

Public Law 87-301

AN ACT

To amend the Immigration and Nationality Act; and for other purposes.

September 26, 1961
[S. 2237]

Alien orphans,
entry.
66 Stat. 166.

"Eligible or-
phan".

73 Stat. 644.
8 USC 1155.

66 Stat. 171; 71
Stat. 639.

Nonquota status;
petitions.
73 Stat. 644.

8 USC 1101.

8 USC 1153.

Supra.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 101(b) of the Immigration and Nationality Act (8 U.S.C. 1101) is hereby amended by adding the following new subparagraph (6):

"(6) The term 'eligible orphan' means any alien child under the age of fourteen at the time at which the visa petition is filed pursuant to section 205(b) who is an orphan because of the death or disappearance of both parents, or because of abandonment, or desertion by, or separation or loss from, both parents, or who has only one parent due to the death or disappearance of, abandonment, or desertion by, or separation or loss from the other parent, and the remaining parent is incapable of providing care for such orphan and has in writing irrevocably released him for emigration and adoption."

SEC. 2. Section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101) is hereby amended by adding the following:

"(F) a child who is an eligible orphan, adopted abroad by a United States citizen and spouse or coming to the United States for adoption by a United States citizen and spouse: *Provided*, 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 Act."

SEC. 3. (a) Section 205(b) of the Immigration and Nationality Act (8 U.S.C. 1155) is hereby amended to read as follows:

"(b) Any citizen of the United States claiming that any immigrant is his spouse or child and that such immigrant is entitled to a nonquota immigrant status under section 101(a)(27)(A), or any citizen of the United States claiming that any immigrant is his parent or unmarried son or unmarried daughter and that such immigrant is entitled to a quota immigrant status under section 203(a)(2), or any alien lawfully admitted for permanent residence claiming that any immigrant is his spouse or his unmarried son or his unmarried daughter and that such immigrant is entitled to a quota immigrant status under section 203(a)(3), or any citizen of the United States claiming that any immigrant is his brother or sister or his married son or his married daughter and that such immigrant is entitled to a preference under section 203(a)(4) may file a petition with the Attorney General. No petition for quota immigrant status or a preference in behalf of a son or daughter under paragraph (2), (3), or (4) of section 203(a) of the Immigration and Nationality Act shall be approved by the Attorney General unless the petitioner establishes that he is a parent as defined in section 101(b)(2) of the Immigration and Nationality Act of the alien in respect to whom the petition is made, except that no such petition shall be approved if the beneficiary thereof is an alien defined in section 101(b)(1)(F). No petition for nonquota immigrant status in behalf of a child as defined in section 101(b)(1)(F) shall be approved by the Attorney General unless the petitioner establishes to the satisfaction of the Attorney General that the petitioner and spouse will care for such child properly if he is admitted to the United States, and (i) in the case of a child adopted abroad, that the petitioner and spouse personally saw and observed the child prior to or during the adoption proceedings, and (ii) in the case of a child coming to the United States for adoption, that the petitioner and spouse have complied with the preadoption requirements, if any, of the State of such child's proposed residence. The petition shall be in

such form and shall contain such information and be supported by such documentary evidence as the Attorney General may by regulations prescribe. The petition shall be made under oath administered by any individual having authority to administer oaths, if executed in the United States, but, if executed outside the United States, administered by an immigration officer or a consular officer."

(b) The second sentence of section 205(c) of the Immigration and Nationality Act (8 U.S.C. 1155) is hereby amended to read: "Not more than two such petitions may be approved for one petitioner in behalf of a child as defined in section 101(b)(1)(E) or (F), unless necessary to prevent the separation of brothers and sisters."

SEC. 4. The first sentence of section 221(c) of the Immigration and Nationality Act (8 U.S.C. 1201) is hereby amended to read: "An immigrant visa shall be valid for such period, not exceeding four months, as shall be by regulations prescribed, except that any visa issued to a child lawfully adopted by a United States citizen and spouse while such citizen is serving abroad in the United States Armed Forces, or is employed abroad by the United States Government, or is temporarily abroad on business, shall be valid until such time, for a period not to exceed three years, as the adoptive citizen parent returns to the United States in due course of his service, employment, or business."

SEC. 5. (a) Title I of the Immigration and Nationality Act (8 U.S.C. 1101) is hereby amended by adding the following:

"JUDICIAL REVIEW OF ORDERS OF DEPORTATION AND EXCLUSION

"SEC. 106. (a) The procedure prescribed by, and all the provisions of the Act of December 29, 1950, as amended (64 Stat. 1129; 68 Stat. 961; 5 U.S.C. 1031 et seq.), shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings under section 242(b) of this Act or comparable provisions of any prior Act, except that—

"(1) a petition for review may be filed not later than six months from the date of the final deportation order or from the effective date of this section, whichever is the later.

