TITLE 8—ALIENS AND NATIONALITY

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 Repealed or Omitted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and, in addition to certain specific repeals thereby, all acts or parts of acts in conflict with its provisions were repealed by former section 904 of this title.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Section 1, relating to citizenship of persons born in the United States, was repealed by act Oct. 14, 1940, ch. 876, title I, subch.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. 1174. It was from R.S. § 1992, which was revised from act Apr. 9, 1866, ch. 31, § 1, 14 Stat. 27. Similar provisions were contained in former section 601(a) of this title. See section 1401 of this title.

Section 2, relating to citizenship of persons born in Territory of Oregon, was from R.S. § 1905, which was revised from act Apr. 18, 1867, ch. 172, § 3, 17 Stat. 134.


Section 4, relating to citizenship of Hawaiians, was from act Apr. 30, 1900, ch. 339, § 31, 31 Stat. 141. See section 1465 of this title.

Sections 5 and 5a, relating to citizenship of Puerto Ricans, were from act Mar. 2, 1917, ch. 145, §§ 5, 5a, respectively, 39 Stat. 953, as amended Mar. 4, 1927, ch. 503, § 2, 44 Stat. 1418; May 17, 1932, ch. 190, 47 Stat. 138. See section 1402 of this title.

Section 5a-1, making a further extension of time for Puerto Ricans to become citizens in cases of misinformation regarding status, was repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1174. It was from act May 16, 1938, ch. 225, 52 Stat. 377. See section 1402 of this title.

Sections 5b and 5c, relating to citizenship of inhabitants of the Virgin Islands, were from act Feb. 25, 1927, ch. 192, §§ 1, 2, respectively, 44 Stat. 1234, 1235, as amended May 17, 1932, ch. 190, 47 Stat. 138; June 28, 1932, ch. 283, § 5, 47 Stat. 336. See section 1406 of this title.

Sections 5d to 9a were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504. Sections 5d and 5e, relating to citizenship of persons born in Canal Zone or Panama, were from act Apr. 8, 1937, ch. 435, § 1, 50 Stat. 155. Section 7, relating to citizenship of persons naturalized under certain laws, was from R.S. § 2172, which was revised from act Apr. 14, 1862, ch. 28, § 4, 2 Stat. 155. Section 8, relating to citizenship, upon parent’s naturalization, of children born abroad of alien parents, was from act Mar. 2, 1907, ch. 2354, § 5, 34 Stat. 1229, as amended May 24, 1904, ch. 341, § 1, 31 Stat. 797. See sections 1431 to 1433 of this title. Section 7, relating to citizenship of children of persons naturalized under certain laws, was from R.S. § 2172, which was revised from act Apr. 14, 1862, ch. 28, § 4, 2 Stat. 155. Section 8, relating to citizenship, upon parent’s naturalization, of children born abroad of alien parents, was from act Mar. 2, 1907, ch. 2354, § 5, 34 Stat. 1229, as amended May 24, 1904, ch. 341, § 1, 31 Stat. 797. See sections 1431 to 1433 of this title.

Sections 9 to 12, relating to citizenship of women citizens as affected by marriage, was from acts Sept. 22, 1922, ch. 411, § 3(a), 42 Stat. 1022; July 3, 1930, ch. 635, § 1, 46 Stat. 659; Mar. 3, 1901, ch. 442, § 4(a), 31 Stat. 1511; 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, 1940, ch. 509, 54 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, § 6, 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 were formerly transferred to sections 1971 and 1972, respectively, of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as sections 10101 and 10102, respectively, of Title 52, Voting and Elections.

CHAPTER 2—ELECTIVE FRANCHISE

§§ 31, 32. Transferred

Codification

Sections 31 and 32 were formerly transferred to sections 1971 and 1972, respectively, of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as sections 10101 and 10102, respectively, of Title 52, Voting and Elections.

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, 1873, ch. 114, § 4, 18 Stat. 338, 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 1989, 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. § 2352, related to continuation of laws then in force.

Section 62, R.S. § 2353, 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. § 2307, 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, 1887, 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

Section 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:


... (continued as above)


Section, acts Aug. 18, 1894, ch. 301, § 1, 28 Stat. 301; Aug. 1, 1914, ch. 229, § 1, 38 Stat. 606; June 5, 1920, ch. 235, § 1, 41 Stat. 936, provided for appointment of commissioners of immigration at the several ports.


Section 109, acts Feb. 5, 1917, ch. 29, § 24, 39 Stat. 893; June 10, 1921, ch. 18, § 304, 42 Stat. 24; May 29, 1928, ch. 864, § 504, 45 Stat. 854; Feb. 21, 1931, ch. 270, § 1205; May 2, 1952, ch. 156, § 145; June 20, 1942, ch. 426, § 373, related to officers and employees. See sections 1103(a) and 1303 of this title.

§§ 109a to 109d. Transferred


§§ 111. Transferred

CODIFICATION

Section 111 transferred to section 1554 of this title.

§§ 112. Omitted

CODIFICATION

Section, act Mar. 4, 1915, ch. 147, § 1, 38 Stat. 1151; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2423, 54 Stat. 1238, which related to employment of officers and clerks enforcing alien contract labor laws, was transferred to section 342c of former Title 5, Executive Departments and Government Officers and Employees, and subsequently eliminated from the Code on enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378. See section 1193 of this title.


§§ 114. Omitted

CODIFICATION

Section, act Aug. 15, 1919, ch. 50, 41 Stat. 280; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2423, 54 Stat. 1238, authorized lease for other than governmental purposes of Charleston immigration station and dock connected therewith. It was also classified to section 342k of former Title 5, Executive Departments and Government Officers and Employees, and subsequently eliminated from the Code on enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.


Section 115, act Feb. 5, 1917, ch. 29, § 26, 39 Stat. 894, related to disposal of privileges at immigrant stations. See section 1355(a) of this title.


§§ 117, 118. Omitted

CODIFICATION

$131 Omitted

CODIFICATION
Section, act Sept. 22, 1922, ch. 411, § 8, as added July 3, 1930; ch. 826, 46 Stat. 849, provided as follows: ‘‘(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
Act May 24, 1934, ch. 344, § 4, 48 Stat. 798, 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 137–1, acts Oct. 16, 1918, ch. 186; § 2, 40 Stat. 1012; June 28, 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 1102(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, ch. 1024, title I, § 22, 64 Stat. 1006, related to temporary exclusion of suspects, subversive aliens and penalties. See sections 1102, 1102, 1225, 1225, 1326 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:

Section 133a, acts Oct. 19, 1888, ch. 1210, § 1, 25 Stat. 566; Oct. 16, 1889, ch. 213, § 1, 25 Stat. 626; Sept. 22, 1890, ch. 1022, § 1, 25 Stat. 690; June 12, 1907, ch. 1024, § 1, 34 Stat. 228, related to exclusion of aliens and penalties. See sections 1102, 1102, 1225, 1225, 1326 and 1327 of this title.

Section 133b, acts Oct. 19, 1888, ch. 1210, § 1, 25 Stat. 566; Sept. 22, 1890, ch. 1022, § 1, 34 Stat. 228, related to recordation of entry for permanent residence.

