note under section 1522 of this title.


AMENDMENTS
2000—Subsec. (c)(1)(B)(iii). Pub. L. 106–386 amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ‘‘cancellation of removal under section 240A of such Act (as in effect prior to April 1, 1997).’’.
1997—Subsec. (b)(5). Pub. L. 105–33, § 5562, substituted ‘‘section 249(b) of such Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Public Law 104–208)’’ for ‘‘section 249(b) of such Act’’.
Subsec. (c). Pub. L. 105–33, § 5571(h), inserted at end ‘‘After consultation with the Secretaries of Health and Human Services, Agriculture, and Housing and Urban Development, the Commissioner of Social Security, and with the heads of such Federal agencies administering benefits as the Attorney General considers appropriate, the Attorney General shall issue guidance (in the Attorney General’s sole and unreviewable discretion) for purposes of this subsection and section 1631(f) of this title, concerning the meaning of the terms ‘battery’ and ‘extreme cruelty’, and the standards and methods to be used for determining whether a substantial connection exists between battery or cruelty suffered and an individual’s need for benefits under a specific Federal, State, or local program.’’.
Subsec. (c)(1)(A). Pub. L. 105–33, § 5571(a), substituted ‘‘agency providing such benefits’’ for ‘‘Attorney General, which opinion is not subject to review by any court’’.
Subsec. (c)(1)(B)(i). Pub. L. 105–33, § 5381(b)(7)(A), substituted ‘‘(as in effect prior to April 1, 1997),’’ for ‘‘, or’’.

EFFECTIVE DATE OF 2008 AMENDMENT
Pub. L. 110–457, title II, § 211(b), Dec. 23, 2008, 122 Stat. 5063, provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply to applications for public benefits and public benefits provided on or after the date of the enactment of this Act [Dec. 23, 2008] without regard to whether regulations have been implemented to carry out such amendments.’’.

EFFECTIVE DATE OF 1997 AMENDMENT

EFFECTIVE DATE OF 1996 AMENDMENT
Amendment by section 308(g)(8)(E) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.


$1642. Verification of eligibility for Federal public benefits
(a) In general
(1) Not later than 18 months after August 22, 1996, the Attorney General of the United States, after consultation with the Secretary of Health and Human Services, shall promulgate regulations requiring verification that a person applying for a Federal public benefit (as defined in section 1611(c) of this title), to which the limitation under section 1611 of this title applies, is a qualified alien and is eligible to receive such benefit. Such regulations shall, to the extent feasible, require that information requested and exchanged be similar in form and manner to information requested and exchanged under section 1320b–7 of title 42. Not later than 90 days after August 5, 1997, the Attorney General of the United States, after consultation with the Secretary of Health and Human Services, shall issue interim verification guidance.
(2) Not later than 18 months after August 22, 1996, the Attorney General, in consultation with the Secretary of Health and Human Services,
shall also establish procedures for a person applying for a Federal public benefit (as defined in section 1611(c) of this title) to provide proof of citizenship in a fair and nondiscriminatory manner.

(3) Not later than 90 days after August 5, 1997, the Attorney General shall promulgate regulations which set forth the procedures by which a State or local government can verify whether an alien applying for a State or local public benefit is a qualified alien, a nonimmigrant under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], or an alien paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act [8 U.S.C. 1182(d)(5)] for less than 1 year, for purposes of determining whether the alien is ineligible for benefits under section 1621 of this title.

(b) State compliance

Not later than 24 months after the date the regulations described in subsection (a) of this section are adopted, a State that administers a program that provides a Federal public benefit shall have in effect a verification system that complies with the regulations.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the purpose of this section.

(d) No verification requirement for nonprofit charitable organizations

Subject to subsection (a) of this section, a nonprofit charitable organization, in providing any Federal public benefit (as defined in section 1611(c) of this title) or any State or local public benefit (as defined in section 1621(c) of this title), is not required under this chapter to determine, verify, or otherwise require proof of eligibility of any applicant for such benefits.

The Immigration and Nationality Act, referred to in subsec. (a)(3), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1367 of this title.

This chapter, referred to in subsec. (d), was in the original "this title" meaning title IV of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2260, which enacted this chapter, section 1183a of this title, and sections 611a and 1437y of Title 26. Incomplete classification of title IV to the Code, see Tables.

AMENDMENTS


1996—Subsec. (a). Pub. L. 104–208, §504, designated existing provisions as par. (1) and added par. (2).


EFFECTIVE DATE OF 1997 AMENDMENT


§1643. Statutory construction

(a) Limitation

(1) Nothing in this chapter may be construed as an entitlement or a determination of an individual's eligibility or fulfillment of the requisite requirements for any Federal, State, or local governmental program, assistance, or benefits. For purposes of this chapter, eligibility relates only to the general issue of eligibility or ineligibility on the basis of alienage.

(2) Nothing in this chapter may be construed as addressing alien eligibility for a basic public education as determined by the Supreme Court of the United States under Plyler v. Doe (457 U.S. 202)(1982).

(b) Benefit eligibility limitations applicable only with respect to aliens present in United States

Notwithstanding any other provision of this chapter, the limitations on eligibility for benefits under this chapter shall not apply to eligibility for benefits of aliens who are not residing, or present, in the United States with respect to—

(1) wages, pensions, annuities, and other earned payments to which an alien is entitled resulting from employment by, or on behalf of, a Federal, State, or local governmental agency which was not prohibited during the period of such employment or service under section 274A [8 U.S.C. 1324a] or other applicable provision of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]; or

(2) benefits under laws administered by the Secretary of Veterans Affairs.

(c) Not applicable to foreign assistance

This chapter does not apply to any Federal, State, or local governmental program, assistance, or benefits provided to an alien under any program of foreign assistance as determined by the Secretary of State in consultation with the Attorney General.

(d) Severability

If any provision of this chapter or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this chapter and the application of the provisions of such to any person or circumstance shall not be affected thereby.

The Immigration and Nationality Act, referred to in subsec. (a), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1367 of this title.


REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (a)(3), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1367 of this title and Tables.

This chapter, referred to in subsec. (d), was in the original "this title" meaning title IV of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2260, which enacted this chapter, section 1183a of this title, and sections 611a and 1437y of Title 8.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title" meaning title IV of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2260, which enacted this chapter, section 1183a of this title, and sections 611a and 1437y of Title
the food stamp program established under the Food and Nutrition Act of 2008 considered to
authorized to disclose quarters of coverage information concerning an alien and an alien’s
spouse or parents to a government agency for the purposes of this chapter.


REFERENCES IN TEXT
This chapter, referred to in text, was in the original “this title” meaning title IV of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2260, which enacted this chapter, section 1183a of this title, and sections 611a and 1437y of Title 42, The Public Health and Welfare, amended section 1383 of this title, sections 32 and 6213 of Title 26, Internal Revenue Code, and sections 1436a and 1471 of Title 42, and enacted provisions set out as notes under section 1183a of this title and section 32 of Title 26. For complete classification of title IV to the Code, see Tables.

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS
1997—Subsecs. (b) to (d). Pub. L. 105–33 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

EFFECTIVE DATE OF 1997 AMENDMENT

§ 1644. Communication between State and local government agencies and Immigration and Naturalization Service

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.


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.

§ 1645. Qualifying quarters

For purposes of this chapter, in determining the number of qualifying quarters of coverage under title II of the Social Security Act (42 U.S.C. 401 et seq.) an alien shall be credited with—

(1) all of the qualifying quarters of coverage as defined under title II of the Social Security Act worked by a parent of such alien before the date on which the alien attains age 18, and

(2) all of the qualifying quarters worked by a spouse of such alien during their marriage and the alien remains married to such spouse or such spouse is deceased.

No such qualifying quarter of coverage that is creditable under title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to an alien under paragraph (1) or (2) if the parent or spouse (as the case may be) of such alien received any Federal means-tested public benefit (as provided under section 1613 of this title) during the period for which such qualifying quarter of coverage is so credited. Notwithstanding section 6103 of title 26, the Commissioner of Social Security is au-
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refer to the supplemental nutrition assistance program established under that Act, see section 4002(c) of Pub. L. 110–246, set out as a note under section 7 of Title 7, Agriculture.

EFFECTIVE DATE

Section effective, except as otherwise provided, as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reinforcement Act of 1996, Pub. L. 104–193, see section 5308 of Pub. L. 104–193, set out as an Effective Date of 1997 Amendment note under section 1612 of this title.

CHAPTER 15—ENHANCED BORDER SECURITY AND VISA ENTRY REFORM

SEC. 1701. Definitions.