"(2) the venue of any petition for review under this section shall be in the judicial circuit in which the administrative proceedings before a special inquiry officer were conducted in whole or in part, or in the judicial circuit wherein is the residence, as defined in this Act, of the petitioner, but not in more than one circuit;

"(3) the action shall be brought against the Immigration and Naturalization Service, as respondent. Service of the petition to review shall be made upon the Attorney General of the United States and upon the official of the Immigration and Naturalization Service in charge of the Service district in which the office of the clerk of the court is located. The service of the petition for review upon such official of the Service shall stay the deportation of the alien pending determination of the petition by the court, unless the court otherwise directs;

"(4) except as provided in clause (B) of paragraph (5) of this subsection, the petition shall be determined solely upon the administrative record upon which the deportation order is based and the Attorney General's findings of fact, if supported by rea-

73 Stat. 645.

71 Stat. 639;
Ante, p. 650.
8 USC 1101.
Visas.
Period of validity.

66 Stat. 191.

8 USC 1101-1105.

66 Stat. 208.
8 USC 1252.

sonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive;

"(5) whenever any petitioner, who seeks review of an order under this section, claims to be a national of the United States and makes a showing that his claim is not frivolous, the court shall (A) pass upon the issues presented when it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or (B) where a genuine issue of material fact as to the petitioner's nationality is presented, transfer the proceedings to a United States district court for the district where the petitioner has his residence for hearing de novo of the nationality claim and determination as if such proceedings were originally initiated in the district court under the provisions of section 2201 of title 28, United States Code. Any such petitioner shall not be entitled to have such issue determined under section 360(a) of this Act or otherwise;

"(6) if the validity of a deportation order has not been judicially determined, its validity may be challenged in a criminal proceeding against the alien for violation of subsection (d) or (e) of section 242 of this Act only by separate motion for judicial review before trial. Such motion shall be determined by the court without a jury and before the trial of the general issue. Whenever a claim to United States nationality is made in such motion, and in the opinion of the court, a genuine issue of material fact as to the alien's nationality is presented, the court shall accord him a hearing de novo on the nationality claim and determine that issue as if proceedings had been initiated under the provisions of section 2201 of title 28, United States Code. Any such alien shall not be entitled to have such issue determined under section 360(a) of this Act or otherwise. If no such hearing de novo as to nationality is conducted, the determination shall be made solely upon the administrative record upon which the deportation order is based and the Attorney General's findings of fact, if supported by reasonable, substantial and probative evidence on the record considered as a whole, shall be conclusive. If the deportation order is held invalid, the court shall dismiss the indictment and the United States shall have the right to appeal to the court of appeals within thirty days. The procedure on such appeals shall be as provided in the Federal rules of criminal procedure. No petition for review under this section may be filed by any alien during the pendency of a criminal proceeding against such alien for violation of subsection (d) or (e) of section 242 of this Act;

"(7) nothing in this section shall be construed to require the Attorney General to defer deportation of an alien after the issuance of a deportation order because of the right of judicial review of the order granted by this section, or to relieve any alien from compliance with subsections (d) and (e) of section 242 of this Act. Nothing contained in this section shall be construed to preclude the Attorney General from detaining or continuing to detain an alien or from taking him into custody pursuant to subsection (c) of section 242 of this Act at any time after the issuance of a deportation order;

"(8) it shall not be necessary to print the record or any part thereof, or the briefs, and the court shall review the proceedings on a typewritten record and on typewritten briefs; and

"(9) any alien held in custody pursuant to an order of deportation may obtain judicial review thereof by habeas corpus proceedings.

8 USC 1252.

62 Stat. 964.

66 Stat. 273.
8 USC 1503.

"(b) Notwithstanding the provisions of any other law, any alien against whom a final order of exclusion has been made heretofore or hereafter under the provisions of section 236 of this Act or comparable provisions of any prior Act may obtain judicial review of such order by habeas corpus proceedings and not otherwise.