Section 133c, acts Oct. 19, 1888, ch. 1210, § 1, 25 Stat. 566; Aug. 30, 1888, ch. 213, § 1, 25 Stat. 626, related to exceptions as to certain aliens seeking temporary entrance. See section 1102(d)(2) of this title.

Section 133d, 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.

Section 133e, act Oct. 16, 1918, ch. 186; § 4, as added Sept. 23, 1950, ch. 1024, title I, § 22, 64 Stat. 1006, related to deportation of subversive aliens.

Sections 133f to 133l, acts Oct. 16, 1918, ch. 186, §§ 5–9, as added Sept. 23, 1950, ch. 1024, title I, § 22, 64 Stat. 1006, related to temporary exclusion of suspects, subversive aliens and penalties. See sections 1102, 1102, 1225, 1225, 1326 and 1327 of this title.

Section 133m, act Mar. 28, 1951, ch. 23, § 1, 65 Stat. 28, related to clarification of immigration status of certain aliens.

Section 133n, act Mar. 28, 1951, ch. 23, § 2, 65 Stat. 28, related to recordation of entry for permanent residence.
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; March 4, 1917, ch. 108, § 11, 40 Stat. 606, 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 13, 1917, ch. 130, § 37, 40 Stat. 443, related in aliens subject to disability or afflicted with disease. See section 1322 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; July 24, 1924, ch. 439, title II, § 20, 44 Stat. 671; Dec. 19, 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 1351 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, 1950, ch. 1052, ch. III, 64 Stat. 1048, related to deportation or exclusion proceedings unaffected by the Administrative Procedure Act.


Section 156a, acts Feb. 18, 1931, ch. 224, 46 Stat. 1171; 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).


§ 174. Omitted


Section 175, act Feb. 5, 1917, ch. 29, § 1, 39 Stat. 874, related to application of laws to Philippine Islands.

Section 176, act Mar. 15, 1914, ch. 70, § 1, 38 Stat. 435, related to disposition of moneys received or paid for detention of aliens. See section 1356(a) of this title.


Section 178, act Feb. 5, 1917, ch. 29, § 38, 39 Stat. 897, provided for the effective date of the act of Feb. 5, 1917, repealed specified provisions, and set forth laws unaffected by the enactment of this act.

Section 179, act May 26, 1923, ch. 190, § 21(b), 43 Stat. 165, related to blank forms of manifest and crew lists. See section 1326(b) of this title.

Sections 180a to 180d, act Mar. 4, 1929, ch. 690, §§ 1(a)-(c), 45 Stat. 1551; June 24, 1929, ch. 40, 46 Stat. 41, related to reentry or attempted reentry of deported aliens. See sections 1101(g) and 1326 of this title.

Sections 180a to 180d, act Mar. 4, 1929, ch. 690, §§ 2-5, 45 Stat. 1551, 1552, related to reentry of deported aliens. See sections 1101(g) and 1326 of this title.
TITLE 8—ALIENS AND NATIONALITY

§§ 201 to 204

SUBCHAPTER III—QUOTA AND NONQUOTA
IMMIGRANTS
§§ 201 to 204. Repealed. June 27, 1952, ch. 477,
title IV, § 403(a)(23), (24), 66 Stat. 279, eff.
Dec. 24, 1952
Section 201, act May 26, 1924, ch. 190, § 1, 43 Stat. 153,
related to short title.
Section 202, acts May 26, 1924, ch. 190, § 2, 43 Stat. 153;
Section 203, acts May 26, 1924, ch. 190, § 3, 43 Stat. 154;
July 6, 1932, ch. 434, 47 Stat. 607; July 1, 1940, ch. 502, § 1,
54 Stat. 711; Dec. 29, 1945, ch. 652, title I, § 7(c), 59 Stat.
672, defined immigrant. See section 1101 of this title.
Section 204, acts May 26, 1924, ch. 190, § 4, 43 Stat. 155;
July 3, 1926, ch. 738, § 1, 44 Stat. 812; May 29, 1928, ch. 914,
§§ 1, 2, 45 Stat. 1009; July 3, 1930, ch. 835, § 3, 46 Stat. 854;
July 11, 1932, ch. 471, § 1, 47 Stat. 656; May 19, 1948, ch.
311, § 1, 62 Stat. 241, defined nonquota immigrant. See
section 1101 of this title.

§§ 204a, 204b. Omitted
CODIFICATION
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 204b of this title provided that section 204a should
not apply after June 28, 1934.

§§ 204c to 219. Repealed. June 27, 1952, ch. 477,
title IV, § 403(a)(23), (36), (44), (45), 66 Stat.
279, 280, eff. Dec. 24, 1952
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.
Section 206, acts May 26, 1924, ch. 190, § 6, 43 Stat. 155;
471, § 2, 47 Stat. 656; May 19, 1948, ch. 311, § 2, 62 Stat. 241,
related to enumeration of preferences within quotas.
Section 207, act May 26, 1924, ch. 190, § 7, 43 Stat. 156,
related to application for visas.
Section 208, act May 26, 1924, ch. 190, § 8, 43 Stat. 156,
related to nonquota immigration visas.
Section 209, acts May 26, 1924, ch. 190, § 9, 43 Stat. 157;
May 14, 1937, ch. 182, § 1, 50 Stat. 164, related to visas of
nonquota and preferred immigrants.
Section 210, acts May 26, 1924, ch. 190, § 10, 43 Stat. 158;
Section 211, acts May 26, 1924, ch. 190, § 11, 43 Stat. 159;
Mar. 4, 1927, ch. 514, 44 Stat. 1455; Mar. 31, 1928, ch. 306,
45 Stat. 400, related to immigration quotas as determined by national origin.
Section 212, act May 26, 1924, ch. 190, § 12, 43 Stat. 160,
related to determination of nationality. See section
1152 of this title.
Section 212a, acts Dec. 17, 1943, ch. 344, § 2, 57 Stat. 601;
Aug. 9, 1946, ch. 945, § 2, 60 Stat. 975, related to reentry
permits for Chinese persons.
Section 212b, act July 2, 1946, ch. 534, § 4, 60 Stat. 417,
related to reentry permits for Indians and races indigenous to India.
Section 212c, act July 2, 1946, ch. 534, § 5, 60 Stat. 417,
related to definitions and allocations of quota.
Section 213, acts May 26, 1924, ch. 190, § 13, 43 Stat. 161;
June 13, 1930, ch. 476, 46 Stat. 581; May 14, 1937, ch. 182,
§ 2, 50 Stat. 165; Aug. 9, 1946, ch. 945, § 1, 60 Stat. 975, related to compliance with immigration requirements.
Section 213a, act May 14, 1937, ch. 182, § 3, 50 Stat. 165,
related to deportation of alien securing visa through
fraudulent marriage.
Section 214, act May 26, 1924, ch. 190, § 14, 43 Stat. 162,
related to deportation and procedure thereunder.

