

V. REQUIREMENTS FOR U.S. CITIZENSHIP, IMMIGRATION, AND VISAS

A. Overview

The Fourteenth Amendment to the U.S. Constitution defines citizens as “all persons born or naturalized in the United States and subject to the jurisdiction thereof.”¹⁷⁵ Citizenship also can be conferred individually or collectively by statute. For example, by statute, U.S. citizens include individuals born abroad to an American parent.¹⁷⁶

Noncitizens fall into three categories for purposes of U.S. immigration law. First, noncitizens who enter illegally or who violate the terms of their visa status are referred to as “unlawful” or “unauthorized.” Second, individuals who are admitted temporarily as visitors for a specific purpose are “nonimmigrants.”¹⁷⁷ Nonimmigrants are required to leave the country at the end of the time allotted them for the specific purpose.¹⁷⁸ Third, noncitizens who receive permission to live and work permanently in the United States are called by various names, including “immigrants,” “resident aliens,” “lawful permanent residents,” “permanent residents,” or may be referred to as “green card holders.”¹⁷⁹ Immigrants are not citizens but they are allowed to reside permanently within the United States, may apply for U.S. citizenship through the naturalization process, are able to work without restriction, with limited exceptions for government employment. All immigrants in the United States are protected by the Constitution, but the extent of that protection varies according to the status of their presence here. Similarly, all immigrants enjoy most of the statutory protections accorded by Federal and State law, but the extent of that protection also varies by alienage status.¹⁸⁰

A noncitizen seeking to enter the United States generally is required to present valid documentation for entry, usually a visa and a passport. These requirements, however, can be waived in certain circumstances. The Department of State and the INS form a “double check”

¹⁷⁵ U.S. Const. amend. XIV, sec. 1.

¹⁷⁶ 8 U.S.C. sec. 1401.

¹⁷⁷ See Congressional Research Service, CRS Report for Congress, *98-918: Immigration Fundamentals* (September 15, 1999) and Congressional Research Service, CRS Report for Congress, *RS20916: Immigration & Naturalization Fundamentals* (May 18, 2001).

¹⁷⁸ *Id.*

¹⁷⁹ Immigrants are defined as anyone who does not fall within one of the nonimmigrant classifications. 8 U.S.C. sec. 1101(a)(15).

¹⁸⁰ See Congressional Research Service, CRS Report for Congress, *98-918: Immigration Fundamentals* (September 15, 1999).

system for entry into the United States. The Department of State grants visas.¹⁸¹ The INS inspects individuals upon arrival at a port of entry and determines whether they are admitted into the country.¹⁸² There are many grounds for inadmissibility, including criminal history, security and public health considerations, the likelihood of becoming a public charge, and documentary requirements violations.¹⁸³ Some grounds can be waived.¹⁸⁴ Even for grounds that cannot be waived, an individual may be “paroled” into the United States for emergency or humanitarian reasons.¹⁸⁵

Among the grounds for inadmissibility is a provision that makes inadmissible former U.S. citizens who renounce their citizenship to avoid taxation.¹⁸⁶ Individuals seeking permanent resident status cannot obtain a waiver of this ground of inadmissibility and therefore, cannot return to the United States on a permanent basis. Individuals seeking to enter the United States temporarily, however, may obtain a waiver of this ground of inadmissibility.¹⁸⁷ Thus, while such individuals cannot establish permanent residency in the United States, they may receive a waiver to permit them to visit the United States as a nonimmigrant.

¹⁸¹ Under section 428 of the Homeland Security Act of 2002 (“Homeland Security Act”), Pub. Law 107-296, consular officers will continue to issue visas, but they will do so under the general supervision of the Secretary of Homeland Security. The Secretary of Homeland Security also will have general authority to refuse visas in accordance with immigration law, a power not currently given to the Secretary of State. The Secretary of State will retain authority to deny visas on foreign policy and national security grounds. The Homeland Security Act is not intended to fundamentally alter the immigration and nationality policy of the United States.

¹⁸² Under subtitle D of the Homeland Security Act, enforcement functions of the INS, including inspections, will be performed under the Bureau of Border Security, Department of Homeland Security.

¹⁸³ 8 U.S.C. sec. 1182(a).

¹⁸⁴ 8 U.S.C. sec. 1182(d), (h), (i), (k), (l).

¹⁸⁵ 8 U.S.C. sec. 1182(d)(5). A grant of parole is temporary permission to be present in the United States. The parolee is required to leave when the conditions supporting his or her parole cease to exist. Parole does not constitute formal admission into the country.

¹⁸⁶ Sec. 212(a)(10)(E) of the Immigration and Nationality Act (the “INA”); 8 U.S.C. sec. 1182(a)(10)(E).

¹⁸⁷ 8 U.S.C. sec. 1182(d)(3).

B. Acquisition and Loss of U.S. Citizenship

1. Acquisition of U.S. citizenship

An individual may obtain U.S. citizenship in one of four ways: (1) being born within the geographical boundaries of the United States and certain of its territories; (2) being born outside the United States to at least one U.S. citizen parent (as long as that parent had previously been resident in the United States for a requisite period of time); (3) through the naturalization process; or (4) by an act of Congress.¹⁸⁸ The Department of State estimates that there are approximately 3.78 million U.S. citizens living abroad, although thousands of these individuals may not even know that they are U.S. citizens.¹⁸⁹

2. Loss of U.S. citizenship

Seven acts

A U.S. citizen may voluntarily give up his or her U.S. citizenship at any time. Seven acts, which if performed voluntarily with the intention to relinquish U.S. nationality, will result in the loss of U.S. citizenship:

- (1) becoming naturalized in another country;
- (2) formally declaring allegiance to another country;
- (3) serving in a foreign army;
- (4) serving in certain types of foreign government employment if the individual is a national of the foreign country or if he or she takes an oath of allegiance to such foreign country;
- (5) making a formal renunciation of nationality before a U.S. diplomatic or consular officer in a foreign country;
- (6) making a formal renunciation of nationality in the United States during a time of war; or
- (7) committing an act of treason for which the individual is convicted.¹⁹⁰

¹⁸⁸ U.S. Const. amend. XIV, sec. 1; 8 U.S.C. sec. 1401.

¹⁸⁹ Bureau of Consular Affairs, Department of State, *Private American Citizens Residing Abroad* (July 1999). This does not include U.S. Government (military and nonmilitary) employees and their dependents.

¹⁹⁰ 8 U.S.C. sec. 1481(a).