66 Stat. 200.
8 USC 1226.

"(c) An order of deportation or of exclusion shall not be reviewed by any court if the alien has not exhausted the administrative remedies available to him as of right under the immigration laws and regulations or if he has departed from the United States after the issuance of the order. Every petition for review or for habeas corpus shall state whether the validity of the order has been upheld in any prior judicial proceeding, and, if so, the nature and date thereof, and the court in which such proceeding took place. No petition for review or for habeas corpus shall be entertained if the validity of the order has been previously determined in any civil or criminal proceeding, unless the petition presents grounds which the court finds could not have been presented in such prior proceeding, or the court finds that the remedy provided by such prior proceeding was inadequate or ineffective to test the validity of the order."

(b) This section shall take effect on the thirtieth day after its approval and, notwithstanding the provisions of any other law, including section 405 of the Immigration and Nationality Act, shall then be applicable to all administrative proceedings involving deportation or exclusion of aliens notwithstanding (1) that the person involved entered the United States prior to the effective date of this section or of the Immigration and Nationality Act or (2) that the administrative proceeding was commenced or conducted prior to the effective date of this section or of the Immigration and Nationality Act. Any judicial proceeding to review an order of deportation which is pending unheard in any district court of the United States on the effective date of this section (other than a habeas corpus or criminal proceeding in which the validity of the deportation order has been challenged) shall be transferred for determination in accordance with this section to the court of appeals having jurisdiction to entertain a petition for review under this section. Any judicial proceeding to review an order of exclusion which is pending unheard on the effective date of this section shall be expedited in the same manner as is required in habeas corpus. All laws or parts of laws inconsistent with this section are, to the extent of such inconsistency, repealed. If any particular provision of this section, or the application thereof to any person or circumstance, is held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

Effective date.
8 USC 1101 note.

Pending judicial proceedings.

Separability.

SEC. 6. Section 222 of the Immigration and Nationality Act (8 U.S.C. 1202) is hereby amended by deleting from subsection (a) the language "race and ethnic classification;" and by deleting from subsection (c) the language "his race and ethnic classification:".

Application for visas.
66 Stat. 193.

SEC. 7. (a) Section 101(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1101) is hereby amended by inserting immediately after "December 31, 1946," the following: "or from June 25, 1950, to July 1, 1955."

"Veteran".
66 Stat. 166.

(b) Section 101(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1101) is hereby amended (1) by striking out "and (C)" and inserting in lieu thereof "(C)", and (2) by inserting immediately after "December 31, 1946" the following: "; and (D) the term 'Korean hostilities' relates to the period from June 25, 1950, to July 1, 1955".

Naturalization
through military
service.
66 Stat. 250.

SEC. 8. (a) Section 329(a) of the Immigration and Nationality Act (8 U.S.C. 1440) is amended by inserting after "December 31, 1946," the following: "or during a period beginning June 25, 1950; and ending July 1, 1955."

(b) Section 329(b) (4) of the Immigration and Nationality Act (8 U.S.C. 1440) is hereby amended by inserting after "December 31, 1946," the following: "or during a period beginning June 25, 1950, and ending July 1, 1955."

Revision of
quotas.
66 Stat. 176.

SEC. 9. Section 202(e) of the Immigration and Nationality Act (8 U.S.C. 1152) is hereby amended to read as follows:

"(e) After the determination of quotas has been made as provided in section 201, revision of the quotas shall be made by the Secretary of State, the Secretary of Commerce, and the Attorney General, jointly, whenever necessary, to provide for any change of boundaries resulting in transfer of territory from one sovereignty to another, a change of administrative arrangements of a colony or other dependent area, or any other political change, requiring a change in the list of quota areas or of the territorial limits thereof. In the case of any change in the territorial limits of quota areas, not requiring a change in the quotas for such areas, the Secretary of State shall, upon recognition of such change, issue appropriate instructions to all consular offices concerning the change in the territorial limits of the quota areas involved. Whenever one or more colonies or other component or dependent areas overseas from the governing country, or one or more quota areas have been subject to a change of administrative arrangements, a change of boundaries, or any other political change, the annual quota of the newly established quota area or the number of visas authorized to be issued under section 202(c) (1), notwithstanding any other provisions of this Act, shall not be less than the sum total of quotas in effect or number of visas authorized for the area immediately preceding the change of administrative arrangements, change of boundaries, or other political change."

66 Stat. 180;73
Stat. 645.

SEC. 10. Section 205(c) of the Immigration and Nationality Act (8 U.S.C. 1155) is hereby amended by adding at the end thereof the following new sentence: "Notwithstanding the provisions of this subsection, no petition shall be approved if the alien previously has been accorded, by reason of marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws—

8 USC 1101.

"(1) a nonquota status under section 101(a) (27) (A) as the spouse of a citizen of the United States, or

8 USC 1153.

"(2) a preference quota status under section 203(a) (3) as the spouse of an alien lawfully admitted for permanent residence."