Page 6

Section 215, acts May 26, 1924, ch. 190, § 15, 43 Stat. 162;
July 1, 1932, ch. 363, 47 Stat. 524; July 1, 1940, ch. 502, § 2,
672, related to admission of persons excepted from definition of immigrant and nonquota immigrants.
Section 216, acts May 26, 1924, ch. 190, § 16, 43 Stat. 163;
Dec. 19, 1944, ch. 608, § 3, 58 Stat. 817, related to unlawful
bringing of aliens into United States by water.
Section 217, act May 26, 1924, ch. 190, § 17, 43 Stat. 163,
related to contracts with transportation lines.
Section 218, act May 26, 1924, ch. 190, § 18, 43 Stat. 164,
related to unused immigration visas.
Section 219, act May 26, 1924, ch. 190, § 21(a), 43 Stat.
165, related to reentry permits.

Stat. 862, eff. Sept. 1, 1948
Section, act May 26, 1924, ch. 190, § 22, 43 Stat. 165, related to forging, counterfeiting, etc., of reentry permits. See section 1546 of Title 18, Crimes and Criminal
Procedure.

§§ 221 to 227. Repealed. June 27, 1952, ch. 477,
title IV, § 403(a)(20), (22), (23), (29), 66 Stat.
279, eff. Dec. 24, 1952
Section 221, act 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 224, acts May 26, 1924, ch. 190, § 28(a)–(e),
(g)–(n), 43 Stat. 168; June 2, 1924, ch. 233, 43 Stat. 253;
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. 1065, related to admission of certain aliens in excess of quotas.

§ 228. Omitted
CODIFICATION
Section, act June 7, 1924, ch. 379, 43 Stat. 669, related
to aliens who entered prior to July 1, 1924 under quota
of 1921, and was omitted as executed.

§§ 229 to 231. Repealed. June 27, 1952, ch. 477,
title IV, § 403(a)(17), (23), (27), 66 Stat. 279, eff.
Dec. 24, 1952
Section 229, acts May 19, 1921, ch. 8, 42 Stat. 5; May
26, 1924, ch. 190, § 30, 43 Stat. 169, related to imposition
and enforcement of penalties under act May 19, 1921.
1014, related to alien residents conscripted or volunteering for service during World War I.
Section 231, act May 26, 1926, ch. 400, 44 Stat. 657, related to admission into Puerto Rico of certain resident
Spanish subjects.

§§ 232 to 237. Omitted
CODIFICATION
Sections 232 to 236, act Dec. 28, 1945, ch. 591, §§ 1–5, 59
Stat. 659, relating to admission of alien spouses and
minor children of World War II veterans, omitted as expired three years after Dec. 28, 1945.
Section 237, act Dec. 28, 1945, ch. 591, § 6, added July

§ 238. Transferred
CODIFICATION
Section transferred to section 1557 of this title.


§ 239. Omitted

CODIFICATION

SUBCHAPTER IV—ALIEN VETERANS OF WORLD WAR I


Sections, act May 26, 1926, chs. 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. 128, 22 Stat. 58, which, as being then in force, were, by act Apr. 27, 1904, ch. 1680, §§ 5–8, 33 Stat. 438, and act Apr. 29, 1905, ch. 41, 33 Stat. 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. 1606, § 14, June 10, 1913; 1940 Reorg. Plan No. V, eff. June 14, 1940, § 5 F.R. 2423, 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. 600, of sections 262 to 297 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 seaboard 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, § 18, 18 Stat. 477, related to inquiry and certification by consular officers.

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

Section 338, act Mar. 3, 1875, ch. 141, § 18, 18 Stat. 477, related to penalties for involuntary transportation of Chinese, Japanese, and others for purpose of holding to service.

Section 339, act Mar. 3, 1875, ch. 141, § 18, 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. 901, § 1, 45 Stat. 994. It was from act Mar. 4, 1909, ch. 299, § 1, 35 Stat. 982.

Sections 356 to 385a were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 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, § 26, 34 Stat. 606, and Mar. 2, 1929, ch. 536, § 8, 45 Stat. 1315; 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 title.
Sections 375, relating to racial limitation of naturalization, was from R.S. § 2169 (revised from act July 2, 1932, ch. 395, § 4, 47 Stat. 571; see section 1445(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. It was from act June 29, 1906, ch. 3592, § 4(f), as added May 9, 1918, ch. 69, § 10, 40 Stat. 544.

Section 373, 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. 796, 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. 596.

Section 375, 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. 4, 1929, ch. 683, § 1, 45 Stat. 1545; June 20, 1939, ch. 224, § 1, 53 Stat. 843; see section 1445(f) of this title.

Section 374, relating to 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 25, 1926, ch. 368, § 1. It was from act June 29, 1906, ch. 3592, § 4(f), as added May 9, 1918, ch. 69, § 10, 40 Stat. 544.

Section 373, 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. 796, 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. 596.
from country as affecting continuity of residence for purpose of naturalization, was from act June 25, 1936, ch. 811, § 2, 49 Stat. 1925; see section 1427(c) of this title. Sections 392d and 392e, relating to temporary absence of clergymen as affecting continuity of residence, were from act Aug. 9, 1939, ch. 536, §§ 6(e), 45 Stat. 1514. It was from act June 29, 1906, ch. 3592, § 19, 39 Stat. 599.

Section 383, relating to proof of residence by deposition, was repealed by act Mar. 2, 1929, ch. 536, §§ 6(e), 45 Stat. 1514. It was from act June 29, 1906, ch. 3592, § 19, 39 Stat. 599.

Section 384, relating to residence of aliens serving on vessels of foreign registry, was repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. It was from act June 29, 1906, ch. 3592, § 4(7), as added May 9, 1918, ch. 69, § 1, 40 Stat. 544; amended May 23, 1932, ch. 203, § 47, 47 Stat. 165. See section 1441(a)(2) of this title.

Section 385, related to validation of Hawaiian jurisdiction exercised prior to Sept. 27, 1906. It was from acts Apr. 30, 1900, ch. 339, § 1, 31 Stat. 161; May 27, 1910, ch. 258, § 9, 36 Stat. 448; Oct. 14, 1921, ch. 477, title IV, § 403(a)(37), 66 Stat. 280. It was from act June 29, 1906, ch. 3592, § 4(7), as added May 9, 1918, ch. 69, § 1, 40 Stat. 542; June 4, 1920, ch. 227, § 30, 41 Stat. 776; Mar. 2, 1929, ch. 536, §§ 6(e), (d), 45 Stat. 1514; May 17, 1932, ch. 190, 47 Stat. 158; May 25, 1932, ch. 203, § 2, 47 Stat. 165; July 30, 1937, ch. 645, § 3, 56 Stat. 548; see sections 1427, 1439, and 1441(a)(1) of this title. Section 389, relating to residence requirements for certain Filipinos and Puerto Ricans serving in military service, was from act June 29, 1906, ch. 3592, § 4(7), as added May 9, 1918, ch. 69, § 1, 40 Stat. 542; June 4, 1920, ch. 227, § 30, 41 Stat. 776; Mar. 2, 1929, ch. 536, §§ 6(e), (d), 45 Stat. 1514; May 17, 1932, ch. 190, 47 Stat. 158; May 25, 1932, ch. 203, § 2, 47 Stat. 165; July 30, 1937, ch. 645, § 3, 56 Stat. 548; see sections 1427, 1439, and 1441(a)(1) of this title. Section 390, relating to residence of aliens conditionally serving in military services after honorable discharge, was from act June 29, 1906, ch. 3592, § 4(7), as added May 9, 1918, ch. 69, § 1, 40 Stat. 542.