SUBCHAPTER I—FUNDING

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1731. Implementation of an integrated entry and exit data system.
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1736. Check of lookout databases.
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SUBCHAPTER IV—INSPECTION AND ADMISSION OF ALIENS

1752. Staffing levels at ports of entry.
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SUBCHAPTER V—FOREIGN STUDENTS AND EXCHANGE VISITORS

1761. Foreign student monitoring program.
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SUBCHAPTER VI—MISCELLANEOUS PROVISIONS

1771. General Accounting Office study.
1772. International cooperation.
1773. Statutory construction.
1774. Annual report on aliens who fail to appear after release on own recognizance.
1775. Retention of nonimmigrant visa applications by the Department of State.

§ 1701. Definitions

In this chapter:

(1) Alien
The term “alien” has the meaning given the term in section 1101(a)(3) of this title.

(2) Appropriate committees of Congress
The term “appropriate committees of Congress” means the following:
(A) The Committee on the Judiciary, the Select Committee on Intelligence, and the Committee on Foreign Relations of the Senate.
(B) The Committee on the Judiciary, the Permanent Select Committee on Intelligence, and the Committee on International Relations of the House of Representatives.

(3) Chimera system
The term “Chimera system” means the interoperable electronic data system required to be developed and implemented by section 1722(a)(2) of this title.

(4) Federal law enforcement agencies
The term “Federal law enforcement agencies” means the following:
(A) The United States Secret Service.
(B) The Drug Enforcement Administration.
(C) The Federal Bureau of Investigation.
(D) The Immigration and Naturalization Service.
(E) The United States Marshall Service.
(F) The Naval Criminal Investigative Service.
(G) The Coast Guard.
(H) The Diplomatic Security Service.
(I) The United States Postal Inspection Service.
(J) The Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice.
(K) The United States Customs Service.
(L) The National Park Service.

(5) Intelligence community
The term “intelligence community” has the meaning given that term in section 401a(4) of title 50.

(6) President
The term “President” means the President of the United States, acting through the Assistant to the President for Homeland Security, in coordination with the Secretary of State, the Commissioner of Immigration and Naturalization, the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Secretary of Transportation, the Commissioner of Customs, and the Secretary of the Treasury.

(7) USA PATRIOT Act
The term “USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Inter-
cept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56).


REFERENCES IN TEXT

This chapter, referred to in introductory provisions, was in the original “this Act”, meaning Pub. L. 107–173, May 14, 2002, 116 Stat. 545, 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.


AMENDMENTS


CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.


“(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [Dec. 17, 2004], the Secretary of Homeland Security shall submit to Congress a report on the progress made toward achieving and maintaining operational control over the entire international land and maritime borders of the United States by remotely piloted aircraft, including recommendations for the appropriate agent within the Department of Homeland Security to be the executive agency for remotely piloted aircraft operations;

“(b) CONTENTS.—The plan submitted under subsection (a) shall include—

“(1) recommendations for establishing command and control centers, operations sites, infrastructure, maintenance, and procurement;

“(2) cost estimates for the implementation of the plan and ongoing operations;

“(3) recommendations for the appropriate agent within the Department of Homeland Security to be the executive agency for remotely piloted aircraft operations;

“(4) the number of remotely piloted aircraft required for the plan;

“(5) the types of missions the plan would undertake, including—
“(A) protecting the lives of people seeking illegal entry into the United States;
“(B) interdicting illegal movement of people, weapons, and other contraband across the border;
“(C) providing investigative support to assist in the dismantling of smuggling and criminal networks along the border;
“(D) using remotely piloted aircraft to serve as platforms for the collection of intelligence against smugglers and criminal networks along the border; and
“(E) further validating and testing of remotely piloted aircraft for airspace security missions;
“(6) the equipment necessary to carry out the plan; and
“(7) a recommendation regarding whether to expand the pilot program along the entire southwest border.

(c) IMPLEMENTATION.—The Secretary of Homeland Security shall implement the plan submitted under subsection (a) as a pilot program as soon as sufficient funds are appropriated and available for this purpose.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.”

SUBCHAPTER I—FUNDING

§ 1711. Authorization of appropriations for hiring and training Government personnel

(a) Additional personnel

(1) INS inspectors

Subject to the availability of appropriations, during each of the fiscal years 2003 through 2006, the Attorney General shall increase the number of inspectors and associated support staff in the Immigration and Naturalization Service by the equivalent of at least 200 full-time employees over the number of inspectors and associated support staff in the Immigration and Naturalization Service authorized by the USA PATRIOT Act.

(2) INS investigative personnel

Subject to the availability of appropriations, during each of the fiscal years 2003 through 2006, the Attorney General shall increase the number of investigative and associated support staff in the Immigration and Naturalization Service by the equivalent of at least 200 full-time employees over the number of investigators and associated support staff in the Immigration and Naturalization Service authorized by the USA PATRIOT Act.

(b) Authorization of appropriations for INS staffing

(1) In general

There are authorized to be appropriated for the Department of Justice such sums as may be necessary to provide facilities, attorney personnel and support staff, and other resources needed to support the increased number of inspectors, investigative staff, and associated support staff.

(c) Authorization of appropriations for training

There are authorized to be appropriated such sums as may be necessary—

(1) to appropriately train Immigration and Naturalization Service personnel on an ongoing basis—

(A) to ensure that their proficiency levels are acceptable to protect the borders of the United States; and

(B) otherwise to enforce and administer the laws within their jurisdiction;

(2) to provide adequate continuing cross-training to agencies staffing the United States border and ports of entry to effectively and correctly apply applicable United States laws;

(3) to fully train immigration officers to use the appropriate lookout databases and to monitor passenger traffic patterns; and

(4) to expand the Carrier Consultant Program described in section 1225a(b) of this title.2

(d) Authorization of appropriations for consular functions

(1) Responsibilities

The Secretary of State shall—

(A) implement enhanced security measures for the review of visa applicants;

(B) staff the facilities and programs associated with the activities described in subparagraph (A); and

(C) provide ongoing training for consular officers and diplomatic security agents.

(2) Authorization of appropriations

There are authorized to be appropriated for the Department of State such sums as may be necessary to carry out paragraph (1).


REFERENCES IN TEXT

fication of this Act to the Code, see Short Title of 2001 Amendment note set out under section 1 of Title 18, Crimes and Criminal Procedure, and Tables.

The section 235A(b) of this title, referred to in subsection (c)(4), was in the original “section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1252A(b))” and was translated as reading section 235A(b) of that Act to reflect the probable intent of Congress because that section 235A(b) describes the Carrier Consultant Program.

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.

§1712. Authorization of appropriations for improvements in technology and infrastructure

(a) Funding of technology

(1) Authorization of appropriations

In addition to funds otherwise available for such purpose, there are authorized to be appropriated $150,000,000 to the Immigration and Naturalization Service for purposes of—

(A) making improvements in technology (including infrastructure support, computer security, and information technology development) for improving border security;

(B) expanding, utilizing, and improving technology to improve border security; and

(C) facilitating the flow of commerce and persons at ports of entry, including improving and expanding programs for preenrollment and preclearance.

(2) Waiver of fees

Federal agencies involved in border security may waive all or part of enrollment fees for technology-based programs to encourage participation by United States citizens and aliens in such programs. Any agency that waives any part of any such fee may establish its fees for other services at a level that will ensure the recovery from other users of the amounts waived.

(3) Offset of increases in fees

The Attorney General may, to the extent reasonable, increase land border fees for the issuance of arrival-departure documents to offset technology costs.

(b) Improvement and expansion of INS, State Department, and customs facilities

There are authorized to be appropriated to the Immigration and Naturalization Service and the Department of State such sums as may be necessary to improve and expand facilities for use by the personnel of those agencies.


ADVANCED TECHNOLOGY NORTHERN BORDER SECURITY PILOT PROGRAM


“SEC. 5101. ESTABLISHMENT.

“The Secretary of Homeland Security may carry out a pilot program to test various advanced technologies that will improve border security between ports of entry along the northern border of the United States.

“SEC. 5102. PROGRAM REQUIREMENTS.

“(a) REQUIRED FEATURES.—The Secretary of Homeland Security shall design the pilot program under this title to have the following features:

“(1) Use of advanced technological systems, including sensors, video, and unmanned aerial vehicles, for border surveillance.
"(2) Use of advanced computing and decision integration software for—
 "(A) evaluation of data indicating border incursions;
 "(B) assessment of threat potential; and
 "(C) rapid real-time communication, monitoring, intelligence gathering, deployment, and response.
 "(3) Testing of advanced technology systems and software to determine best and most cost-effective uses of advanced technology to improve border security.
 "(4) Operation of the program in remote stretches of border lands with long distances between 24-hour ports of entry with a relatively small presence of United States border patrol officers.
 "(5) Capability to expand the program upon a determination by the Secretary that expansion would be an appropriate and cost-effective means of improving border security.