An individual who wishes to renounce citizenship formally (item (5), above) must execute an Oath of Renunciation before a consular officer, and the individual's loss of citizenship is effective on the date the oath is executed. In all other cases, the loss of citizenship is effective on the date that the act of relinquishing citizenship is committed, even though the loss may not be documented until a later date. The Supreme Court has held that relinquishment of citizenship alone is an insufficient basis for revoking citizenship.¹⁹¹ Rather, the act of relinquishing citizenship must be done with the requisite intent.

A child under the age of 18 cannot lose U.S. citizenship by naturalizing in a foreign state, by taking an oath of allegiance to a foreign state, by serving in a foreign government, or by being convicted for an act of treason (a minor, probably would not be charged with this because he or she may not have the resources to commit this crime). A child under age 18 can, however, lose U.S. citizenship by serving in a foreign military or by formally renouncing citizenship, but such an individual may regain citizenship by asserting a claim of citizenship before reaching the age of 18 years and six months.¹⁹²

Certificates of loss of nationality

Generally, the Department of State documents a loss of citizenship on a certificate of loss of nationality ("CLN") when the individual acknowledges to a consular officer that relinquishment of citizenship was taken with the requisite intent. There is no obligation for an individual to obtain a CLN or otherwise notify the Department of State of relinquishing one's citizenship. When an individual acknowledges that the relinquishment of citizenship was done with the requisite intent, the consular officer abroad submits a CLN to the Department of State in Washington, D.C. for approval.¹⁹³ Upon approval, a copy of the CLN is issued to the affected individual.¹⁹⁴ The date upon which the CLN is approved is not the effective date for loss of citizenship. The loss of citizenship is effective on the date the relinquishment of citizenship occurs, if done with the requisite intent.

Before a CLN is issued, the Department of State reviews the individual's files to confirm that: (1) the individual was a U.S. citizen; (2) relinquishment of citizenship occurred; (3) relinquishment was undertaken voluntarily; and (4) the individual had the intent of relinquishing citizenship.¹⁹⁵ If the relinquishment of citizenship involved an action of a foreign government (for example, if the individual was naturalized in a foreign country or joined a foreign army), the

¹⁹¹ *Vance v. Terrazas*, 444 U.S. 252, 260 (1980).

¹⁹² An individual cannot regain his or her citizenship by asserting a claim of citizenship in this manner if he or she formally renounced citizenship during wartime. 8 U.S.C. sec. 1483(b).

¹⁹³ 8 U.S.C. sec. 1501; Department of State, 7 Foreign Affairs Manual, sec. 1221.

¹⁹⁴ Department of State, 7 Foreign Affairs Manual, sec. 1222.

¹⁹⁵ Department of State, 7 Foreign Affairs Manual, sec. 1211.

Department of State will not issue a CLN until it has obtained an official statement from the foreign government confirming the relinquishment of citizenship.¹⁹⁶

If a CLN is not issued because the Department of State does not believe that relinquishment of citizenship has occurred (for example, if the requisite intent appears to be lacking), the issue may be resolved through litigation, as any dispute about relinquishment of citizenship could lead to litigation. Whenever the loss of U.S. nationality is put in issue, the burden of proof is on the individual or party claiming that a loss of citizenship has occurred to establish, by a preponderance of the evidence, that the loss occurred.¹⁹⁷

Similarly, if a CLN has been issued, but the Department of State later discovers that such issuance was improper (for example, because fraudulent documentation was submitted, or the requisite intent appears to be lacking), the Department of State could initiate proceedings to revoke the CLN.¹⁹⁸ If the recipient is unable to establish beyond a preponderance of the evidence that citizenship was lost on the date claimed, the CLN would be revoked. To the extent that the IRS believes a CLN was improperly issued, the IRS could present such evidence to the Department of State and request that revocation proceedings be commenced.

Revocation of naturalized citizenship

In addition to relinquishment of citizenship, a naturalized U.S. citizen can have his or her citizenship involuntarily revoked. For revocation, a U.S. court must determine that the certificate of naturalization was illegally procured, or was procured by concealment of a material fact or by willful misrepresentation (for example, if the individual concealed the fact that he served as a concentration camp guard during World War II).¹⁹⁹ In such cases, the individual's certificate of naturalization is canceled, effective as of the original date of the certificate; in other words, it is as if the individual was never a U.S. citizen at all.

¹⁹⁶ Department of State, 7 Foreign Affairs Manual, sec. 1214 (“A potentially expatriating act should be documented by statements from the foreign government.”).

¹⁹⁷ 8 U.S.C. sec. 1481(b).

¹⁹⁸ See Department of State, 7 Foreign Affairs Manual, sec. 1231.

¹⁹⁹ See sec. 340(a) of the INA, 8 U.S.C. sec. 1451(a). See also *United States v. Demjanjuk*, 680 F.2d 32 (6th Cir. 1982), cert. denied, 459 U.S. 1036 (1982).

C. General Rules for U.S. Immigration and Visas for Noncitizens

If an individual relinquishes or loses his or her U.S. citizenship, he or she becomes a noncitizen subject to U.S. immigration laws should that individual decide to enter the United States. In general, a noncitizen who wishes to enter the United States must complete a two-step process. The first step involves issuance of a visa by a U.S. consular officer abroad. This step is followed by inspection and admission (or exclusion) by an INS inspector at the port or place of entry.

1. Role of the Department of State

Outside of the United States, noncitizens deal almost exclusively with the U.S. Consulate or Embassy in their home country.²⁰⁰ The U.S. consular officer has, within the confines of the law, almost complete discretion as to whom and under what circumstances a visa to the United States will be granted.²⁰¹ Furthermore, there is no appeal from a denial of a visa by the U.S. consul other than for interpretations of law.²⁰²

2. Role of the INS

The INS handles immigration matters with respect to noncitizens who are already in the United States. Currently, this agency is a division of the U.S. Department of Justice and operates through various regional and sub-regional offices throughout the United States.²⁰³ Regardless of how a noncitizen may have arrived in the United States, after entry he or she is under the jurisdiction of the INS.²⁰⁴

3. Acquisition and relinquishment of immigrant visas

An immigrant visa is issued to an individual who intends to relocate to the United States permanently. Stringent conditions apply to the admission of immigrants. Once admitted, however, immigrants are subject to few restrictions. They may accept and change employment, and may apply for U.S. citizenship through the naturalization process, generally after five years.

²⁰⁰ Ramon Carrion, *USA Immigration Guide* 11 (1998).

²⁰¹ Under the Homeland Security Act, consular officers will continue to issue visas, but they will do so under the general supervision of the Secretary of Homeland Security.