Section 390a, relating to naturalization of alien veterans of World War I, was repealed by act June 27, 1922, ch. 477, title IV, § 403(a), 66 Stat. 280. It was from act Aug. 19, 1919, ch. 698, § 2, as added Aug. 16, 1920, ch. 684, 45 Stat. 789.

Sections 390 to 392, relating to naturalization of alien veterans of World War I, were repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, § 504, 54 Stat. 1172. They were from act June 29, 1906, ch. 3592, §§ 4(7), (13), and 40 Stat. 542, as added May 9, 1918, ch. 69, § 1, 40 Stat. 542 to 544. See section 1439 of this title.


Sections 392e to 392g, relating to the naturalization of alien veterans of World War I formerly ineligible because of race, were from act June 24, 1935, ch. 399, §§ 4, 5, 45 Stat. 1546; revised 36 Stat. 397, 398. Sections 393 to 395, relating to the naturalization of alien veterans, were from act June 29, 1906, ch. 3592, § 4(7), as added May 9, 1918, ch. 69, §§ 1, 2, 40 Stat. 542; see sections 1441(a) and 1441(a)(1) of this title. Sections 396 to 398, relating to time of filing petition, subpoena of witnesses, and final hearings on petitions, respectively, were from act June 29, 1906, ch. 3592, §§ 6, 9, 45 Stat. 1546; revised 36 Stat. 396, 397, 398. Sections 399 to 395, relating to the naturalization of alien veterans, were from act June 29, 1906, ch. 3592, § 4(7), as added May 9, 1918, ch. 69, §§ 1, 2, 45 Stat. 1511; see sections 1445(c) and 1447(a), (e) of this title.
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 registering 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 1306 of this title.

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

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

NATIONALITY ACT OF 1940

On October 14, 1940, and subsequent to the enactment of former section 451 et seq. of this title, Congress passed the Nationality Act of 1940 [former section 501 et seq. of this title] for the purpose of consolidating and restating the laws of the United States upon citizenship, naturalization and expatriation. Said act contained further provisions relating to registry of aliens [former sections 728 and 746 of this title], and former §§ 728 and 746 of this title, Congress therewith were thereby repealed.

CHAPTER 11—NATIONALITY

SUBCHAPTER I—DEFINITIONS


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

§ 606. Transferred

CODIFICATION

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

SUBCHAPTER II—NATIONALITY AT BIRTH


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

§ 606. Transferred

Section 722a, act May 3, 1940, ch. 133, § 2, 54 Stat. 178, related to patriotic address to new citizens. See section 1448a of this title.


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


§ 748. Alien enemy. See section 1440 of this title.

§ 749. Legislation. See section 1481 of this title.

§ 750. Subchapter. See section 1482 of this title.


§ 755. Subchapter V—Miscellaneous


CHAPTER 12—IMMIGRATION AND NATIONALITY

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
1101. Definitions.
1102. Diplomatic and semidiplomatic immunities.
1103. Powers and duties of the Secretary, the Under Secretary, and the Attorney General.
1104. Powers and duties of Secretary of State.
1105. Liaison with internal security officers; data exchange.
1105a. Employment authorization for battered spouses of certain nonimmigrants.
1106. Repealed.
1107. Additional report.

SUBCHAPTER II—IMMIGRATION

PART I—SELECTION SYSTEM

1151. Worldwide level of immigration.
1151a. Repealed.
1152. Numerical limitations on individual foreign states.
1153. Allocation of immigrant visas.
1154. Procedure for granting immigrant status.
1155. Revocation of approval of petitions; effective date.
1156. Unused immigrant visas.
1157. Annual admission of refugees and admission of emergency situation refugees.
1158. Asylum.
1159. Adjustment of status of refugees.
1160. Special agricultural workers.
1161. Repealed.

PART II—ADMISSION QUALIFICATIONS FOR ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

1181. Admission of immigrants into the United States.
1182. Inadmissible aliens.
1182a to 1182c. Repealed.
1182d. Denial of visas to confiscators of American property.
1182e. Denial of entry into United States of foreign nationals engaged in establishment or enforcement of forced abortion or sterilization policy.
1182f. Denial of entry into United States of Chinese and other nationals engaged in coerced organ or bodily tissue transplantation.
1183. Admission of aliens on giving bond or undertaking; return upon permanent departure.
1183a. Requirements for sponsor’s affidavit of support.
1184. Admission of nonimmigrants.
1184a. Philippine Traders as nonimmigrants.
1185. Travel control of citizens and aliens.
1186. Transferred.
1186a. Conditional permanent resident status for certain alien spouses and sons and daughters.
1186b. Conditional permanent resident status for certain alien entrepreneurs, spouses, and children.
1187. Visa waiver program for certain visitors.
1187a. Provision of assistance to non-program countries.
1188. Admission of temporary H–2A workers.
1189. Designation of foreign terrorist organizations.

PART III—ISSUANCE OF ENTRY DOCUMENTS

1201. Issuance of visas.
Naturalization through active-duty service in armed forces.

Former citizens regaining citizenship.

Residents of the Philippines excepted from certain requirements.

Former citizens losing citizenship by entering armed forces of foreign countries during World War II.

Naturalization through service in the armed forces.

Naturalization through active-duty service in the Armed Forces during World War I, World War II, Korean hostilities, Vietnam hostilities, or other periods of military hostilities.

Posthumous citizenship through death while on active-duty service in armed forces during World War I, World War II, Korean hostilities, the Vietnam hostilities, or in other periods of military hostilities.

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.

Fingerprints and other biometric information for members of the United States Armed Forces.

Provision of information on military naturalization.

Constructive residence through service on certain United States vessels.

Alien enemies.

Administration.

Naturalization proceedings overseas for members of the Armed Forces and their spouses and children.

Application for naturalization; declaration of intention.

Investigation of applicants; examination of applications.

Hearings on denials of applications for naturalization.

Oath of renunciation and allegiance.

Certificate of naturalization; contents.

Application for naturalization; declaration of intention.

Certificate of naturalization; appointment of Director; functions.

Definitions.

Alien enemies.

Administration.

Naturalization proceedings overseas for members of the Armed Forces and their spouses and children.

Application for naturalization; declaration of intention.

Investigation of applicants; examination of applications.

Hearings on denials of applications for naturalization.

Oath of renunciation and allegiance.

Certificate of naturalization; contents.

Application for naturalization; declaration of intention.

Certificate of naturalization; appointment of Director; functions.

Definitions.

As used in this chapter—

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

The term “advocates” includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.

The term “alien” means any person not a citizen or national of the United States.

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.

The term “Attorney General” means the Attorney General of the United States.