§ 5103. ADMINISTRATIVE PROVISIONS.—The Secretary of Homeland Security shall ensure that the operation of the pilot program under this subtitle—
 "(1) is coordinated among United States, State, local, and Canadian law enforcement and border security agencies; and
 "(2) includes ongoing communication among such agencies.

§ 5104. REPORT.—The Secretary of Homeland Security may provide for the establishment of cooperative arrangements for participation in the pilot program by such participants as law enforcement and border security agencies referred to in section 5102(h), institutions of higher education, and private sector entities.

§ 5104. REPORT.—Not later than 1 year after the date of enactment of this Act (Dec. 17, 2004), the Secretary of Homeland Security shall submit to Congress a report on the pilot program under this subtitle.

§ 5105. AUTHORIZATION OF APPROPRIATIONS.—In carrying out the pilot program under this subtitle, the Secretary of Homeland Security may provide for the establishment of cooperative arrangements for participation in the pilot program by such participants as law enforcement and border security agencies referred to in section 5102(h), institutions of higher education, and private sector entities.

§ 5106. AUTHORIZATION OF APPROPRIATIONS.—The amounts of the surcharges shall be reasonable related to the costs of providing services in connection with the activity or item for which the surcharges are charged.

§ 1713. Machine-readable visa fees

(a) Omitted

(b) Fee amount

The machine-readable visa fee charged by the Department of State shall be the higher of $65 or the cost of the machine-readable visa service, as determined by the Secretary of State after conducting a study of the cost of such service.

(c) Surcharge

The Department of State is authorized to charge a surcharge of $10, in addition to the machine-readable visa fee, for issuing a machine-readable visa in a nonmachine-readable passport.

(d) Availability of collected fees

Notwithstanding any other provision of law, amounts collected as fees described in this section shall be credited as an offsetting collection to any appropriation for the Department of State to recover costs of providing consular services. Amounts so credited shall be available, until expended, for the same purposes as the appropriation to which credited.


§ 1714. Surcharges related to consular services

Beginning in fiscal year 2005 and thereafter, the Secretary of State is authorized to charge surcharges related to consular services in support of enhanced border security that are in addition to the passport and immigrant visa fees in effect on January 1, 2004: Provided, That funds collected pursuant to this authority shall be credited to this account, and shall be available until expended for the purposes of such account: Provided further, That such surcharges shall be $12 on passport fees, and $45 on immigrant visa fees.


(AUTHORITY TO ADMINISTRATIVELY AMEND SURCHARGES

Pub. L. 109–472, § 6, Jan. 11, 2007, 120 Stat. 3555, provided that:
 "(a) IN GENERAL.—Beginning in fiscal year 2007 and thereafter, the Secretary of State is authorized to amend administratively the amounts of the surcharges related to consular services in support of enhanced border security (provided for in the last paragraph under the heading ‘‘diplomatic and consular programs’’ under title IV of division B of the Consolidated Appropriations Act, 2005 (Public Law 108–447) [this section]) that are in addition to the passport and immigrant visa fees in effect on January 1, 2004.
 "(b) REQUIREMENTS.—In carrying out subsection (a) and the provision of law described in such subsection, the Secretary shall meet the following requirements:
 "(1) The amounts of the surcharges shall be reasonably related to the costs of providing services in connection with the activity or item for which the surcharges are charged.
 "(2) The aggregate amount of surcharges collected may not exceed the aggregate amount obligated and expended for the costs related to consular services in support of enhanced border security incurred in connection with the activity or item for which the surcharges are charged.
 "(3) A surcharge may not be collected except to the extent the surcharge will be obligated and expended
§ 1721. Interim measures for access to and coordination of law enforcement and other information

(a) Interim directive

Until the plan required by subsection (c) of this section is implemented, Federal law enforcement agencies and the intelligence community shall, to the maximum extent practicable, share any information with the Department of State and the Immigration and Naturalization Service relevant to the admissibility and deportability of aliens, consistent with the plan described in subsection (c) of this section.

(b) Report identifying law enforcement and intelligence information

(1) In general

Not later than 120 days after May 14, 2002, the President shall submit to the appropriate committees of Congress a report identifying Federal law enforcement and the intelligence community information needed by the Department of State to screen visa applicants, or by the Immigration and Naturalization Service to screen applicants for admission to the United States, and to identify those aliens inadmissible or deportable under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].

(2) Omitted

(c) Coordination plan

(1) Requirement for plan

Not later than one year after October 26, 2001, the President shall develop and implement a plan based on the findings of the report under subsection (b) of this section that requires Federal law enforcement agencies and the intelligence community to provide to the Department of State and the Immigration and Naturalization Service all information identified in that report as expeditiously as practicable.

(2) Consultation requirement

In the preparation and implementation of the plan under this subsection, the President shall consult with the appropriate committees of Congress.

(3) Protections regarding information and uses thereof

The plan under this subsection shall establish conditions for using the information described in subsection (b) of this section received by the Department of State and Immigration and Naturalization Service—

(A) to limit the redissemination of such information;

(B) to ensure that such information is used solely to determine whether to issue a visa to an alien or to determine the admissibility or deportability of an alien to the United States, except as otherwise authorized under Federal law;

(C) to ensure the accuracy, security, and confidentiality of such information;

(D) to protect any privacy rights of individuals who are subjects of such information;

(E) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information; and

(F) in a manner that protects the sources and methods used to acquire intelligence information as required by section 403–3(c)(7) of title 50.1

(4) Criminal penalties for misuse of information

Any person who obtains information under this subsection without authorization or exceeding authorized access (as defined in section 1030(e) of title 18), and who uses such information in the manner described in any of the paragraphs (1) through (7) of section 1030(a) of such title, or attempts to use such information in such manner, shall be subject to the same penalties as are applicable under section 1030(c) of such title for violation of that paragraph.


REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (b)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Section 403–3 of title 50, referred to in subsec. (c)(3)(P), was repealed and a new section 403–3 was enacted by Pub. L. 106–458, title I, § 1011(a), Dec. 17, 2004, 118 Stat. 3643, 3655, and, as so enacted, subsec. (c)(7) no longer contains provisions relating to the protection of sources and methods used to acquire intelligence information. See section 403–1 of Title 50, War and National Defense.

CODIFICATION


AMENDMENTS


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.

ENHANCEMENT OF COMMUNICATIONS INTEGRATION AND INFORMATION SHARING ON BORDER SECURITY


1 See References in Text note below.
(a) IN GENERAL.—Not later than 180 days after the date of enactment of this division [May 11, 2005], the Secretary of Homeland Security, acting through the Under Secretary of Homeland Security for Border and Transportation Security, in consultation with the Under Secretary of Homeland Security for Science and Technology, the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection, the Assistant Secretary of Commerce for Communications and Information, and other appropriate Federal, State, local, and tribal agencies, shall develop and implement a plan—

“(1) to improve the communications systems of the departments and agencies of the Federal Government in order to facilitate the integration of communications among the departments and agencies of the Federal Government and State, local government agencies, and Indian tribal agencies on matters relating to border security; and

“(2) to enhance information sharing among the departments and agencies of the Federal Government, State and local government agencies, and Indian tribal agencies on such matters.

“(b) Expiration.—Not later than 1 year after implementing the plan under subsection (a), the Secretary shall submit a copy of the plan and a report on the plan, including any recommendations the Secretary finds appropriate, to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Science, Space, and Technology, the House of Representatives Committee on Homeland Security, and the House of Representatives Committee on the Judiciary.”

§ 1722. Interoperable law enforcement and intelligence data system with name-matching capability and training

(a) Interoperable law enforcement and intelligence electronic data system

(1) Requirement for integrated immigration and naturalization data system

The Immigration and Naturalization Service shall fully integrate all databases and data systems maintained by the Service that process or contain information on aliens. The fully integrated data system shall be an interoperable component of the electronic data system described in paragraph (2).

(2) Requirement for interoperable data system

Upon the date of commencement of implementation of the plan required by section 1721(c) of this title, the President shall develop and implement an interoperable electronic data system to provide current and immediate access to information in databases of Federal law enforcement agencies and the intelligence community that is relevant to determine whether to issue a visa or to determine the admissibility or deportability of an alien (also known as the “Chimera system”).

(3) Consultation requirement

In the development and implementation of the data system under this subsection, the President shall consult with the Director of the National Institute of Standards and Technology (NIST) and any such other agency as may be deemed appropriate.

(4) Technology standard

(A) In general

The data system developed and implemented under this subsection, and the databases referred to in paragraph (2), shall utilize the technology standard established pursuant to section 1379 of this title.

(B) Omitted

(5) Access to information in data system

Subject to paragraph (6), information in the data system under this subsection shall be readily and easily accessible—

(A) to any consular officer responsible for the issuance of visas;

(B) to any Federal official responsible for determining an alien’s admissibility to or deportability from the United States; and

(C) to any Federal law enforcement or intelligence officer determined by regulation to be responsible for the investigation or identification of aliens.