Tubercular
aliens.
66 Stat. 182.

SEC. 11. Section 212(a) (6) of the Immigration and Nationality Act (8 U.S.C. 1182) is hereby amended to read as follows:

"(6) Aliens who are afflicted with any dangerous contagious disease;"

SEC. 12. Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is hereby amended by adding the following additional subsection:

"(f) Any alien afflicted with tuberculosis in any form who (A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa, or (B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa, shall, if otherwise admissible, be issued a visa and admitted to the United States for per-

manent residence in accordance with such terms, conditions, and controls, if any, including the giving of a bond, as the Attorney General, in his discretion after consultation with the Surgeon General of the United States Public Health Service, may by regulations prescribe."

SEC. 13. Section 212(a) (9) of the Immigration and Nationality Act (8 U.S.C. 1182) is hereby amended by changing the semicolon at the end to a period, and adding thereafter the following: "Any alien who would be excludable because of the conviction of a misdemeanor classifiable as a petty offense under the provisions of section 1(3) of title 18, United States Code, by reason of the punishment actually imposed, or who would be excludable as one who admits the commission of an offense that is classifiable as a misdemeanor under the provisions of section 1(2) of title 18, United States Code, 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."

Petty offenses.

62 Stat. 684.

SEC. 14. Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is hereby amended by adding the following additional subsection:

Excludable
aliens.
66 Stat. 182.

"(g) Any alien, who is excludable from the United States under paragraphs (9), (10), or (12) of this section, who (A) is the spouse or child, including a minor unmarried adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or (B) has a son or daughter who is a United States citizen or an alien lawfully admitted for permanent residence, shall, if otherwise admissible, be issued a visa and admitted to the United States for permanent residence (1) if it shall be established to the satisfaction of the Attorney General that (A) the alien's exclusion would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, or son or daughter of such alien, and (B) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States; and (2) if the Attorney General, in his discretion, and pursuant to such terms, conditions, and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa and for admission to the United States."

SEC. 15. Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is hereby amended by adding the following additional subsection:

Procurement of
visas by fraud, etc.

"(h) Any alien who is the spouse, parent, or child of a United States citizen or of an alien lawfully admitted for permanent residence and who is excludable because (1) he seeks, has sought to procure, or has procured, a visa or other documentation, or entry into the United States, by fraud or misrepresentation, or (2) he admits the commission of perjury in connection therewith, may be granted a visa and admitted to the United States for permanent residence, if otherwise admissible, if the Attorney General in his discretion has consented to the alien's applying or reapplying for a visa and for admission to the United States."

SEC. 16. Section 241 of the Immigration and Nationality Act (8 U.S.C. 1251) is hereby amended by adding the following:

Deportable
aliens.
66 Stat. 204.

"(f) The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a

child of a United States citizen or of an alien lawfully admitted for permanent residence.”

Jurisdiction to naturalize.
66 Stat. 239.

8 USC 1101 note.

SEC. 17. Section 310 of the Immigration and Nationality Act (8 U.S.C. 1421) is hereby amended by adding the following additional subsection:

“(e) Notwithstanding the provisions of section 405(a), any petition for naturalization filed on or after the enactment of this subsection shall be heard and determined in accordance with the requirements of this title.”

Revocation of naturalization.
68 Stat. 1232.

SEC. 18. (a) Section 340(a) of the Immigration and Nationality Act (66 Stat. 260; 8 U.S.C. 1451(a)) is hereby amended by inserting, following the language “that such order and certificate of naturalization” the language “were illegally procured or”.

(b) Section 340(b) of the Immigration and Nationality Act (66 Stat. 260; 8 U.S.C. 1451(b)) is hereby amended by inserting, immediately preceding the word “procured”, the language “illegally procured or”.

Loss of nationality.
66 Stat. 267.

SEC. 19. Section 349 of the Immigration and Nationality Act (8 U.S.C. 1481) is hereby amended by adding the following subsection:

“(c) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (b), any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this 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.”

66 Stat. 271.

SEC. 20. Section 354(4) of the Immigration and Nationality Act (8 U.S.C. 1486) is hereby amended to read as follows:

“(4) who has attained the age of sixty years, and has had a residence outside the United States and its outlying possessions for not less than ten years, during all of which period he has been engaged in an occupation of the type designated in paragraphs (1), (2), or (4) of section 353, or paragraph (2) of this section, and who is in bona fide retirement from such occupation; or who is the spouse or child of the national described in this paragraph and who has his residence abroad for the purpose of being with such American citizen spouse or parent; or”.