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

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

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

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

(13)(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)(5) 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 extraterritorial 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 1229b(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 diplomat or consular officer who has been accredited by a foreign government, recognized de jure by the United States and who is accepted by the President or by the Secretary of State, and the members of the alien's immediate family;
    (ii) upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and the members of their immediate families; and
    (iii) upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status under (i) and (ii) above;
    (B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocations) 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 a 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; and
    (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)² 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(j)(2) of this title, who is coming temporarily to the United States to perform services (other than services described in subclause (a)) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P) in a specialty occupation described in section 1184(i)(1) of this title or as a fashion model, who meets the requirements for the occupation specified in section 1184(i)(2) of this title or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 1182(m)(1) of this title, or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section 1184(g)(8)(A) of this title, who is engaged in a specialty occupation described in section 1184(i)(3) of this title, 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, or (c) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 1182(m)(1) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 1182(m)(2) of this title for the facility (as defined in section 1182(m)(6) of this title) for which the alien will perform the services; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform services (other than services described in subclause (a)) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P) in a specialty occupation described in section 1182(m)(1) of this title, and

See References in Text note below.

1 See References in Text note below.
§ 1101

2

See References in Text note below.

soley to engage in such vocation, and the spouse and children of such a representative, if accompanying or following to join him;

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

(K) subject to subsections (d) and (p)² 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 petitioner, is the beneficiary of a petition to accord a status under section 1151(b)(2) of this title and who 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 render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(M) 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 (ii) 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 commutes to the United States institution or place of study from Canada or Mexico;

(N) 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

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

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

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

²See References in Text note below.
(P) an alien having a foreign residence which
the alien has no intention of abandoning who—
   (i)(a) is described in section 1184(c)(4)(A) of
the title (relating to athletes), or (b) is de-
scribed 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 tem-
porarily and solely for the purpose of per-
forming as such an artist or entertainer or
with such a group under a reciprocal ex-
change program which is between an organi-
zation 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 enter-
tainers;
   (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 tem-
porarily 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 de-
scribed in clause (i), (ii), or (iii) and is ac-
compnying, or following to join, the alien;
(Q) an alien having a residence in a foreign
country which he has no intention of abandon-
ing 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 pro-
viding practical training, employment, and
the sharing of the history, culture, and tradi-
tions 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 organi-
zation in the United States; and
   (ii) seeks to enter the United States for a
period not to exceed 5 years to perform the
work described in subclause (I), (II), or (III)
of paragraph (27)(C)(i);
(S) subject to section 1184(k) of this title, an
alien—
   (i) who the Attorney General determines—
   (I) is in possession of critical reliable in-
formation concerning a criminal organiza-
tion or enterprise;
   (II) is willing to supply or has supplied
such information to Federal or State law
enforcement authorities or a Federal or
State court; and
   (III) whose presence in the United States
the Attorney General determines is essen-
tial to the success of an authorized crimi-
nal investigation or the successful pros-
ecution of an individual involved in the
criminal organization or enterprise; or
   (ii) who the Secretary of State and the At-
torney General jointly determine—
   (I) is in possession of critical reliable in-
formation concerning a terrorist organiza-
tion, enterprise, or operation;
   (II) is willing to supply or has supplied
such information to Federal law enforce-
ment 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 accom-
panying, or following to join, the alien;
(T)(i) subject to section 1184(o) of this title,
an alien who the Secretary of Homeland Secu-
ry, or in the case of subclause (III)(aa) the
Secretary of Homeland Security, in consulta-
tion with the Attorney General, determines—
   (I) is or has been a victim of a severe form
of trafficking in persons, as defined in sec-
 tion 7102 of title 22;
   (II) is physically present in the United
States, American Samoa, or the Common-
wealth 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 participa-
tion in investigative or judicial processes as-
associated with an act or a perpetrator of traf-
ficking;
   (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 cooper-
ate 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\footnote{So in original. The words “the alien” probably should not ap-
pear.} would suffer extreme hard-
ship 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;
§ 1101

(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, or any adult or minor children of a derivative beneficiary of the alien, as of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement official investigating a severe 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; stalking; 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; fraud in foreign labor contracting (as defined in section 1351 of title 18); 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—

(1) 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.

(16) 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. 3803(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 1439 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 adjustment of status, 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, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation;
(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);
(D) an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: Provided, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status;
(E) an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3602(a)(1) of title 22) enters into force [October 1, 1979], who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty [April 1, 1979], and who has performed faithful service as such an employee for one year or more;
(F) an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who, before the date on which such Panama Canal Treaty of 1977 enters into force [October 1, 1979], has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or (ii) who, on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment or continues to be employed by the United States Government in an area of the former Canal Zone;
(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977 [April 1, 1979], who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment;
(H) an immigrant, and his accompanying spouse and children, who—
(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,
(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,
(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978, and
(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry;
(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after October 24, 1988, whichever is later;
(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a non-
immigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) files a petition for status under this subparagraph no later than six months after the date of such death or six months after October 24, 1988, whichever is later;

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

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

(J) an immigrant 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 re-unification 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 (J), (ii), (iii), or (iv) of subparagraph (I) if any reference in such a clause—

(i) to an international organization described in paragraph (15)(G)(iv) 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 1998 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 1153(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 show-
ing 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.

(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 as of any time, means an individual who at such time is not married, whether or not previously married.

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

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

(42) The term “refugee” means (A) any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 1107(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. 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 specific 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), (m), (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 6 least one year;

(H) an offense described in section 875, 876, 877, or 1232 of title 18 (relating to the demand for or receipt of ransom);

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

(J) an offense described in section 1992 of title 18 (relating to racketeering activity) or 1955 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 1951 of title 18 (relating to transportation for the purpose of prostitution); if committed for commercial advantage; or

(iii) is described in any of sections 1581–1585 or 1588–1591 of title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

(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 3121 of title 50 (relating to protection of undercover intelligence agents); or

(iii) section 3121 of title 50 (relating to protecting the identity of undercover agents);

(M) an offense that—

(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or

(ii) is described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000;

(N) an offense described in paragraph (1)(A) or (2) of section 1344(a) of this title (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;

(O) an offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 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;

(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years’ imprisonment or more may be imposed; and

(U) 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.

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

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

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

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

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

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

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

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

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

---

6So in original. Probably should be followed by a semicolon.
function. An individual shall not be considered
to be acting in a managerial or executive capac-
ity (as previously defined) merely on the basis of

The General shall take into account the reasonable

(A) shall become final upon the earlier of—

(B) Any reference to a term of imprisonment

(C) a child born out of wedlock, by, through

(D) a child born out of wedlock, by, through

(E) a child adopted while under the age of

(F) a stepchild, whether or not born out of

(G) That no natural

(ii) a child who: (I) is a natural sibling of a

(i) a child, under the age of sixteen at the

(i) a determination by the Board of Immigra-

(47)(A) The term “order of deportation” means

(46) The term “extraordinary ability” means,

(B) a stepchild, whether or not born out of

We are not sure what this text is about.
§ 1101

The child's proposed residence; and

The Secretary of Homeland Security is satisfied that proper care will be furnished the child if admitted to the United States; Provided, That—

(I) the Secretary of Homeland Security 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 provisions as in clauses (I) and (II), a child who—

(1) is a natural sibling of a child described in clause (I), subparagraph (E)(i), or subparagraph (F)(i); and

(2) 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 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

(O)(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) is a natural sibling of a child described in clause (I), subparagraph (E)(i), or subparagraph (F)(i); and

(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)(F) (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 Repub-
lic, 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—
(1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father’s residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 1431 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)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

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

(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, either inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 1182(a) of this title; or subparagraphs (A) and (B) of section 1182(a)(2) of this title and subparagraph (C) thereof of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marijuana), 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; (See References in Text note below.)