²⁰² Ramon Carrion, *USA Immigration Guide* 11 (1998).

²⁰³ The Homeland Security Act transfers the functions of the INS to the Department of Homeland Security. The INS is abolished upon this transfer. Within the Department of Homeland Security, immigration enforcement functions and the immigration services functions are transferred to separate entities. By law, these functions cannot subsequently be combined administratively.

²⁰⁴ *Id.*

Application process

Petitions for immigrant, i.e., long-term permanent resident status, are first filed with the INS by the sponsoring relative or employer in the United States.²⁰⁵ If the prospective immigrant is already residing in the United States, the INS handles the entire process, i.e., “adjustment of status.”²⁰⁶ If the prospective long-term permanent resident does not have legal residence in the United States, the petition is forwarded to Consular Affairs in their home country after the INS has reviewed it.²⁰⁷ The Consular Affairs Officer (when the immigrant is coming from abroad) and the INS adjudicator (when the immigrant is adjusting status in the United States) must be satisfied that the individual is entitled to immigrant status.²⁰⁸

A personal interview is required for all prospective long-term permanent residents.²⁰⁹ The burden of proof is on the applicant to establish eligibility for the type of visa for which the application is being made.²¹⁰ Consular Affairs Officers (when the immigrant is coming from abroad) and INS adjudicators (when the immigrant is adjusting status in the United States) must confirm that the immigrant is not ineligible for a visa under the so-called “grounds of inadmissibility” of the INA, which include criminal, terrorist, and public health grounds.²¹¹

Relinquishing permanent resident status

There are several ways in which permanent resident status can be relinquished. First, an individual who wishes to terminate his or her permanent residency may simply return his or her green card (or permanent resident card) to the INS. Second, an individual may be involuntarily deported from the United States (through a judicial or administrative proceeding) with the green card being canceled at that time. Third, a green card holder who leaves the United States and attempts to reenter more than a year later may have his or her green card taken away by the INS border examiner, although the individual may request a hearing before an immigration judge to have the green card reinstated. A green card holder may leave the United States permanently

²⁰⁵ See A-306, Congressional Research Service, CRS Report for Congress, RL31512: *Visa Issuances: Policy, Issues, and Legislation* (July 31, 2002).

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ 22 C.F.R. sec. 42.62.

²¹⁰ See A-306, Congressional Research Service, CRS Report for Congress, RL31512: *Visa Issuances: Policy, Issues, and Legislation* (July 31, 2002).

²¹¹ *Id.*

without relinquishing his or her green card, although the individual would continue to be taxed as a U.S. resident.²¹²

Tracking long-term permanent residents

Historically, there has been no statutory requirement that the INS track the movement of long-term permanent residents in and out of the United States. However, in connection with the implementation of section 402 of the Enhanced Border Security and Visa Reform Act of 2002, the INS proposes that long-term permanent resident arrivals and departures be tracked at air and seaports beginning in January 1, 2003.²¹³ The Arrival and Departure Information System (AIDS) would be the repository and retrieval mechanism for the arrival and departure data on all immigrants, including long-term permanent residents.²¹⁴ The long-term permanent resident's Alien Registration Receipt Number would serve as the identifier for retrieving the record.²¹⁵

4. Nonimmigrant visas

Types of nonimmigrant visas

Various types of nonimmigrant visas are issued to individuals who come to the United States on a temporary basis and intend to return home after a certain period of time.²¹⁶ The type of nonimmigrant visa issued to such individuals is dependent upon the purpose of the visit and its duration.²¹⁷ Nonimmigrants must demonstrate that they are coming for a limited period and for a

²¹² Section 7701(b)(6)(B) provides that an individual who has obtained the status of residing permanently in the United States as an immigrant (i.e., an individual who has obtained a green card) will continue to be taxed as a lawful permanent resident of the United States until such status is revoked or is administratively or judicially determined to have been abandoned.

²¹³ See A-143 (October 8, 2002, letter from the INS).

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ See A-284, Congressional Research Service, RL31381: *U.S. Immigration Policy on Temporary Admissions* (May 8, 2002). During fiscal year 1999 (the most recent year for which INS data are published), 31.4 million nonimmigrants entered the United States, of which 76.7 percent were tourists. Of that number, over 16 million nonimmigrants entered as visitors through the Visa Waiver Program.

²¹⁷ See sec. 101(a)(15) of the INA. There are 24 major nonimmigrant visa categories, and 70 specific types of nonimmigrant visas.

specific purpose.²¹⁸ An individual holding a nonimmigrant visa is prohibited from engaging in activities that are inconsistent with the purpose of the visa (for example, an individual holding a tourist visa is not permitted to obtain employment in the United States). A nonimmigrant is required to leave the country at the end of the time allotted his or her visa.

Nonimmigrant visas are available to the following categories of individuals: foreign diplomats (“A”); temporary business visitors (“B-1”); tourists (“B-2”); travelers in transit through the United States to another destination (“C”); crew members of foreign airlines or ships (“D”); treaty traders (“E-1”); treaty investors (“E-2”); students (“F”); representatives of international organizations (“G”); nurses, professionals in specialty occupations, temporary workers performing services unavailable in the United States, and participants in job training programs (“H”); employees of foreign media organizations (“I”); exchange visitors (“J”); fiances/fiancées of U.S. citizens (“K”); intracompany transferees (“L”); vocational and other nonacademic students (“M”); certain present or former employees of international organizations, their parents and siblings (“N”); representatives of NATO member states (“NATO” visas); individuals with extraordinary abilities in sciences, arts, education, business or athletics (“O”); internationally recognized athletes and entertainers (“P”); participants in international cultural exchange programs (“Q”); religious workers (“R”), informants or witnesses against a criminal or terrorist organization or enterprise (“S”), NAFTA professionals or their immediate families (“TN” or “TD”), victims of human trafficking or their immediate family (“T-1” or “T-2”), victims or informants of criminal activity or their spouse or child (“U-1” or “U-2”), and the spouse of a long-term permanent resident who has a petition pending for three years or longer or a child of a long-term permanent resident (“V-1” or “V-2” or “V-3”). For most of these categories, a qualifying individual and his or her spouse and minor children are eligible for the category of visa involved.