(6) Limitation on access

The President shall, in accordance with applicable Federal laws, establish procedures to restrict access to intelligence information in the data system under this subsection, and the databases referred to in paragraph (2), under circumstances in which such information is not to be disclosed directly to Government officials under paragraph (5).

(b) Name-search capacity and support

(1) In general

The interoperable electronic data system required by subsection (a) of this section shall—

(A) have the capacity to compensate for disparate name formats among the different databases referred to in subsection (a) of this section;

(B) be searchable on a linguistically sensitive basis;

(C) provide adequate user support;

(D) to the extent practicable, utilize commercially available technology; and

(E) be adjusted and improved, based upon experience with the databases and improvements in the underlying technologies and sciences, on a continuing basis.

(2) Linguistically sensitive searches

(A) In general

To satisfy the requirement of paragraph (1)(B), the interoperable electronic database shall be searchable based on linguistically sensitive algorithms that—

(i) account for variations in name formats and transliterations, including varied spellings and varied separation or combination of name elements, within a particular language; and

(ii) incorporate advanced linguistic, mathematical, statistical, and anthropological research and methods.

(B) Languages required

(i) Priority languages

Linguistically sensitive algorithms shall be developed and implemented for no fewer than 4 languages designated as high priorities by the Secretary of State, after consultation with the Attorney General and the Director of Central Intelligence.

(ii) Implementation schedule

Of the 4 linguistically sensitive algorithms required to be developed and implemented under clause (i)—
(I) the highest priority language algorithms shall be implemented within 18 months after May 14, 2002; and
(II) an additional language algorithm shall be implemented each succeeding year for the next three years.

(3) Adequate user support

The Secretary of State and the Attorney General shall jointly prescribe procedures to ensure that consular and immigration officers can, as required, obtain assistance in resolving identity and other questions that may arise about the names of aliens seeking visas or admission to the United States that may be subject to variations in format, transliteration, or other similar phenomenon.

(4) Interim reports

Six months after May 14, 2002, the President shall submit a report to the appropriate committees of Congress on the progress in implementing each requirement of this section.

(5) Reports by intelligence agencies

(A) Current standards

Not later than 60 days after May 14, 2002, the Director of Central Intelligence shall complete the survey and issue the report previously required by section 309(a) of the Intelligence Authorization Act for Fiscal Year 1998 (50 U.S.C. 403–3 note).1

(B) Guidelines

Not later than 120 days after May 14, 2002, the Director of Central Intelligence shall issue the guidelines and submit the copy of those guidelines previously required by section 309(b) of the Intelligence Authorization Act for Fiscal Year 1998.

(6) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out the provisions of this subsection.


REFERENCES IN TEXT

Section 309 of the Intelligence Authorization Act for Fiscal Year 1998, referred to in subsec. (b)(5), is section 309 of Pub. L. 105–107, title III, Nov. 20, 1997, 111 Stat. 2253, which was set out as a note under former section 403–3 of Title 50, War and National Defense, and is now set out as a note under section 403–1 of Title 50.

CODIFICATION


CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

§1723. Commission on Interoperable Data Sharing

(a) Establishment

Not later than one year after October 26, 2001, the President shall establish a Commission on Interoperable Data Sharing (in this section referred to as the “Commission”). The purposes of the Commission shall be to—

(1) monitor the protections described in section 1721(c)(3) of this title;
(2) provide oversight of the interoperable electronic data system described in section 1722 of this title; and
(3) report to Congress annually on the Commission’s findings and recommendations.

(b) Composition

The Commission shall consist of nine members, who shall be appointed by the President, as follows:

(1) One member, who shall serve as Chair of the Commission.

(2) Eight members, who shall be appointed from a list of nominees jointly provided by the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the Majority Leader of the Senate, and the Minority Leader of the Senate.

(c) Considerations

The Commission shall consider recommendations regarding the following issues:

(1) Adequate protection of privacy concerns inherent in the design, implementation, or operation of the interoperable electronic data system.

(2) Timely adoption of security innovations, consistent with generally accepted security standards, to protect the integrity and confidentiality of information to prevent the risks of accidental or unauthorized loss, access, destruction, use modification, or disclosure of information.

(3) The adequacy of mechanisms to permit the timely correction of errors in data maintained by the interoperable data system.

(4) Other protections against unauthorized use of data to guard against the misuse of the interoperable data system or the data maintained by the system, including recommendations for modifications to existing laws and regulations to sanction misuse of the system.

(d) Authorization of appropriations

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this section.


1 See References in Text note below.
§ 1724. Personnel management authorities for positions involved in the development and implementation of the interoperable electronic data system ("Chimera system")

(a) In general
Notwithstanding any other provision of law relating to position classification or employee pay or performance, the Attorney General may hire and fix the compensation of necessary scientific, technical, engineering, and other analytical personnel for the purpose of the development and implementation of the interoperable electronic data system described in section 1722(a)(2) of this title (also known as the “Chimera system”).

(b) Limitation on rate of pay
Except as otherwise provided by law, no employee compensated under subsection (a) of this section may be paid at a rate in excess of the rate payable for a position at level III of the Executive Schedule.

(c) Limitation on total calendar year payments
Total payments to employees under any system established under this section shall be subject to the limitation on payments to employees under section 5307 of title 5.

(d) Operating plan
Not later than 90 days after May 14, 2002, the Attorney General shall submit to the Committee on Appropriations, the Committee on the Judiciary, the Select Committee on Intelligence, and the Committee on Foreign Relations of the Senate and the Committee on Appropriations, the Committee on the Judiciary, the Permanent Select Committee on Intelligence, and the Committee on International Relations of the House of Representatives an operating plan—

(1) describing the Attorney General’s intended use of the authority under this section; and

(2) identifying any provisions of title 5 being waived for purposes of the development and implementation of the Chimera system.

(e) Termination date
The authority of this section shall terminate upon the implementation of the Chimera system.


REFERENCES IN TEXT
Level III of the Executive Schedule, referred to in subsec. (b), is set out in section 5314 of Title 5, Government Organization and Employees.

CHANGE OF NAME
Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

SUBCHAPTER III—VISA ISSUANCE

§ 1731. Implementation of an integrated entry and exit data system

(a) Development of system
In developing the integrated entry and exit data system for the ports of entry, as required by the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106-215), the Attorney General and the Secretary of State shall—

(1) implement, fund, and use a technology standard under section 1379 of this title at United States ports of entry and at consular posts abroad;

(2) establish a database containing the arrival and departure data from machine-readable visas, passports, and other travel and entry documents possessed by aliens; and

(3) make interoperable all security databases relevant to making determinations of admissibility under section 1182 of this title.

(b) Implementation
In implementing the provisions of subsection (a) of this section, the Immigration and Naturalization Service and the Department of State shall—

(1) utilize technologies that facilitate the lawful and efficient cross-border movement of commerce and persons without compromising the safety and security of the United States; and

(2) consider implementing the North American National Security Program described in section 1751 of this title.


REFERENCES IN TEXT

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.

§ 1732. Machine-readable, tamper-resistant entry and exit documents

(a) Report

(1) In general
Not later than 180 days after May 14, 2002, the Attorney General, the Secretary of State, and the National Institute of Standards and Technology (NIST), acting jointly, shall submit to the appropriate committees of Congress a comprehensive report assessing the actions that will be necessary, and the considerations to be taken into account, to achieve fully, not later than October 26, 2004—

(A) implementation of the requirements of subsections (b) and (c) of this section; and

(B) deployment of the equipment and software to allow biometric comparison and authentication of the documents described in subsections (b) and (c) of this section.

(2) Estimates
In addition to the assessment required by paragraph (1), the report required by that
paragraph shall include an estimate of the costs to be incurred, and the personnel, man-hours, and other support required, by the Department of Justice, the Department of State, and NIST to achieve the objectives of subparagraphs (A) and (B) of paragraph (1).

(b) Requirements

(1) In general

Not later than October 26, 2004, the Attorney General and the Secretary of State shall issue to aliens only machine-readable, tamper-resistant visas and other travel and entry documents that use biometric identifiers. The Attorney General and the Secretary of State shall jointly establish document authentication standards and biometric identifiers standards to be employed on such visas and other travel and entry documents from among those biometric identifiers recognized by domestic and international standards organizations.

(2) Readers and scanners at ports of entry

(A) In general

Not later than October 26, 2005, the Attorney General, in consultation with the Secretary of State, shall install at all ports of entry of the United States equipment and software to allow biometric comparison and authentication of all United States visas and other travel and entry documents issued to aliens, and passports issued pursuant to subsection (c)(1) of this section.