See References in Text note below. § 1101

(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)); 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)—
(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
§ 1101

TITLES 8—ALIENS AND NATIONALITY

Page 28

(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 provide the alien with an "employment authorization" endorsement or other appropriate work permit.


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

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 subsecs. (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 207 of Title 22, Foreign Relations and Intercourse.


complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.


Section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 944), referred to in subsec. (a)(19), was classified to section 303 of the former Appendix to Title 50, War and National Defense, and was omitted from the Code as obsolete.


CODIFICATION

September 30, 1996, referred to in the concluding provisions of subsec. (a)(43), was in 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. 104–206, which inserted that language, to reflect the probable intent of Congress.

AMENDMENTS

2014—Subsec. (b)(1)(F)(i). Pub. L. 113–76 substituted ‘‘who is at least 25 years of age, at least 1 of whom personally saw and observed the child prior to or during the adoption proceedings;’’ for ‘‘at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings;’’.

2013—Subsec. (a)(15)(T)(ii)(III). Pub. L. 113–4, §1221, inserted ‘‘or adult or minor children of a derivative beneficiary of the alien, as—’’ after ‘‘18 years of age’’.

Subsec. (a)(15)(U)(iii). Pub. L. 113–4, §§601, 1222, inserted ‘‘stalking;’’ after ‘‘sexual exploitation;’’ and ‘‘trafficking in foreign labor;’’ (as defined in section 1351 of title 18)’’ after ‘‘perjury;’’.


Subsec. (b)(1)(G). Pub. L. 111–207 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 ‘‘September 30, 2009,’’ for ‘‘March 6, 2009,’’.


Subsec. (a)(15)(T)(i)(II). Pub. L. 110–457, §201(a)(1)(C), inserted at end ‘‘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’’.


Subsec. (a)(15)(T)(ii)(III). Pub. L. 110–457, §201(a)(1)(E), struck out el. (iii) 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)(ii), 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. 109–246, which directed insertion of ‘‘(other than a citizen described in section 1154(a)(1)(A)(ii)(I) of this title)’’ after ‘‘citizen of the United States’’ each place appearing in section 101(a)(15)(K), without specifying the Act to be amended, was executed to subsec. (a)(15)(K) of this section, which
§ 1101

is section 101 of the Immigration and Nationality Act, to reflect the probable intent of Congress.


(1) 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; and

(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, if accompanying, or following to join, the alien described in clause (i);”.


Subsec. (a)(15)(U)(ii). Pub. L. 109–162, § 801(b)(2), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “If the Attorney General considers it necessary to avoid extreme hardship to the spouse, the child, or, in the case of an alien child, the parent of the alien described in clause (i), the Attorney General may also grant status under this paragraph based upon certification of a government official listed in clause (i)(III) that an investigation or prosecution would be harmed without the assistance of the spouse, the child, or, in the case of an alien child, the parent of the alien; and—

(1) if accompanying, or following to join him, the alien described in clause (i);”.


Subsec. (b)(1)(E)(i). Pub. L. 109–162, § 806(d), inserted before colon “or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household”.


Subsec. (a)(15)(H)(i)(a). Pub. L. 109–90 substituted “agriculture as defined in section 203(f) of this title 29, and the pressing of apples for cider on a farm,” for “agriculture as defined in section 203(f) of title 29,” and made technical amendment to reference in original act which appears in text as reference to section 312(g) of title 26.

2004—Subsec. (a)(15)(Q). Pub. L. 108–449, § 18(b)(1), substituted “Secretary of Homeland Security” for “Attorney General” in two places, “citizen of the United Kingdom or the Republic of Ireland, 21 to 35 years of age, unemployed for not less than 12 months, and having a residence for not less than 18 months; or a person of any age or 18 years of age or younger having a residence,” and “24 months” for “36 months”.


2003—Subsec. (a)(15)(H)(ii). Pub. L. 108–77, § 107(c), 402(a)(1), temporarily substituted “1182(n)(1) of this title, or (b) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section 1184(g)(8)(A) of this title, who is engaged in a specialty occupation described in section 1184(c)(3) of this title, 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(n)(1) of this title, or (c)” for “1182(n)(1) of this title, or (c)”. See Effective and Termination Dates of 2003 Amendment note below.


Subsec. (a)(43)(K)(iii). Pub. L. 108–193, § 4(b)(5), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “is described in section 1581, 1582, 1583, 1584, 1585, or 1588 of title 18 (relating to peonage, slavery, and involuntary servitude);”.

2002—Subsec. (a)(15)(F)(ii). (ii). Pub. L. 107–274, § 2(a), added cls. (ii) and (iii) and struck out former cl. (ii) which read as follows: “and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;”.


Subsec. (a)(15)(M)(ii), (iii). Pub. L. 107–274, § 2(b), added cls. (ii) and (iii) and struck out former cl. (ii) which read as follows: “and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;”.

2000—Subsec. (a)(15)(K). Pub. L. 106–553, § 1(a)(2) [title XI, § 1103(a)], amended subpar. (K) generally. Prior to amendment, subpar. (K) read as follows: “an alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission, and the minor children of such fiancée or fiancé accompanying him or following to join him;”.


Subsec. (b)(2). Pub. L. 106–279, § 302(c), inserted “and paragraph (1)(G)(i)” after “second proviso therein”.

Subsec. (f). Pub. L. 106–395 inserted at end: “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 initia-
tive, 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 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.


1999—Subsec. (a)(15)(H)(1)(a). Pub. L. 106–95, §2(c), struck out subcl. (a) which read as follows: "who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 1182(m)(1) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 1182(m)(2) of this title for each facility (which facility shall include the petitioner and each worksite, other than a personal household worksite, if the worker is not the alien's employer or controlled by the employer) for which the alien will perform the services, or".


Subsec. (b)(1)(F). Pub. L. 106–139, §11a(2), designated existing provisions as cl. (i), substituted "or" for "for period at end, and added cl. (ii).

Subsec. (c)(1). Pub. L. 106–139, §1(b)(1), substituted "16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1))," for "14 years, 4 months (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1))," for "eighteen years, 3 months (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1))," for "eighteen years, 4 months (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1))," for "eighteen years, 6 months (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1))," for "sixteen years, 4 months (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1))," and added cl. (ii).

1998—Subsec. (a)(9). Pub. L. 105–277, §2222(e), inserted "or employee" after "other officer" and "or, when used in subchapter III, for the purpose of adjudicating nationality" before period at end.

Subsec. (a)(15)(N). Pub. L. 105–277, §421(b), inserted "(or under analogous authority under paragraph (27)(L))" after "(27)(L))" in cl. (i) and added "(27)(L)) in cl. (i)."

Subsec. (a)(15)(Q). Pub. L. 105–277, §421(b), inserted "(or employee)" after "other officer" and "or, when used in subchapter III, for the purpose of adjudicating nationality" before period at end.

Subsec. (a)(15)(R). Pub. L. 105–319, §2(e)(2), inserted "consistent with section 1184(k)" of this title after "such a course of study".