Foreign business people and investors often obtain “E” visas to come into the United States. Generally, an “E” visa is initially granted for a two-year period, but it can be routinely extended for additional two-year periods. There is no overall limit on the amount of time an individual may retain an “E” visa. There are two types of “E” visas: an “E-1” visa, for “treaty traders” and an “E-2” visa, for “treaty investors.” To qualify for an “E-1” visa, an individual must be a national of a country that has a treaty of trade with the United States, and must be coming to the United States solely to engage in substantial trade principally between the United States and that country. Trade includes the import and export of goods or services. Nationals of that country must own at least 50 percent of the foreign-based company, and at least 50 percent of the shareholders must have an “E-1” or “E-2” visa and live in the United States (thus, an individual holding a green card would not be counted, or if they live outside the United States, could be classified as “E-1” or “E-2”). Over 50 percent of the individual’s business must be between the United States and the foreign company. To qualify for an “E-2” visa, an individual (or a company of which he or she is an executive, manager, or essential employee) must be a national of a country that has a treaty investor agreement with the United States, and must be coming to the United States solely to develop and direct the operations of an enterprise in which he has invested, or is actively in the process of investing, a substantial amount of capital.

²¹⁸ *Id.*

Application process

The burden of proof is on the applicant to establish eligibility for nonimmigrant status and the type of nonimmigrant visa for which the application is being made. The Consular Affairs Officer, at the time of application for a visa, and INS inspectors, at the time of application for admission, must be satisfied that the applicant is entitled to nonimmigrant status.²¹⁹ An application for a nonimmigrant visa usually is made at the consular post abroad where the applicant resides.²²⁰ Generally, the applicant is required to appear personally, although this requirement may be waived, especially for “B” visitor visas.²²¹ Application for a nonimmigrant visa is made on form DS-156 (or supplemental form DS-157 for certain applicants). This is a short form requiring information regarding the purpose of the applicant’s trip. Photographs and such other documents as the consul may request are also required.²²²

Ordinarily, tourist visas are issued almost immediately, usually without the need for supporting documents.²²³ A treaty trader visa, on the other hand, requires documentation to show that the substantive requirements have been met.²²⁴ Other visas, such as the temporary worker and intracompany transferee visas require prior approval of a visa petition by the INS.²²⁵

The primary inquiry for a nonimmigrant visa centers on whether the applicant truly intends to enter the United States temporarily for the purposes contemplated by the visa category. If the applicant cannot satisfactorily prove this intent, the application is denied.²²⁶ The application also is denied if the individual is inadmissible under the statutory grounds for inadmissibility, unless the disqualification can be waived. Waivers are discussed below.

The nonimmigrant visa is endorsed or inserted on a page of the passport or equivalent document.²²⁷ The visa includes the date and place of issuance, the visa classification, the limited number of entries for which it is valid or the letter “M” for unlimited entries, and the period of

²¹⁹ See 22 C.F.R. sec. 41.11(a). See also A-306, Congressional Research Service, CRS Report for Congress, RL31512: *Visa Issuances: Policy, Issues, and Legislation* (July 31, 2002).

²²⁰ 22 C.F.R. sec. 41.101.

²²¹ 22 C.F.R. sec. 41.102.

²²² 22 C.F.R. sec. 41.103.

²²³ Gordon, Mailman, & Yale-Loehr, *Immigration Law & Procedure*, sec. 8.04, *Control of Entry*, at 8-8 (May 2002).

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ 22 C.F.R. sec. 41.11.

²²⁷ 22 C.F.R. sec. 41.113.

validity.²²⁸ The length of time for which an individual is admitted to the United States does not necessarily correspond to the period of the validity of the visa.²²⁹ The INS inspector sets the admission period at the time of admission.

5. U.S. port of entry inspection

Ports of entry are found along the United States land border and at international airports and seaports. Noncitizens make their application for admission at these ports of entry and undergo inspection. Alternatively, a noncitizen may undergo a pre-inspection (inspection before departure or en route) instead of an inspection upon arrival.²³⁰ For example, individuals departing by airplane for New York from Montreal or Toronto, Canada, usually are pre-inspected by U.S. Government personnel.²³¹

The primary inspection involves an examination of documents (usually a passport and a visa) and an interrogation. Usually the inspector asks about the applicant's purpose in coming, how long he or she intends to stay, and any other information bearing on admissibility.²³² The primary inspector also notes visually and by the applicant's answers whether there are any physical or mental afflictions that would render the applicant inadmissible and indicate the need for a Public Health Service examination.²³³ The inspector might also consult the "lookout" book or computer to note whether there is negative information bearing on admissibility.²³⁴ The thoroughness of the examination depends on the circumstances and the place.

An applicant who is not clearly admissible usually is referred for a "secondary inspection."²³⁵ At this point, more probing questions are asked to determine whether the applicant intends to work or remain in the country indefinitely or whether there are other grounds for denying admission. The inspector also may conduct a search of the individual and of his or

²²⁸ 22 C.F.R. sec. 41.113(c).

²²⁹ 22 C.F.R. sec. 41.112(a).

²³⁰ 8 C.F.R. sec. 235.7. There are also automated or expedited systems of inspection at certain ports of entry that have an identifiable group of low-risk border crossers.

²³¹ Gordon, Mailman & Yale-Loehr, *Immigration Law & Procedure*, sec. 8.05[2][b], *Manner of Inspection* at 8-12 (May 2002).

²³² *Id.*, at sec. 805[2][c] at 8-12.

²³³ *Id.*

²³⁴ The operation of the various lookout systems is described below.

²³⁵ Gordon, Mailman & Yale-Loehr, *Immigration Law & Procedure*, sec. 8.05[2][b], *Manner of Inspection* at 8-13 (May 2002).

her personal effects if the officer reasonably suspects that such a search would disclose grounds for inadmissibility.²³⁶

If the inspector remains uncertain, or there is a likelihood that a ground for inadmissibility would be waived by a district director, the applicant may be subject to a “deferred inspection,” also known as “deferred inspection parole.” A deferred inspection is conducted at the local INS office having jurisdiction. At some time during that process, a disposition is made. The applicant can be:

- (1) admitted (either by being found admissible, or if possible, having the ground of inadmissibility waived);
- (2) allowed to withdraw the application for admission and depart;
- (3) paroled into the United States;
- (4) temporarily removed for decision by the regional commissioner as to further action;
- (5) summarily removed under the expedited removal procedure; or
- (6) held or paroled for a removal hearing.²³⁷

6. Grounds of inadmissibility

The concept of inadmissibility can arise when noncitizens appear at the U.S. consulate and apply for a visa, or at a port of entry (e.g., airport, seaport, or other entry point). Noncitizens must satisfy the consular officers abroad and the INS inspectors upon entry to the United States that they are eligible for visas, or admission, and not subject to the “grounds of inadmissibility” of the INA. Thus, a U.S. consular office may deny a visa petition because the consular office believes that one or more grounds of inadmissibility may apply. If a noncitizen has a visa, the INS inspector at the border may deny them entry to the United States on the basis that one or more grounds of inadmissibility might apply.