(B) Use of readers and scanners

The Attorney General, in consultation with the Secretary of State, shall utilize biometric data readers and scanners that—

(i) domestic and international standards organizations determine to be highly accurate when used to verify identity;

(ii) can read the biometric identifiers utilized under subsections (b)(1) and (c)(1) of this section; and

(iii) can authenticate the document presented to verify identity.

(3) Use of technology standard

The systems employed to implement paragraphs (1) and (2) shall utilize the technology standard established pursuant to section 1379 of this title.

(c) Technology standard for visa waiver participants

(1) Certification requirement

Not later than October 26, 2005, the government of each country that is designated to participate in the visa waiver program established under section 1187 of this title shall certify, as a condition for designation or continuation of that designation, that it has a program to issue to its nationals machine-readable passports that are tamper-resistant and incorporate biometric and document authentication identifiers that comply with applicable biometric and document identifying standards established by the International Civil Aviation Organization. This paragraph shall not be construed to rescind the requirement of section 1187(a)(3) of this title.

(2) Use of technology standard

On and after October 26, 2005, any alien applying for admission under the visa waiver program under section 1187 of this title shall present a passport that meets the requirements of paragraph (1) unless the alien’s passport was issued prior to that date.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section, including reimbursement to international and domestic standards organizations.


AMENDMENTS


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.

§ 1733. Terrorist lookout committees

(a) Establishment

The Secretary of State shall require a terrorist lookout committee to be maintained within each United States mission to a foreign country.

(b) Purpose

The purpose of each committee established under subsection (a) of this section shall be—

(1) to utilize the cooperative resources of all elements of the United States mission in the country in which the consular post is located to identify known or potential terrorists and to develop information on those individuals;

(2) to ensure that such information is routinely and consistently brought to the attention of appropriate United States officials for use in administering the immigration laws of the United States; and

(3) to ensure that the names of known and suspected terrorists are entered into the appropriate lookout databases.

(c) Composition; chair

The Secretary shall establish rules governing the composition of such committees.

(d) Meetings

Each committee established under subsection (a) of this section shall meet at least monthly to share information pertaining to the committee’s purpose as described in subsection (b)(2) of this section.

(e) Periodic reports to the Secretary of State

Each committee established under subsection (a) of this section shall submit monthly reports to the Secretary of State describing the committee’s activities, whether or not information on known or suspected terrorists was developed during the month.

(f) Reports to Congress

The Secretary of State shall submit a report on a quarterly basis to the appropriate committees of Congress on the status of the committees established under subsection (a) of this section.
§ 1734. Improved training for consular officers

(a) Training

The Secretary of State shall require that all consular officers responsible for adjudicating visa applications, before undertaking to perform consular responsibilities, receive specialized training in the effective screening of visa applicants who pose a potential threat to the safety or security of the United States. Such officers shall be specially and extensively trained in the identification of aliens inadmissible under section 1182(a)(3)(A) and (B) of this title, inter-agency and international intelligence sharing regarding terrorists and terrorism, and cultural-sensitivity toward visa applicants. In accordance with section 1776 of this title, and as part of the consular training provided to such officers by the Secretary of State, such officers shall also receive training in detecting fraudulent documents and general document forensics and shall be required as part of such training to work with immigration officers conducting inspections of applicants for admission into the United States at ports of entry.

(b) State sponsor of international terrorism defined

(1) In general

In this section, the term “state sponsor of international terrorism” means any country the government of which has been determined by the Secretary of State under any of the laws specified in paragraph (2) to have repeatedly provided support for acts of international terrorism.

(2) Laws under which determinations were made

The laws specified in this paragraph are the following:
(A) Section 2405(j)(1)(A) of title 50, Appendix (or successor statute).
(B) Section 2780(d) of title 22.
(C) Section 2371(a) of title 22.


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.

§ 1736. Check of lookout databases

Prior to the admission of an alien under the visa waiver program established under section 1137 of this title, the Immigration and Naturalization Service shall determine that the applicant for admission does not appear in any of the appropriate lookout databases available to immigration inspectors at the time the alien seeks admission to the United States.


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.

§ 1737. Tracking system for stolen passports

(a) Entering stolen passport identification numbers in the interoperable data system

(1) In general

Beginning with implementation under section 1722 of this title of the law enforcement and intelligence data system, not later than 72 hours after receiving notification of the loss
or theft of a United States or foreign passport, the Attorney General and the Secretary of State, as appropriate, shall enter into such system the corresponding identification number for the lost or stolen passport.

(2) Entry of information on previously lost or stolen passports

To the extent practicable, the Attorney General, in consultation with the Secretary of State, shall enter into such system the corresponding identification numbers for the United States and foreign passports lost or stolen prior to the implementation of such system.

(b) Transition period

Until such time as the law enforcement and intelligence data system described in section 1722 of this title is fully implemented, the Attorney General shall enter the data described in subsection (a) of this section into an existing data system being used to determine the admissibility or deportability of aliens.


§ 1738. Identification documents for certain newly admitted aliens

Not later than 180 days after May 14, 2002, the Attorney General shall ensure that, immediately upon the arrival in the United States of an individual admitted under section 1157 of this title, or immediately upon an alien being granted asylum under section 1158 of this title, the alien will be issued an employment authorization document. Such document shall, at a minimum, contain the fingerprint and photograph of such alien.


§ 1739. Study of the feasibility of a North American National Security Program

(a) In general

The President shall conduct a study of the feasibility of establishing a North American National Security Program to enhance the mutual security and safety of the United States, Canada, and Mexico.

(b) Study elements

In conducting the study required by subsection (a) of this section, the President shall consider the following:

(1) Preclearance

The feasibility of establishing a program enabling foreign national travelers to the United States to submit voluntarily to a preclearance procedure established by the Department of State and the Immigration and Naturalization Service to determine whether such travelers are admissible to the United States under section 1182 of this title. Consideration shall be given to the feasibility of expanding the preclearance program to include the preclearance both of foreign nationals traveling to Canada and foreign nationals traveling to Mexico.

(2) Preinspection

The feasibility of expanding preinspection facilities at foreign airports as described in section 1225a of this title. Consideration shall be given to the feasibility of expanding preinspections to foreign nationals on air flights destined for Canada and Mexico, and the cross training and funding of inspectors from Canada and Mexico.

(3) Conditions

A determination of the measures necessary to ensure that the conditions required by section 1225a(a)(5) of this title are satisfied, including consultation with experts recognized for their expertise regarding the conditions required by that section.

(c) Report

Not later than 1 year after May 14, 2002, the President shall submit to the appropriate committees of Congress a report setting forth the findings of the study conducted under subsection (a) of this section.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.


§ 1752. Staffing levels at ports of entry

The Immigration and Naturalization Service shall staff ports of entry at such levels that would be adequate to meet traffic flow and inspection time objectives efficiently without compromising the safety and security of the United States. Estimated staffing levels under workforce models for the Immigration and Naturalization Service shall be based on the goal of providing immigration services described in section 1356(g) of this title within 45 minutes of a passenger’s presentation for inspection.

§ 1752a. Model ports-of-entry

(a) In general

The Secretary of Homeland Security shall—

(1) establish a model ports-of-entry program for the purpose of providing a more efficient and welcoming international arrival process in order to facilitate and promote business and tourist travel to the United States, while also improving security; and

(2) implement the program initially at the 20 United States international airports that have the highest number of foreign visitors arriving annually as of August 3, 2007.

(b) Program elements

The program shall include—

(1) enhanced queue management in the Federal Inspection Services area leading up to primary inspection;

(2) assistance for foreign travelers once they have been admitted to the United States, in consultation, as appropriate, with relevant governmental and nongovernmental entities; and

(3) instructional videos, in English and such other languages as the Secretary determines appropriate, in the Federal Inspection Services area that explain the United States inspection process and feature national, regional, or local welcome videos.

(c) Additional Customs and Border Protection officers for high-volume ports

Subject to the availability of appropriations, not later than the end of fiscal year 2008 the Secretary of Homeland Security shall employ not fewer than an additional 200 Customs and Border Protection officers over the number of such positions for which funds were appropriated for the preceding fiscal year to address staff shortages at the 20 United States international airports that have the highest number of foreign visitors arriving annually as of August 3, 2007.

CODIFICATION

Section was enacted as part of the Implementing Recommendations of the 9/11 Commission Act of 2007 and not as part of the Enhanced Border Security and Visa Entry Reform Act of 2002 which comprises this chapter.

§ 1753. Joint United States-Canada projects for alternative inspections services

(a) In general

United States border inspections agencies, including the Immigration and Naturalization Service, acting jointly and under an agreement of cooperation with the Government of Canada, may conduct joint United States-Canada inspections projects on the international border between the two countries. Each such project may provide alternative inspections services and shall undertake to harmonize the criteria for inspections applied by the two countries in implementing those projects.