Subsec. (a)(15)(S). Pub. L. 105–204, §625(a)(2), inserted "consistent with section 1184(k) of this title" after "such a course of study".


Subsec. (a)(17). Pub. L. 105–204, §308(d)(4)(A), substituted "expulsion, or removal" for "or expulsion".


Subsec. (a)(42). Pub. L. 105–204, §601(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 shall be regarded as making an entry into the United States was occasioned by deportation proceedings, extradition, or other legal process shall be held to be entitled to such exception.

Subsec. (a)(43). Pub. L. 104–208, §321(a)(2), inserted "Note: 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)(B). Pub. L. 104–208, §321(a)(2), substituted "$10,000" for "$100,000".


Pub. L. 104–208, §321(a)(3), substituted "at least one year" for "is at least 5 years".

Subsec. (a)(43)(G). Pub. L. 104–208, §322(a)(3)(A), which directed amendment of subpar. (G) 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)(3), substituted “at least one year” for “is at least 5 years”.


Pub. L. 104–132, §460(e)(1), inserted “or, an offense described in section 1083 (if it is a second or subsequent offense of 1965 of that title (relating to gambling offenses),” after “corrupt organizations)”, substituted “sentence of one year imprisonment” for “sentence of 10 years’ imprisonment”.

Pub. L. 104–132, §460(e)(2)(A), struck out “or at end.”

Pub. L. 104–208, §761(b)(5), struck out comma after “1588”.

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


Pub. L. 104–208, §460(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. (b)(1)(D). Pub. L. 104–51, §1(1)(B), substituted “child born out of wedlock” for “an illegitimate child”.

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

1994—Subsec. (a)(1). Pub. L. 103–236 substituted official designated by the Secretary of State pursuant to section 1194(b) of this title for “Assistant Secretary of State for Consular Affairs”.


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

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

Subsec. (a)(27)(l)(ii). Pub. L. 103–418, §202, added subcl. (II) and struck out former subcl. (I) which read as follows: “files a petition for status under this subchapter to be employed by the United States Government in an area of the former Canal Zone”.

Subsec. (a)(33). Pub. L. 103–416, §222(a), amended par. (45) generally. Prior to amendment, par. (45) read as follows: “The term ‘aggravated felony’ means murder, any illicit trafficking in any controlled substance (as defined in section 802 of title 21), including any drug
trafficking crime as defined in section 926(c)(2) of title 18, or any illicit trafficking in any firearms or destructive devices as defined in section 921 of such title, any other crime described in section 1565 of title 18 (relating to laundering of monetary instruments), or any crime of violence (as defined in section 16 of title 18, not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years, or any attempt or conspiracy to commit any such act. Such term applies to offenses described in the previous sentence whether in violation of Federal or State law and also applies to offenses described in the previous sentence in violation of foreign law for which the term of imprisonment was completed within the previous 15 years.\footnote{1961—Subsec. (a)(15)(D)(i). Pub. L. 102–222, §309(b)(1), inserted a comma after “States”).}


Pub. L. 102–222, §303(a)(5)(A), inserted “subject to section 1182(j)(2) of this title,” after “or (b)”.

Subsec. (a)(15)(O)(i). Pub. L. 102–222, §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. 102–222, §205(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows:

“(I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, or performs as part of an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time and has had a sustained and substantial relationship with that group over a period of at least one 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 event or performance;”.

Subsec. (a)(15)(P)(ii)(II). Pub. L. 102–222, §206(b), (c)(1), inserted “or organizations” after “and” and struck out “and” before semicolon at end “between the United States and the foreign states involved”.

Subsec. (a)(15)(P)(iii)(II). Pub. L. 102–222, §206(d), struck out “in order to perform, teach, or coach” for “for the purpose of performing” and inserted “commercial or non-commercial” before “program”.


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

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

Subsec. (a)(15)(H)(i)(a). Pub. L. 101–649, §162(c)(2)(A), substituted “for each facility (which facility shall include the petitioner and each worksite, other than a private household worksite, if the worksite is not the alien’s employer or employed by the employer of 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 described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 1184(i)(1) of this title, who meets the requirements for the occupation specified in section 1184(i)(2) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with, and had approved by, the Secretary an application under section 1182(n)(1) of this title” for “who is of distinguished merit and ability and who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 1184(i)(1) of this title, who meets the requirements for the occupation specified in section 1184(i)(2) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with, and had approved by, the Attorney General determines that the alien’s entry into the United States substantially benefit prospectively the United States”.

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

Subsec. (a)(15)(H)(ii). 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)(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 date 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, §406(a)(2), struck out “except as used in section 1421(a) of this title” after “includes”.

Subsec. (a)(45). 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.”
§ 1101  TITLE 8—ALIENS AND NATIONALITY

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

Pub. L. 101–649, §501(a)(6), struck out: “committed within the United States” after “to commit any such act.”

Pub. L. 101–649, §501(a)(3), inserted: “any offense described in section 1566 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,”.


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

Pub. L. 101–649, §603(a)(1)(B), substituted “subparagraphs (A) and (B) of section 1122(a)(2) of this title and subparagraph (C) thereof” for “paragraphs (9) and (10) of section 1122(a) of this title and paragraph (23) thereof”.

Subsec. (f)(6). Pub. L. 101–649, §609(a), substituted “an aggravated felony (as defined in subsection (a)(43))” for “the crime of murder”.

Pub. L. 101–649, §603(a)(1)(C), substituted “1122(a)(2)(E) of this title” for “1122(a)(34) of this title”.


1989—Subsec. (a)(15)(H)(1). Pub. L. 101–238 inserted before period at end “, except that, for purposes of paragraphs (1)(F) and (K) of section 1484 of this title and paragraph (23) of such section (except as such paragraph relates to a single offense of simple possession of a controlled substance), the term ‘parent’ does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.”

1988—Subsec. (a)(15)(J). Pub. L. 100–525, §9(a)(1), substituted “Director of the United States Information Agency” for “Secretary of State”. Pub. L. 99–603, §312(a), designated existing provisions as subcl. (b) and added subcl. (a) relating to persons performing agricultural labor or services as defined by the Secretary of Labor in regulations and including agricultural labor as defined in section 218(a)(1) of title 29 and agriculture as defined in section 203(f) of title 29 of a temporary or seasonal nature.


Subsec. (b)(1)(D). Pub. L. 99–663, §315(a), inserted “or to its natural father if the father has or had a bona fide parent-child relationship with the person”.

Subsec. (b)(1)(E). Pub. L. 99–663, §2, struck out “thereafter” after “the child has”.

Subsec. (c)(1). Pub. L. 99–663, §3, which struck out par. (1) defining “child”, was repealed by Pub. L. 100–525, §8(b), and such par. (1) was revived as of Nov. 11, 1986, see Repeal and Revival note below.

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

1983—Pub. L. 97–116, §§2(a)(1), 18(a)(1), substituted in cl. (i) “college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program” for “institutions of learning or other recognized place of study”, and “Secretary of Education” for “Office of Education of the United States”.