The grounds of inadmissibility include: criminal history, security and terrorist concerns, health-related grounds, seeking to work without proper labor certification, illegal entrants and immigration law violations, ineligibility for citizenship, previous removal, the likelihood of becoming a public charge (e.g., indigence), and violations of documentary requirements.²³⁸ In addition, individuals are inadmissible if they are former U.S. citizens who renounce their

²³⁶ 8 U.S.C. sec. 1357(c).

²³⁷ Gordon, Mailman & Yale-Lochr, *Immigration Law & Procedure*, sec. 8.05[2][d], *Secondary or Deferred Inspection* at 8-13 (May 2002). The concepts of parole and waiver are discussed below.

²³⁸ 8 U.S.C. sec. 1182(a).

citizenship for purposes of tax avoidance as determined by the Attorney General.²³⁹ This latter ground of inadmissibility is discussed in more detail below.

7. Detecting inadmissibility: Department of State and INS lookout systems

(a) Department of State

The Department of State uses a computer database, the Consular Lookout Security System (“CLASS”), to screen and deny visas to individuals who are inadmissible to the United States.²⁴⁰ CLASS is used to screen overseas visa applicants for criminal and terrorist backgrounds. CLASS is essentially a “watch list” that contains names of suspected terrorists. Through an information exchange program between the Departments of State and Justice, noncitizens who have been deported or who are known to be inadmissible are placed in CLASS.²⁴¹ Also placed in CLASS are the names of individuals known to have engaged in acts that may indicate a loss of U.S. nationality and thus ineligibility.²⁴²

Similarly, the Department of State uses the “TIPOFF” system, which includes a “watch list” of suspected terrorists.²⁴³ TIPOFF provides information on suspected terrorists who should be watched closely. TIPOFF is unique in that it gathers its information directly from the intelligence community as well as law enforcement agencies.

(b) INS

INS utilizes a computer database called the InterBorder Agency Inspection System (“IBIS”), which includes components of CLASS.²⁴⁴ At the port of entry, the inspector accomplishes an IBIS inquiry by entering an individual’s passport number into the system.²⁴⁵ IBIS is a broad system that interfaces with various FBI databases, Department of Treasury databases, and the Department of State’s CLASS and TIPOFF databases. Due to this interface capability, the IBIS is able to obtain such information as whether a noncitizen is admissible, any criminal information, and whether a noncitizen is wanted by law enforcement.

²³⁹ 8 U.S.C. sec. 1182(a)(10)(E).

²⁴⁰ Congressional Research Service, CRS Report for Congress, RL31019: *Terrorism: Automated Lookout Systems and Border Security Options and Issues* (June 18, 2001). See A-14, (March 31, 2000, Memorandum from the CRS to the Joint Committee staff).

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.* Machine-readable passports for countries in the visa waiver program are not required until October 1, 2003.

The INS also utilizes a computer database called the National Automated Immigration Lookout System (“NAILS”), which is a “watch list” of noncitizens who are inadmissible for entry to the United States. NAILS is a text-based system that feeds into IBIS and is used by INS inspectors during primary inspections. NAILS contains limited information about questionable noncitizens such as biographical data and some criminal history. NAILS interfaces with IBIS and CLASS.

The INS maintains a Computer Linked Application Information Management System (“CLAIMS”), which indicates whether an individual has been granted a waiver of inadmissibility in the course of pursuing an immigration benefit, such as admission or adjustment status. For non-criminal waivers, the INS does not currently maintain statistics regarding the number of waivers of inadmissibility granted by type.²⁴⁶

The INS also maintains a computer database called the Central Index System (“CIS”), which contains records long-term permanent residents whose status has been revoked or has been administratively or judicially determined to have been abandoned.²⁴⁷ The records are retrieved using the long-term permanent resident’s alien registration number. The information contained in the CIS is not shared with the IRS, nor is the CIS accessible by the IRS. The CIS contains the immigrant’s date of birth, the country of origin, and the date that the INS determines that the long-term permanent resident abandoned residence, Form I-94 control number, and a social security number in some instances.

The INS’s Nonimmigrant Information System (“NIIS”) provides limited data on the arrival and departures of nonimmigrants admitted for short visits, as well as a nonimmigrant’s stated destination in the United States. The NIIS is primarily accessed by a combined name, date of birth, or country of birth, and Form I-94 control number. The NIIS interfaces with IBIS, NAILS, and CIS.

INS computer systems are generally based on alien registration numbers, arrival/departure dates, or application or petition receipt numbers.

8. Waivers of inadmissibility

The INS has not implemented a system that maintains statistics regarding the number of waivers of inadmissibility granted by type in the context of non-criminal waivers.²⁴⁸ The INS

²⁴⁶ See A-143 (October 8, 2002, letter from the INS to the Joint Committee staff). As part of a larger project, the INS is consolidating many of the forms currently used to apply for various criminal and non-criminal waivers under new Form I-724 series. Each form in the series would address separate grounds of inadmissibility and as a result, the INS would be able to compile more accurate statistics on the number of waivers sought for each ground of inadmissibility, as well as the number of approval and denials.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

also does not maintain statistics on the number of waivers sought for each ground of inadmissibility, including the number of approval and denials.²⁴⁹ The following represents the total number of waivers granted for all grounds of inadmissibility.²⁵⁰

Type of Waiver	FY 00	FY 01	FY 02 (through May 02)
Visa/Passport	20,688	21,181	5,761
Non-Criminal	6,718	8,819	5,874
Criminal	4,415	4,864	3,968
Total	31,821	34,864	15,603

Nonimmigrant documentary waivers – in general

As a general rule, to be eligible for a nonimmigrant visa, a noncitizen must have a passport valid for six months beyond the dates of travel. For admission as a nonimmigrant, the passport and either a valid nonimmigrant visa or nonimmigrant border crossing identification card must be provided.²⁵¹ There are exemptions from this rule by statute and international agreement; there also is authority to waive either or both of the documentary requirements.²⁵² The law grants to the Attorney General and the Secretary of State, acting jointly, power to waive the visa or the passport requirements,²⁵³ or both, on the basis of:

- (1) unforeseen emergency in individual cases;
- (2) reciprocity for nationals of foreign contiguous territories (Canada and Mexico) or adjacent islands; or
- (3) immediate and continuous transit through the United States as passengers of carriers that have executed certain contracts.