(b) Annual report

The Attorney General and the Secretary of the Treasury shall prepare and submit annually to Congress a report on the joint United States-Canada inspections projects conducted under subsection (a) of this section.

(c) Exemption from Administrative Procedure Act and Paperwork Reduction Act

Subchapter II of chapter 5 of title 5 (commonly referred to as the “Administrative Procedure Act”) and chapter 35 of title 44 (commonly referred to as the “Paperwork Reduction Act”) shall not apply to fee setting for services and other administrative requirements relating to projects described in subsection (a) of this section, except that fees and forms established for such projects shall be published as a notice in the Federal Register.

§ 1761. Foreign student monitoring program

(a) Omitted

(b) Information required of the visa applicant

Prior to the issuance of a visa under subparagraph (F), subparagraph (M), or, with respect to an alien seeking to attend an approved institution of higher education, subparagraph (J) of section 1101(a)(15) of this title, each alien applying for such visa shall provide to a consular officer the following information:

(1) The alien’s address in the country of origin.

(2) The names and addresses of the alien’s spouse, children, parents, and siblings.

(3) The names of contacts of the alien in the alien’s country of residence who could verify information about the alien.

(4) Previous work history, if any, including the names and addresses of employers.

(c) Transitional program

(1) In general

Not later than 120 days after May 14, 2002, and until such time as the system described in section 1372 of this title is fully implemented, the following requirements shall apply:

(A) Restrictions on issuance of visas

A visa may not be issued to an alien under subparagraph (F), subparagraph (M), or, with respect to an alien seeking to attend an approved institution of higher education, subparagraph (J) of section 1101(a)(15) of this title, unless—

(i) the Department of State has received from an approved institution of higher education or other approved educational institution electronic evidence of documentation of the alien’s acceptance at that institution; and

(ii) the consular officer has adequately reviewed the applicant’s visa record.
(B) Notification upon visa issuance

Upon the issuance of a visa under section 1101(a)(15)(F) or (M) of this title to an alien, the Secretary of State shall transmit to the Immigration and Naturalization Service a notification of the issuance of that visa.

(C) Notification upon admission of alien

The Immigration and Naturalization Service shall notify the approved institution of higher education or other approved educational institution that an alien accepted for such institution or program has been admitted to the United States.

(D) Notification of failure of enrollment

Not later than 30 days after the deadline for registering for classes for an academic term, the approved institution of higher education or other approved educational institution shall inform the Immigration and Naturalization Service through data-sharing arrangements of any failure of any alien described in subparagraph (C) to enroll or to commence participation.

(2) Requirement to submit list of approved institutions

Not later than 30 days after May 14, 2002, the Attorney General shall provide the Secretary of State with a list of all approved institutions of higher education and other approved educational institutions that are authorized to receive nonimmigrants under section 1101(a)(15)(F) or (M) of this title.

(3) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this subsection.


CODIFICATION

Section is comprised of section 501 of Pub. L. 107–173.

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.

§ 1762. Review of institutions and other entities authorized to enroll or sponsor certain nonimmigrants

(a) Periodic review of compliance

Not later than two years after May 14, 2002, and every two years thereafter, the Commissioner of Immigration and Naturalization, in consultation with the Secretary of Education, shall conduct a review of the institutions certified to receive nonimmigrants under section 1101(a)(15)(F), (M), or (J) of this title. Each review shall determine whether the institutions are in compliance with—

(1) recordkeeping and reporting requirements to receive nonimmigrants under section 1101(a)(15)(F), (M), or (J) of this title; and

(2) recordkeeping and reporting requirements under section 1372 of this title.

(b) Periodic review of sponsors of exchange visitors

(1) Requirement for reviews

Not later than two years after May 14, 2002, and every two years thereafter, the Secretary of State shall conduct a review of the entities designated to sponsor exchange visitor program participants under section 1101(a)(15)(J) of this title.

(2) Determinations

On the basis of reviews of entities under paragraph (1), the Secretary shall determine whether the entities are in compliance with—

(A) recordkeeping and reporting requirements to receive nonimmigrant exchange visitor program participants under section 1101(a)(15)(J) of this title; and

(B) recordkeeping and reporting requirements under section 1372 of this title.

(c) Effect of material failure to comply

Material failure of an institution or other entity to comply with the recordkeeping and reporting requirements to receive nonimmigrant students or exchange visitor program participants under section 1101(a)(15)(F), (M), or (J) of this title, or section 1372 of this title, shall result in the suspension for at least one year or termination, at the election of the Commissioner of Immigration and Naturalization, of the institution’s approval to receive such students, or result in the suspension for at least one year or termination, at the election of the Secretary of State, of the other entity’s designation to sponsor exchange visitor program participants, as the case may be.


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.

SUBCHAPTER VI—MISCELLANEOUS PROVISIONS

§ 1771. General Accounting Office study

(a) Requirement for study

(1) In general

The Comptroller General of the United States shall conduct a study to determine the feasibility and utility of implementing a requirement that each nonimmigrant alien in the United States submit to the Commissioner of Immigration and Naturalization each year a current address and, where applicable, the name and address of an employer.

(2) Nonimmigrant alien defined

In paragraph (1), the term “nonimmigrant alien” means an alien described in section 1101(a)(15) of this title.

(b) Report

Not later than 1 year after May 14, 2002, the Comptroller General shall submit to Congress a report on the results of the study under sub-
section (a) of this section. The report shall include the
Comptroller General’s findings, together with any recommendations that the
Comptroller General considers appropriate.
Stat. 564.)

CHANGE OF NAME

General Accounting Office redesignated Government Accountability Office by section 8 of Pub. L. 108–271, set out as a note under section 702 of Title 31, Money and
Finance.

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.

§ 1772. International cooperation

(a) International electronic data system

The Secretary of State and the Commissioner of
Immigration and Naturalization, in consulta-
tion with the Assistant to the President for
Homeland Security, shall jointly conduct a
study of the alternative approaches (including
the costs of, and procedures necessary for, each
alternative approach) for encouraging or requir-
ing Canada, Mexico, and countries treated as
visa waiver program countries under section 217
of the Immigration and Nationality Act [8
U.S.C. 1107] to develop an intergovernmental
network of interoperable electronic data sys-
tems that—

(1) facilitates real-time access to that coun-
try’s law enforcement and intelligence infor-
mation that is needed by the Department of
State and the Immigration and Naturalization
Service to screen visa applicants and appli-
cants for admission into the United States to
identify aliens who are inadmissible or deport-
able under the Immigration and Nationality
Act (8 U.S.C. 1101 et seq.);

(2) is interoperable with the electronic data
system implemented under section 1722 of this
title; and

(3) performs in accordance with implementa-
tion of the technology standard referred to in
section 1722(a) of this title.

(b) Report

Not later than 1 year after May 14, 2002, the
Secretary of State and the Attorney General
shall submit to the appropriate committees of
Congress a report setting forth the findings of
the study conducted under subsection (a) of this
section.
Stat. 564.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in
subsection (a)(1), is act June 27, 1952, ch. 477, 66 Stat. 163,
as amended, which is classified principally to chapter
12 (§1101 et seq.) of this title. For complete classifica-
tion of this Act to the Code, see Short Title note set out under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION
SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization
Service, transfer of functions, and treatment of related
references, see note set out under section 1551 of this
title.

§ 1773. Statutory construction

Nothing in this chapter shall be construed to impose
requirements that are inconsistent with the
North American Free Trade Agreement or to
require additional documents for aliens for
whom documentary requirements are waived under
section 1182(d)(4)(B) of this title.
Stat. 565.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original
Stat. 543, which is classified principally to this chapter.
For complete classification of this Act to the Code, see
Short Title note set out under section 1701 of this title
and Tables.

§ 1774. Annual report on aliens who fail to ap-
pear after release on own recognize

(a) Requirement for report

Not later than January 15 of each year, the
Attorney General shall submit to the appro-
priate committees of Congress a report on the
total number of aliens who, during the preceding
year, failed to attend a removal proceeding after
having been arrested outside a port of entry, and
imposed requirements that are inconsistent with
the North American Free Trade Agreement or to
impose requirements that are inconsistent with
the alien’s own re-
cognizance. The report shall also take into ac-
count the number of cases in which there were
defects in notices of hearing or the service of no-
tices of hearing, together with a description and
analysis of the effects, if any, that the defects
had on the attendance of aliens at the proceed-
ings.

(b) Initial report

Notwithstanding the time for submission of
the annual report provided in subsection (a) of
this section, the report for 2001 shall be submitted
not later than 6 months after May 14, 2002.
Stat. 565.)

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.