8 USC 1485.

66 Stat. 163.

SEC. 21. The language “CHAPTER 3—ISSUANCE OF ENTRY DOCUMENTS” of the table of contents of the Immigration and Nationality Act, as amended, is hereby amended to read as follows:

“CHAPTER 3—ISSUANCE OF ENTRY DOCUMENTS”

66 Stat. 182.

SEC. 22. (a) The title preceding section 212 of the Immigration and Nationality Act, as amended, is hereby amended to read as follows:

“GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION; WAIVERS OF INADMISSIBILITY”

66 Stat. 250.

(b) The title preceding section 329 of the Immigration and Nationality Act, as amended, is amended to read as follows:

“NATURALIZATION THROUGH ACTIVE-DUTY SERVICE IN ARMED FORCES DURING WORLD WAR I OR WORLD WAR II OR THE KOREAN HOSTILITIES”

SEC. 23. (a) The table of contents (TITLE I—GENERAL) of the Immigration and Nationality Act is hereby amended by adding the following:

66 Stat. 163.

“Sec. 106. Judicial review of orders of deportation and exclusion.”

(b) Section 212 of the table of contents of the Immigration and Nationality Act is hereby amended to read as follows:

66 Stat. 163.

“Sec. 212. General classes of aliens ineligible to receive visas and excluded from admission; waivers of inadmissibility.”

(c) Section 329 of the table of contents of the Immigration and Nationality Act, is hereby amended to read as follows:

66 Stat. 165.

“Sec. 329. Naturalization through active-duty service in Armed Forces during World War I or World War II or the Korean hostilities.”

SEC. 24. (a) The following Acts and all amendments thereto and parts of Acts and all amendments thereto are repealed:

Repeals.

(1) Section 4 of the Act of September 3, 1954 (68 Stat. 1145; 8 U.S.C. 1182a);

(2) Section 4 of the Act of September 11, 1957 (71 Stat. 639-640; 8 U.S.C. 1205);

(3) Sections 5, 6, and 7 of the Act of September 11, 1957 (71 Stat. 640-641; 8 U.S.C. 1182b; 8 U.S.C. 1182c; 8 U.S.C. 1251a);

(4) Section 15 of the Act of September 11, 1957 (71 Stat. 643-644; 50 U.S.C. App. 1971a, note);

(5) Sections 9 and 12 of the Act of September 11, 1957 (71 Stat. 641-642; 8 U.S.C. 1255a; 8 U.S.C. 1154, note);

(6) Section 2 of the Act of August 21, 1958 (72 Stat. 699; 8 U.S.C. 1255; 8 U.S.C. 1153, note);

(7) Sections 4 and 6 of the Act of September 22, 1959 (73 Stat. 644-645; 8 U.S.C. 1153, note).

(b) Paragraphs (4), (5), (6), and (7) of subsection (a) of this section shall take effect upon the expiration of the one hundred and eightieth day immediately following the date of enactment of this Act.

Effective date.

SEC. 25. (a) Any alien eligible for a quota immigrant status under the provisions of section 203(a) (2) or (3) of the Immigration and Nationality Act on the basis of a petition filed with the Attorney General prior to July 1, 1961, shall be held to be a nonquota immigrant and, if otherwise admissible under the provisions of that Act, shall be issued a nonquota immigrant visa: *Provided*, That, upon his application for an immigrant visa, and for admission to the United States, the alien is found to have retained his relationship to the petitioner, and status, as established in the approved petition.

Nonquota immigrant visas.

66 Stat. 178; 73 Stat. 644. 8 USC 1153.

(b) At any time prior to the expiration of the one hundred and eightieth day immediately following the enactment of this Act a special nonquota immigrant visa may be issued to an eligible orphan as defined in section 4 of the Act of September 11, 1957, as amended (8 U.S.C. 1205; 71 Stat. 639, 73 Stat. 490, 74 Stat. 505), if a visa petition filed in behalf of such eligible orphan was (A) approved by the Attorney General prior to September 30, 1961, or (B) pending before the Attorney General prior to September 30, 1961, and the Attorney General approves such petition.

Eligible orphan.

Approved September 26, 1961.

Military Government, Army Reserve
For construction, expansion, rehabilitation, and conversion of facilities for the training and administration of the Army Reserve as authorized by chapter 136 of title 10, United States Code, as amended, the Reserve Forces Facilities Act, and such additional