By regulation, a blanket waiver of the need for a visa, the passport requirements, or both, applies to certain groups of nonimmigrants. Although covered by the waiver, a nonimmigrant

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ 8 U.S.C. sec. 1182(a)(7)(B)(i).

²⁵² 8 U.S.C. sec. 1182(d)(4).

²⁵³ The Homeland Security Act transfers immigration functions of both the Attorney General and the Secretary of State to the Department of Homeland Security.

may still apply for and receive a visa. The following identifies the groups for which a blanket waiver of part or all of the documentary requirements has been made by regulation:²⁵⁴

- (1) Canadian nationals;
- (2) Residents in Canada or Bermuda having a common nationality with Canadians or with British subjects in Bermuda;²⁵⁵
- (3) A resident of the Cayman Islands or the Turks or Caicos Islands who is a British subject and arrives directly from one of these places with a current certificate from its Clerk of the Court indicating no criminal record;
- (4) Bahamian nationals or British subjects residing in the Bahamas if the U.S. immigration officer at Freeport or Nassau finds the individual admissible “clearly and beyond a doubt in all other respects;”
- (5) British, French, or Netherlands nationals who reside in the respective insular possessions of those countries in the Caribbean area;
- (6) Nationals of Jamaica, Barbados, Grenada, or Trinidad and Tobago proceeding to the United States as an agricultural worker or going to the U.S. Virgin Islands on a valid labor certification;
- (7) Nationals and residents of the British Virgin Islands under certain conditions;
- (8) Mexican nationals if: (a) they possess a border crossing card; (b) they are applying for temporary admission for business or pleasure and are coming from a contiguous territory; (c) they are crewmen on a Mexican commercial aircraft; (d) they are entering solely to apply for a Mexican passport or other documents at a

²⁵⁴ See generally, 8 C.F.R. sec. 212.1; 22 C.F.R. sec. 41.2. See Department of State, 9 Foreign Affairs Manual, sec. 41.2.

²⁵⁵ This waiver includes citizens of all commonwealth countries and citizens of Ireland. The commonwealth countries are: Antigua, Australia, the Bahamas, Bangladesh, Barbados, Belize, Botswana, Canada, Cyprus, Dominica, Fiji, Gambia, Ghana, Grenada, Guyana, India, Ireland, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, St. Kitts and Nevis, St. Lucia, St. Vincent, Seychelles, Sierra Leone, Singapore, Solomon Islands, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Kingdom (including colonies, territories, and dependencies), Vanuatu, Western Samoa, Zambia, and Zimbabwe. A passport is not required for these individuals except after a visit outside the Western Hemisphere. Citizenship, as opposed to residency, is required. A resident who is the bearer of a certificate of identity or other stateless individual’s document issued by the government of one of these countries may not benefit from the waiver. See A-274, Department of State, 9 Foreign Affairs Manual sec. 41.2 N1.1, Exhibit I.

Mexican consular office in the United States; (e) they are Mexican Federal Government officials on a temporary assignment and accompanying family bearing a diplomatic passport; or (f) entering pursuant to the International Boundary and Water Commission Treaty.

- (9) Citizens of the Republic of the Marshall Islands and the Federated States of Micronesia;
- (10) Citizens of certain Pacific Rim countries under certain conditions;
- (11) Noncitizens in immediate and continuous transit through the United States, except for nationals of certain countries;
- (12) Unforeseen emergencies; and
- (13) Nonimmigrant fiancée spouses and children of U.S. citizens.

Special rules for Canada and Mexico

Citizens of Canada, Mexico, and certain islands in close proximity to the United States do not need visas to enter the United States, although other types of travel documents may be required. A non-resident border crossing identification card can be issued by either a consular or immigration officer to a resident in a foreign contiguous territory.²⁵⁶ This provision facilitates the entry of pre-screened residents of Canada and Mexico who enter the United States frequently. Under the INS regulations, a Canadian border-crossing card may be issued to and used by a citizen of Canada or a British subject residing in Canada.²⁵⁷ The Mexican border-crossing card is only issued to residents of Mexico who are also citizens of that country.²⁵⁸

Returning lawful permanent residents

Lawful permanent residents returning from a temporary visit abroad generally do not need a visa to reenter the United States. The lawful permanent resident must be returning to an unrelinquished permanent residence in the United States on a green card within a year of departure, or a reentry permit within two years.

Waiver of nonimmigrant documents in individual cases

A nonimmigrant not qualifying for the blanket waiver may make an application to the INS district director in charge of the port of entry showing that the failure to comply with the

²⁵⁶ 8 U.S.C. sec. 1101(a)(6).

²⁵⁷ 8 C.F.R. sec. 212.6.

²⁵⁸ *Id.*

documentary requirements was due to unforeseen emergency.²⁵⁹ The process also may be initiated by a consular officer or officer of the visa office by transmitting the pertinent information to the appropriate immigration officer, requesting concurrence.²⁶⁰

Visa Waiver Program

The Visa Waiver Program was established as a temporary program by the Immigration Reform and Control Act of 1986.²⁶¹ Congress periodically enacted legislation to extend the program's authorization, and the program was made permanent in 2000.

On October 30, 2000, the Visa Waiver Permanent Program Act was signed into law.²⁶² To qualify for the Visa Waiver Program, a country must: (1) offer reciprocal privileges to the United States; (2) have had a nonimmigrant refusal rate of less than 3 percent for the previous year or an average of no more than 2 percent over the past 2 fiscal years with neither year going above 2.5 percent; (3) certify that the country issues, or will issue by October 1, 2003, machine-readable passports; and (4) be determined, by the Attorney General, in consultation with the Secretary of State, not to compromise the law enforcement or security interest of the United States by its inclusion in the program.²⁶³

Under this program, nonimmigrants from certain countries are admitted to the United States without a visa.²⁶⁴ Temporary visitors for business or pleasure (tourists) from participating countries simply complete an admission form before their arrival and are admitted for up to 90 days. No background checks are done prior to arrival. At the port of entry, INS inspectors observe and question applicants, examine applicants, examine passports, and conduct checks

²⁵⁹ 8 U.S.C. sec. 1182(d)(4)(A). Emergency circumstances are discussed at 22 C.F.R. sec. 41.3(d) and 8 C.F.R. sec. 212.1(g).

²⁶⁰ 8 C.F.R. sec. 212.1(j) and 22 C.F.R. sec. 41.3.

²⁶¹ Pub. L. No. 99-603.