§ 1775. Retention of nonimmigrant visa applica-
tions by the Department of State

The Department of State shall retain, for a pe-
riod of seven years from the date of application, every application for a nonimmigrant visa under
section 101(a)(15) of the Immigration and Na-
tionality Act (8 U.S.C. 1101(a)(15)) in a form that
will be admissible in the courts of the United
States or in administrative proceedings, includ-
ing removal proceedings under such Act [8
U.S.C. 1101 et seq.], without regard to whether
the application was approved or denied.
Stat. 565.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in
text, is act June 27, 1952, ch. 477, 66 Stat. 163, as amend-
ed, which is classified principally to chapter 12 (§1101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

§ 1776. Training program

(1) Review, evaluation, and revision of existing training programs

The Secretary of Homeland Security shall—

(A) review and evaluate the training regarding travel and identity documents, and techniques, patterns, and trends associated with terrorist travel that is provided to personnel of the Department of Homeland Security;

(B) in coordination with the Secretary of State, review and evaluate the training described in subparagraph (A) that is provided to relevant personnel of the Department of State; and

(C) in coordination with the Secretary of State, develop and implement an initial training and periodic retraining program—

(i) to teach border, immigration, and consular officials (who inspect or review travel or identity documents as part of their official duties) how to effectively detect, intercept, and disrupt terrorist travel; and

(ii) to ensure that the officials described in clause (i) regularly receive the most current information on such matters and are periodically retrained on the matters described in paragraph (2).

(2) Required topics of revised programs

The training program developed under paragraph (1)(C) shall include training in—

(A) methods for identifying fraudulent and genuine travel documents;

(B) methods for detecting terrorist indicators on travel documents and other relevant identity documents;

(C) in coordination with the Secretary of State, develop and implement an initial training and periodic retraining program—

(i) to teach border, immigration, and consular officials how to effectively detect, intercept, and disrupt terrorist travel; and

(ii) to ensure that the officials described in clause (i) regularly receive the most current information on such matters and are periodically retrained on the matters described in paragraph (2).

(3) Implementation

(A) Department of Homeland Security

(i) In general

The Secretary of Homeland Security shall provide all border and immigration officials who inspect or review travel or identity documents as part of their official duties as part of their official duties with the training described in paragraph (1)(C).

(ii) Report to Congress

Not later than 12 months after December 17, 2004, and annually thereafter for a period of 3 years, the Secretary of Homeland Security shall submit a report to Congress that—

(I) describes the number of consular officers who inspect or review travel or identity documents as part of their official duties, and the proportion of whom have received the revised training program described in paragraph (1)(C)(i); and

(II) explains the reasons, if any, for not completing the requisite training described in paragraph (1)(C)(i); and

(III) provides a timetable for completion of the training described in paragraph (1)(C)(i) for those who have not received such training; and

(IV) describes the status of periodic retraining of appropriate personnel described in paragraph (1)(C)(ii).

(B) Department of State

(i) In general

The Secretary of State shall provide all consular officers who inspect or review travel or identity documents as part of their official duties with the training described in paragraph (1)(C).

(ii) Report to Congress

Not later than 12 months after December 17, 2004, and annually thereafter for a period of 3 years, the Secretary of State shall submit a report to Congress that—

(I) describes the number of consular officers who inspect or review travel or identity documents as part of their official duties, and the proportion of whom have received the revised training program described in paragraph (1)(C)(i); and

(II) explains the reasons, if any, for not completing the requisite training described in paragraph (1)(C)(i); and

(III) provides a timetable for completion of the training described in paragraph (1)(C)(i) for those who have not received such training; and

(IV) describes the status of periodic retraining of appropriate personnel described in paragraph (1)(C)(ii).

(4) Assistance to others

The Secretary of Homeland Security may assist States, Indian tribes, local governments, and private organizations to establish training programs related to terrorist travel intelligence.

(5) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2005 through 2009 to carry out the provisions of this section.

(Pub. L. 108–458, title VII, §7201(a), Dec. 17, 2004, 118 Stat. 3808, provided that: “Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

‘‘(1) Travel documents are as important to terrorists as weapons since terrorists must travel clandestinely to meet, train, plan, case targets, and gain access to attack sites.
"(2) International travel is dangerous for terrorists because they must surface to pass through regulated channels, present themselves to border security officials, or attempt to circumvent inspection points.

"(3) Terrorists use evasive, but detectable, methods to travel, such as altered and counterfeit passports and visas, specific travel methods and routes, liaisons with corrupt government officials, human smuggling networks, supportive travel agencies, and immigration and identity fraud.

"(4) Before September 11, 2001, no Federal agency systematically analyzed terrorist travel strategies. If an agency had done so, the agency could have discovered the ways in which the terrorist predecessors to al Qaeda had been systematically, but detectably, exploiting weaknesses in our border security since the early 1990s.

"(5) Many of the hijackers were potentially vulnerable to interception by border authorities. Analyzing their characteristic travel documents and travel patterns could have allowed authorities to intercept some of the hijackers and a more effective use of information available in government databases could have identified some of the hijackers.

"(6) The routine operations of our immigration laws and the aspects of those laws not specifically aimed at protecting against terrorism inevitably shaped al Qaeda’s planning and opportunities.

"(7) New insights into terrorist travel gained since September 11, 2001, have not been adequately integrated into the front lines of border security.

"(8) The small classified terrorist travel intelligence collection and analysis program currently in place has produced useful results and should be expanded."

§ 1777. Establishment of Human Smuggling and Trafficking Center

(a) Establishment

There is established a Human Smuggling and Trafficking Center (referred to in this section as the “Center”).

(b) Operation

The Secretary of State, the Secretary of Homeland Security, and the Attorney General shall operate the Center in accordance with the Memorandum of Understanding entitled, “Human Smuggling and Trafficking Center (HSTC) Charter”.

(c) Functions

In addition to such other responsibilities as the President may assign, the Center shall—

(1) serve as the focal point for interagency efforts to integrate and disseminate intelligence and information related to terrorist travel;

(2) serve as a clearinghouse with respect to all relevant information from all Federal Government agencies in support of the United States strategy to prevent separate, but related, issues of clandestine terrorist travel and facilitation of migrant smuggling and trafficking of persons;

(3) ensure cooperation among all relevant policy, law enforcement, diplomatic, and intelligence agencies of the Federal Government to improve effectiveness and to convert all information available to the Federal Government relating to clandestine terrorist travel and facilitation, migrant smuggling, and trafficking of persons into tactical, operational, and strategic intelligence that can be used to combat such illegal activities; and

(4) prepare and submit to Congress, on an annual basis, a strategic assessment regarding vulnerabilities in the United States and foreign travel system that may be exploited by international terrorists, human smugglers and traffickers, and their facilitators.

(d) Director

The Secretary of Homeland Security shall nominate an official of the Government of the United States to serve as the Director of the Center, in accordance with the requirements of the memorandum of understanding entitled the “Human Smuggling and Trafficking Center (HSTC) Charter”.

(e) Staffing of the Center

(1) In general

The Secretary of Homeland Security, in cooperation with heads of other relevant agencies and departments, shall ensure that the Center is staffed with not fewer than 40 full-time equivalent positions, including, as appropriate, detailers from the following:

(A) Agencies and offices within the Department of Homeland Security, including the following:

(i) The Office of Intelligence and Analysis;

(ii) The Transportation Security Administration;

(iii) United States Citizenship and Immigration Services;

(iv) United States Customs and Border Protection;

(v) The United States Coast Guard;

(vi) United States Immigration and Customs Enforcement.

(B) Other departments, agencies, or entities, including the following:

(i) The Central Intelligence Agency;

(ii) The Department of Defense;

(iii) The Department of the Treasury;

(iv) The National Counterterrorism Center;

(v) The National Security Agency;

(vi) The Department of Justice;

(vii) The Department of State;

(viii) Any other relevant agency or department.

(2) Expertise of detailers

The Secretary of Homeland Security, in cooperation with the head of each agency, department, or other entity referred to in paragraph (1), shall ensure that the detailers provided to the Center under such paragraph include an adequate number of personnel who are—

(A) intelligence analysts or special agents with demonstrated experience related to human smuggling, trafficking in persons, or terrorist travel; and

(B) personnel with experience in the areas of—

(i) consular affairs;

(ii) counterterrorism;

(iii) criminal law enforcement;

(iv) intelligence analysis;

(v) prevention and detection of document fraud;
(vi) border inspection;
(vii) immigration enforcement; or
(viii) human trafficking and combating severe forms of trafficking in persons.

(3) Enhanced personnel management

(A) Incentives for service in certain positions

(i) In general
The Secretary of Homeland Security, and the heads of other relevant agencies, shall prescribe regulations or promulgate personnel policies to provide incentives for service on the staff of the Center, particularly for serving terms of at least two years duration.

(ii) Forms of incentives
Incentives under clause (i) may include financial incentives, bonuses, and, such other awards and incentives as the Secretary and the heads of other relevant agencies, consider appropriate.