²⁶² Pub. L. No. 106-396.

²⁶³ See A-274, Department of State, 9 Foreign Affairs Manual, sec. 41.2, Exhibit II.

²⁶⁴ See A-278, Congressional Research Service, RS21205: *Immigration: Visa Waiver Program* (April 22, 2002). As of April 2002, 28 countries were eligible to participate in the Visa Waiver Program: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Lichtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, and Uruguay. Argentina was removed from the Visa Waiver Program in February 2002 because of a recent economic collapse causing Argentine nationals to remain illegally past the 90-day period of admission.

against a computerized system to determine whether the applicant is admissible to the United States.²⁶⁵ This is the only opportunity to identify inadmissible noncitizens.

However, there are several important restrictions, namely, noncitizens entering through the Visa Waiver Program are not permitted to extend their stays except for emergency reasons and then for only 30 days.²⁶⁶ Additionally, with some limited exceptions, noncitizens entering through the Visa Waiver Program are not permitted to adjust status.²⁶⁷ Noncitizens entering through the Visa Waiver Program who violate the terms of admission become deportable without any judicial recourse or review (except in asylum cases).²⁶⁸

Waiver of substantive inadmissibility for nonimmigrants

The provisions of the INA²⁶⁹ that render certain noncitizens ineligible to receive visas apply to nonimmigrants as well as to immigrants.²⁷⁰ The Attorney General, however, is given discretionary power to waive these substantive grounds of inadmissibility with respect to nonimmigrants, except for certain security and related grounds.²⁷¹ Applications are evaluated on a case-by-case basis. Factors considered in determining whether to approve a waiver include:

- (1) The effect on U.S. public interests if the applicant is admitted;
- (2) The seriousness of the actions or conditions causing inadmissibility; and
- (3) The reasons for wishing to enter the United States.²⁷² (There is no need to show a compelling reason for the visit.)

²⁶⁵ *Id.* Although nonimmigrants who enter under the Visa Waiver Program do not need a visa, all visa waiver program applicants are issued nonimmigrant visa waiver arrival/departure forms (Form I-94W).

²⁶⁶ *Id.* This provision was amended by P.L. No. 106-406, to provide extended voluntary departure to nonimmigrants who enter under the Visa Waiver Program and require medical treatment. Normally, nonimmigrants entering with a “B” visa may petition to extend their length of stay in the United States or may petition to change to another nonimmigrant or immigrant status.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ Sec. 212(a).

²⁷⁰ 8 U.S.C. sec. 1182(a).

²⁷¹ 8 U.S.C. sec. 1182(d)(3).

²⁷² *See* Department of State, 9 Foreign Affairs Manual, sec. 40.301 n.3.

When applying for a visa

In connection with a visa application, the Attorney General can grant a waiver only upon recommendation of the Secretary of State or the consular officer.²⁷³ The recommendation for waiver must furnish detailed information concerning the grounds of inadmissibility, the date of intended arrival and length of stay in the United States, the purpose of such stay, the number of intended entries, and the justification for the waiver.²⁷⁴ The consular officer or other Department of State official is notified of the decision on the recommendation. No appeal from an adverse decision is allowed.²⁷⁵ If the Attorney General grants the waiver, the consular office may proceed with the issuance of the visa, subject to the conditions imposed by the Attorney General.²⁷⁶

At the port of entry

If a noncitizen does not require a visa, the procedure differs. The application for exercise of the waiver authority is submitted to the INS district director in charge of the intended port of entry prior to arrival in the United States.²⁷⁷ The application details the ground for inadmissibility and the basis for the requested waiver. If the application is not made until arrival, the applicant must establish that he or she was not aware of the ground for inadmissibility and could not have learned of it by reasonable diligence.²⁷⁸

The applicant receives notice of the INS district director's decision and, if the application is denied, of the reasons and of the right to appeal within 15 days.²⁷⁹ The denial of the application is without prejudice to its renewal in exclusion proceedings.²⁸⁰

Each waiver authorization specifies the sections of law under which the individual is inadmissible, the intended date of each arrival and the length and purposes of each authorized stay, the number of entries and length of time for which the authorization is valid, and the basis

²⁷³ See sec. 212(d)(3)(A) of the INA, 8 U.S.C. sec. 1182(d)(3)(A). The Homeland Security Act transfers immigration functions of both the Attorney General and the Secretary of State to the Department of Homeland Security.

²⁷⁴ 8 C.F.R. sec. 212.4(a).

²⁷⁵ *Id.*

²⁷⁶ 22 C.F.R. sec. 40.301(c).

²⁷⁷ 8 C.F.R. sec. 212.4(b).

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

for the waiver approval.²⁸¹ An authorization issued in connection with border crossing cards is valid for multiple entries during the period of validity of the card. Multiple entry authorizations (except for crewman and border crossing cards) are valid for one year, except that a longer period of validity may be permitted upon recommendation of the Department of State.²⁸² A single entry authorization is valid for a maximum of six months.²⁸³ All admissions under such waivers are subject to the terms and conditions set forth in the authorization. Each authorization specifies that it is subject to revocation at any time.²⁸⁴

9. Parole

The INS may parole individuals “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.”²⁸⁵ A grant of parole is temporary permission to be present in the United States and requires parolees to leave when the conditions supporting their parole cease to exist. Parole does not constitute a formal admission into the country.

In general, the parole authority allows the INS to respond to individual cases that present problems for which no remedies, such as waiver, are available elsewhere in the Immigration and Nationality Act. Since fiscal year 1992, the INS has used six categories of parole.²⁸⁶

- (1) Port of entry parole.—This category is used most often. It applies to a wide variety of situations and is used at the discretion of the supervisory inspector, usually to allow short periods of entry. Examples include allowing otherwise inadmissible individuals to attend a funeral and permitting the entry of emergency workers, such as fire fighters, to assist with an emergency.
- (2) Advance parole.—Advance parole may be issued to individuals legally residing in the United States other than as lawful permanent residents, who need to travel abroad and return, and whose conditions of stay do not allow for routine reentry. The most common example is an individual whose application for adjustment to lawful permanent resident status is in process.
- (3) Deferred inspection parole.—This type of parole may be conferred by an INS inspector when noncitizens appear at a port of entry with documentation, but after preliminary examination, some question remains about their admissibility that can

²⁸¹ 8 C.F.R. sec. 212.4(c).

²⁸² 8 C.F.R. sec. 212.4(c)(7).

²⁸³ *Id.*

²⁸⁴ 8 C.F.R. sec. 212.4(c)(7) and (h).

²⁸⁵ 8 U.S.C. sec. 1182(d)(5).

²⁸⁶ Immigration and Naturalization Service, *Report to Congress: Use of the Attorney General's Parole Authority Under the Immigration and Nationality Act* (September 3, 2002).

best be answered at their point of destination.²⁸⁷ In the case of deferred inspection, the inspecting officer at the port of entry cannot make a final determination because necessary information is not available. Instead an appointment is made for the noncitizen to appear at a local INS office, where more information is available and the inspection can be completed.

- (4) Humanitarian parole.—This category is reserved for individuals who need specialized medical care in the United States or because a severe medical condition makes detention or deportation of an otherwise inadmissible individual inappropriate.
- (5) Public interest parole.—Public interest parole is intended for use with noncitizens who enter to take part in legal proceedings, either as witnesses or defendants.
- (6) Overseas parole.—Some noncitizens are issued parole overseas after their applications for refugee status have been denied. This is the only category that is designed to constitute long-term admission to the United States. In recent years, most of the individuals INS has processed through overseas parole have arrived under special legislation or international migration agreements.

10. Admission to the United States: arrival and departure records

Form I-94 is an arrival and departure record that serves as evidence of lawful admission and noncitizen registration. If a noncitizen is admitted, one part of Form I-94 is issued to that individual, endorsed with the date and place of admission, the nonimmigrant classification, and the period for which admission is authorized.²⁸⁸ The other part of Form I-94 is retained for the records of the INS.

The part of Form I-94 designated as “Departure Record” is surrendered to a representative of the transportation company when the individual leaves the United States. The document is then returned to the INS as part of its departure manifest. This record confirms the fact and date of departure.²⁸⁹

The requirement that a completed Form I-94 be issued applies to every admitted nonimmigrant with certain exceptions. These exceptions include entries by Canadian citizens and British subjects residing in Canada or Bermuda who are entering the United States as visitors

²⁸⁷ From January 1, 2000, through April 30, 2002, 25,114 individuals were paroled for deferred inspection. See A-143 (October 8, 2002, letter from the INS).

²⁸⁸ The period of admission need not correspond to the length of the visa’s validity. The passport is also stamped with the word “Admitted” and the date and place of admission.

²⁸⁹ A nonimmigrant who will be making frequent entries into the United States over its land borders may be issued a Form I-94 valid for multiple entries during a six-month period.

for business or pleasure for less than six months.²⁹⁰ Under certain circumstances, the exceptions also include Mexican visitors and government officials, and residents of the British Virgin Islands admitted only for a visit to the U.S. Virgin Islands.²⁹¹

²⁹⁰ 8 C.F.R. sec. 235.1(f)(i).

²⁹¹ *Id.*

D. Inadmissibility of Tax-Motivated Former U.S. Citizens

1. The immigration provision

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 prohibited individuals who renounce U.S. citizenship for purposes of avoiding taxation from entering the United States:

Any alien who is a former citizen of the United States who officially renounces 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.²⁹²

The immigration provision was introduced as an amendment to H.R. 2202, the Immigration in the National Interest Act of 1995, during a markup of the bill before the House Committee on the Judiciary. Then-Representative Jack Reed introduced the measure that would deem inadmissible to the United States former U.S. citizens who renounced their citizenship for purposes of tax avoidance. He stated:

This legislation would simply state that if you [renounce your U.S. citizenship for purposes of tax avoidance], and there's no attempt by this legislation to prevent someone from renouncing their citizenship, you would not be able to return to the United States.²⁹³

An example of a wealthy individual who had renounced citizenship but desired to continue residing in the United States was used to illustrate the problem the amendment sought to address. It was noted that such individual had convinced a foreign government to appoint, or propose to appoint, the individual as a representative to the United States. In discussing the amendment, it was noted that “[t]he government of the United States should not reward those that renounce citizenship by granting them the privileges of residency.”

Opponents criticized the measure on three grounds.²⁹⁴ First, opponents found the amendment too punitive. Second, it was noted that it would be difficult to ascertain precisely why someone renounced citizenship. Finally, opponents believed the measure gave too much discretion to the Attorney General to determine whether the renunciation was for tax avoidance.

Despite this criticism, the amendment was approved by the House Committee on the Judiciary by a vote of 25 to 5 and ultimately became part of the Immigration and Nationality Act at section 212(a)(10)(E), 8 U.S.C. sec. 1182(a)(10)(E).

²⁹² Illegal Immigration Reform and Immigrant Responsibility Act, P.L. No. 104-208, Division C, sec. 352(a), 110 Stat. 3009-641 (1996).

²⁹³ Federal Information Systems Corporation, Transcript 952970478, *Hearing of the House Judiciary Committee, Subject: Mark-Up of Immigration Legislation* (October 24, 1995).

²⁹⁴ *Id.*

2. Attorney General access to return information

The immigration provision requires the Attorney General to determine whether a former citizen renounced his or her U.S. citizenship for tax avoidance purposes.²⁹⁵ However, the ability of the Attorney General to access tax returns or return information for purposes of making this determination is limited under the Code. Section 6103 prohibits the disclosure of returns and return information unless an exception authorizing the disclosure is provided for in the Code. The willful unauthorized disclosure of a return or return information is a felony.²⁹⁶ No explicit exception exists to facilitate the operation of the immigration provision without the Attorney General first obtaining the consent of the taxpayer whose information is being sought. Thus, even if the IRS made a determination that an individual's relinquishment of citizenship was tax-motivated, that information could not be shared with the Attorney General in the absence of the taxpayer's consent.

3. Availability of waivers

The immigration provision acts as an absolute bar to a former U.S. citizen's obtaining a green card. No waiver of inadmissibility is available for individuals seeking immigrant status.

Nonimmigrants, however, can seek a waiver of inadmissibility. Thus, the provision does not bar a tax-motivated former U.S. citizen from ever entering the United States. If a waiver can be obtained, such individual may enter the United States for a limited period of time per visit.

4. Effect of the immigration provision on admissibility

No former U.S. citizens have been found inadmissible under section 212(a)(10)(E) of the INA since its enactment on September 30, 1996. The INS, Department of Justice, the Department of Treasury, the IRS, and the Department of State have been working to develop administrative guidelines and procedures regulations necessary to implement section 212(a)(10)(E) of the INA. This effort has been hampered by the lack of coordination among the various agencies.

²⁹⁵ Under the Homeland Security Act, this authority of the Attorney General will reside in the Department of Homeland Security.

²⁹⁶ Sec. 7213(a).