(B) Enhanced promotion for service at the Center
Notwithstanding any other provision of law, the Secretary of Homeland Security, and the heads of other relevant agencies, shall ensure that personnel who are assigned or detailed to service at the Center shall be considered for promotion at rates equivalent to or better than similarly situated personnel of such agencies who are not so assigned or detailed, except that this subparagraph shall not apply in the case of personnel who are subject to the provisions of the Foreign Service Act of 1980 [22 U.S.C. 3901 et seq.].

(f) Administrative support and funding
The Secretary of Homeland Security shall provide to the Center the administrative support and funding required for its maintenance, including funding for personnel, leasing of office space, supplies, equipment, technology, training, and travel expenses necessary for the Center to carry out its functions.

(g) Report

(1) Initial report
Not later than 180 days after December 17, 2004, the President shall transmit to Congress a report regarding the implementation of this section, including a description of the staffing and resource needs of the Center.

(2) Follow-up report
Not later than 180 days after August 3, 2007, the President shall transmit to Congress a report regarding the implementation of the Center and the activities carried out by the Center, including a description of—
(A) the roles and responsibilities of each agency or department that is participating in the Center;
(B) the mechanisms used to share information among each such agency or department;
(C) the personnel provided to the Center by each such agency or department;
(D) the type of information and reports being disseminated by the Center;

(E) any efforts by the Center to create a centralized Federal Government database to store information related to unlawful travel of foreign nationals, including a description of any such database and of the manner in which information utilized in such a database would be collected, stored, and shared;
(F) how each agency and department shall utilize its resources to ensure that the Center uses intelligence to focus and drive its efforts;
(G) efforts to consolidate networked systems for the Center;
(H) the mechanisms for the sharing of homeland security information from the Center to the Office of Intelligence and Analysis, including how such sharing shall be consistent with section 485(b) of title 6;
(I) the ability of participating personnel in the Center to freely access necessary databases and share information regarding issues related to human smuggling, trafficking in persons, and terrorist travel;
(J) how the assignment of personnel to the Center is incorporated into the civil service career path of such personnel; and
(K) cooperation and coordination efforts, including any memorandums of understanding, among participating agencies and departments regarding issues related to human smuggling, trafficking in persons, and terrorist travel.

(h) Relationship to the NCTC
As part of its mission to combat terrorist travel, the Center shall work to support the efforts of the National Counterterrorism Center.

(i) Coordination with the Office of Intelligence and Analysis
The Office of Intelligence and Analysis, in coordination with the Center, shall submit to relevant State, local, and tribal law enforcement agencies periodic reports regarding terrorist threats related to human smuggling, human trafficking, and terrorist travel.

(1) Initial report
Not later than 180 days after December 17, 2004, the President shall transmit to Congress a report regarding the implementation of this section, including a description of the staffing and resource needs of the Center.

(2) Follow-up report
Not later than 180 days after August 3, 2007, the President shall transmit to Congress a report regarding the implementation of the Center and the activities carried out by the Center, including a description of—
(A) the roles and responsibilities of each agency or department that is participating in the Center;
(B) the mechanisms used to share information among each such agency or department;
(C) the personnel provided to the Center by each such agency or department;
(D) the type of information and reports being disseminated by the Center;

(E) any efforts by the Center to create a centralized Federal Government database to store information related to unlawful travel of foreign nationals, including a description of any such database and of the manner in which information utilized in such a database would be collected, stored, and shared;
(F) how each agency and department shall utilize its resources to ensure that the Center uses intelligence to focus and drive its efforts;
(G) efforts to consolidate networked systems for the Center;
(H) the mechanisms for the sharing of homeland security information from the Center to the Office of Intelligence and Analysis, including how such sharing shall be consistent with section 485(b) of title 6;
(I) the ability of participating personnel in the Center to freely access necessary databases and share information regarding issues related to human smuggling, trafficking in persons, and terrorist travel;
(J) how the assignment of personnel to the Center is incorporated into the civil service career path of such personnel; and
(K) cooperation and coordination efforts, including any memorandums of understanding, among participating agencies and departments regarding issues related to human smuggling, trafficking in persons, and terrorist travel.

(3) Enhanced personnel management

(A) Incentives for service in certain positions

(i) In general
The Secretary of Homeland Security, and the heads of other relevant agencies, shall prescribe regulations or promulgate personnel policies to provide incentives for service on the staff of the Center, particularly for serving terms of at least two years duration.

(ii) Forms of incentives
Incentives under clause (i) may include financial incentives, bonuses, and, such other awards and incentives as the Secretary and the heads of other relevant agencies, consider appropriate.

(B) Enhanced promotion for service at the Center
Notwithstanding any other provision of law, the Secretary of Homeland Security, and the heads of other relevant agencies, shall ensure that personnel who are assigned or detailed to service at the Center shall be considered for promotion at rates equivalent to or better than similarly situated personnel of such agencies who are not so assigned or detailed, except that this subparagraph shall not apply in the case of personnel who are subject to the provisions of the Foreign Service Act of 1980 [22 U.S.C. 3901 et seq.].

(f) Administrative support and funding
The Secretary of Homeland Security shall provide to the Center the administrative support and funding required for its maintenance, including funding for personnel, leasing of office space, supplies, equipment, technology, training, and travel expenses necessary for the Center to carry out its functions.

(g) Report

(1) Initial report
Not later than 180 days after December 17, 2004, the President shall transmit to Congress a report regarding the implementation of this section, including a description of the staffing and resource needs of the Center.

(2) Follow-up report
Not later than 180 days after August 3, 2007, the President shall transmit to Congress a report regarding the implementation of the Center and the activities carried out by the Center, including a description of—
(A) the roles and responsibilities of each agency or department that is participating in the Center;
(B) the mechanisms used to share information among each such agency or department;
(C) the personnel provided to the Center by each such agency or department;
(D) the type of information and reports being disseminated by the Center;

(E) any efforts by the Center to create a centralized Federal Government database to store information related to unlawful travel of foreign nationals, including a description of any such database and of the manner in which information utilized in such a database would be collected, stored, and shared;
(F) how each agency and department shall utilize its resources to ensure that the Center uses intelligence to focus and drive its efforts;
(G) efforts to consolidate networked systems for the Center;
(H) the mechanisms for the sharing of homeland security information from the Center to the Office of Intelligence and Analysis, including how such sharing shall be consistent with section 485(b) of title 6;
(I) the ability of participating personnel in the Center to freely access necessary databases and share information regarding issues related to human smuggling, trafficking in persons, and terrorist travel;
(J) how the assignment of personnel to the Center is incorporated into the civil service career path of such personnel; and
(K) cooperation and coordination efforts, including any memorandums of understanding, among participating agencies and departments regarding issues related to human smuggling, trafficking in persons, and terrorist travel.

(h) Relationship to the NCTC
As part of its mission to combat terrorist travel, the Center shall work to support the efforts of the National Counterterrorism Center.

(i) Coordination with the Office of Intelligence and Analysis
The Office of Intelligence and Analysis, in coordination with the Center, shall submit to relevant State, local, and tribal law enforcement agencies periodic reports regarding terrorist threats related to human smuggling, human trafficking, and terrorist travel.

(1) Initial report
Not later than 180 days after December 17, 2004, the President shall transmit to Congress a report regarding the implementation of this section, including a description of the staffing and resource needs of the Center.

(2) Follow-up report
Not later than 180 days after August 3, 2007, the President shall transmit to Congress a report regarding the implementation of the Center and the activities carried out by the Center, including a description of—
(A) the roles and responsibilities of each agency or department that is participating in the Center;
(B) the mechanisms used to share information among each such agency or department;
§ 1778. Vulnerability and threat assessment

(a) Study

The Under Secretary of Homeland Security for Border and Transportation Security, in consultation with the Under Secretary of Homeland Security for Science and Technology and the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection, shall study the technology, equipment, and personnel needed to address security vulnerabilities within the United States for each field office of the Bureau of Customs and Border Protection that has responsibility for any portion of the United States borders with Canada and Mexico. The Under Secretary shall conduct follow-up studies at least once every 5 years.

(b) Report to Congress

The Under Secretary shall submit a report to Congress on the Under Secretary’s findings and conclusions from each study conducted under subsection (a) of this section together with legislative recommendations, as appropriate, for addressing any security vulnerabilities found by the study.

(c) Authorization of appropriations

There are authorized to be appropriated to the Department of Homeland Security Directorate of Border and Transportation Security such sums as may be necessary for fiscal years 2006 through 2011 to carry out any such recommendations from the first study conducted under subsection (a) of this section.


CODIFICATION

Section was enacted as part of the REAL ID Act of 2005, and also as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, and not as part of the Enhanced Border Security and Visa Entry Reform Act of 2002 which comprises this chapter.