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


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


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


Subsec. (f). Pub. L. 97–116, §2(c), struck out par. (2) which provided that a person not be considered a person of good moral character if within the period for which good moral character is required to be established the person commits adultery, and substituted in par. (3) “paragraphs (9) and (10) of section 1322(a) of this title and paragraph (23) of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marijuana)” for “paragraphs (9), (10), and (23) of section 1322(a) of this title”.


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


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

services as a member of the medical profession, is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency.'

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

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

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

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


Subsec. (b)(1)(F). Pub. L. 94–155 provided for adoption of alien children under the age of fourteen by unmarried United States citizens who are at least twenty-five years of age and inserted requirement that before adoption the Attorney General be satisfied that proper care will be provided the child after admission. 1970—Subsec. (a)(15)(H). Pub. L. 91–225, §1(a), provided for nonimmigrant alien status for alien spouse and minor children of any alien specified in par. (H) if accompanying him or following to join him and struck out "temporary", "other", and "industrial" before "services", "temporary services", and "trainee" in cls. (i) to (iii), respectively.

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

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


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. 87–250 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. (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) 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 non-immigrant 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 subparagraph (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 subsection (B) 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. 110–391, §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 that 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. 72288, ¶.

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


Effective and Termination Dates of 2003 Amendment


Effective Date of 2000 Amendment

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 1184 and 1255 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–146, provided that: "The amendments made by this section [amending this section and sections 1184, 1186a, and 1255 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. 106–499, §2(b), Nov. 1, 2000, 114 Stat. 1787, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2000."


Effective Date of 1999 Amendment

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)(2) of Pub. L. 106–95, as amended, set out as a note under section 1182 of this title.

Effective Date of 1998 Amendment


Effective Date of 1997 Amendment

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, 1155, and 1255 of this title] shall be effective as if included in section 603(a)(1) of the Nicaraguan Adjustment and Central American Relief Act [title II of Pub. L. 105–100, approved Nov. 19, 1997] (as contained in the District of Columbia Appropriations Act, 1998); and

"(2) shall be effective as if included in the enactment of such Act."

Pub. L. 105–54, §1(b), Oct. 6, 1997, 111 Stat. 1175, 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 1996 Amendment


"(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."


"(a) IN GENERAL.—Except as provided in this section and sections 303(b)(2), 306(c), 308(d)(2)(D), or 308(d)(5) of this division [amending sections 1225, 1227, and 1251 of this title, enacting provisions set out as notes under sections 1225, 1226, 1227, and 1252 of this title, and repealing provisions set out as a note under section 1225 of this title, this subtitle [subtitle A (§§301–309) of title III of div. C of Pub. L. 104–208, see Tables for classification] and the amendments made by this subtitle 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 [Sept. 30, 1996] (in this title [see Tables for classification referred to as the ‘title III–A effective date’)."

"(b) PROMULGATION OF REGULATIONS.—The Attorney General shall first promulgate regulations to carry out this subtitle by not later than 30 days before the title III–A effective date.

"(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 title III–A effective date—

"(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, 1225, 1225a, former 1252b] 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 [8 U.S.C. 1227 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(a) of such Act (8 U.S.C. 1229, 1229a(a)) shall be valid as if provided under section 239 of such Act (8 U.S.C. 1229) (as amended by this subsection) 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 (8 U.S.C. 1221 et seq.) (as amended by this subtitle). Any determination in the terminated proceeding shall not be binding in the reinitiated proceeding.

"(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 (8 U.S.C. 1107 (as in effect as of the date of the enactment of this Act) to standing any provision of section 106 of the Immigration and Nationality Act (8 U.S.C. 1107), notwithstanding any provision of section 106 of the Immigration and Nationality Act (8 U.S.C. 1107) (as so in effect).

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

"(D) the petition for judicial review shall be filed with the court of appeals for the judicial circuit in which the inquiry officer or immigration judge were completed; and

"(F) service of the petition for review shall not be described in this clause (excluding this subparagraph) on or before October 1, 1990; and

"(G) there shall be no appeal permitted in the case of an alien parent, at the time a decision is rendered to suspend the deportation, or cancel the removal, of such individual, if the individual has been determined to be described in this clause (excluding this subparagraph) on or before October 1, 1990.

"(5) TRANSITIONAL RULES WITH REGARD TO SUSPENSION OF DEPORTATION.—

"(A) IN GENERAL.—Subject to subparagraphs (B) and (C), paragraphs (1) and (2) of section 240A(d) of the 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 242(a)(1) of the Immigration and Nationality Act [former 8 U.S.C. 1229b(a)(1)], as in effect as of the date of the enactment of the title III-A effective date) or section 240A of such Act (8 U.S.C. 1229b) (as in effect as of the date of the enactment of this 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 paragraph (3) of this subsection, paragraphs (1) and (2) of section 240A(d) of the Immigration and Nationality Act (8 U.S.C. 1229b(d)(1), (2)) shall not 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 244(a) of the Immigration and Nationality Act (former 8 U.S.C. 1158(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 as of the date of the enactment of this title III-A effective date), subparagraph (A) of section 240A(d) of the Immigration and Nationality Act shall not apply in the case of an alien, regardless of whether the alien is in exclusion or deportation 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)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) and—

"(I) was not apprehended after December 19, 1990, at the time of entry, and is—

"(aa) a Salvadoran 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 Baptist Churches, et al. v. Thornburgh (ABC), 760 F. Supp. 796 (N.D. Cal. 1991) on or before October 31, 1991, or applied for temporary protected status on or before October 31, 1991; 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 section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1))) of an individual, at the time a decision is rendered to suspend the deportation, or cancel the removal, of such individual, if the individual has been determined to be described in this clause (excluding this subparagraph) on or before October 1, 1990.

"(IV) is the unmarried son or daughter of an alien parent, at the time a decision is rendered to suspend the deportation, or cancel the removal, of such alien parent, if—

"(aa) the alien parent has been determined to be described in this clause (excluding this subparagraph) on or before October 1, 1990; and

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

"(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 31, 1991, and who, at the time of filing such application, was a national of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, 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 suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act (former 8 U.S.C. 1158(a)(3)) (as in effect before the date of the enactment of this Act (Sept. 30, 1996));

"(7) TRANSITIONAL RULES WITH REGARD TO SUSPENSION OF DEPORTATION.—

"(A) IN GENERAL.—Subject to subparagraphs (B) and (C), paragraphs (1) and (2) of section 240A(d) of the 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 242(a)(1) of the Immigration and Nationality Act [former 8 U.S.C. 1229b(a)(1)], as in effect as of the date of the enactment of this Act (Sept. 30, 1996);
"(VII)(aa) was the spouse or child of an alien described in subclause (I), (II), or (V)—

"(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 cancellation of removal;

"(CC) at the time at which the alien registered for benefits under the settlement agreement in American Baptist Churches, et al. v. Thornburgh (ABC), applied for temporary protected status, or applied for asylum; and

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

(II) LIMITATION ON JUDICIAL REVIEW.—A determination 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. 1252(a)(2)(B)] (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 (VII) of clause (i) 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) RESIDENCE WITH SPOUSE OR PARENT NOT REQUIRED.—For purposes of the application of clause (i)(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 the 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)."
by section 304(a)(3) of this division, shall apply to provo-
king such convictions.”


Pub. L. 104-208, div. C, title III, § 371(d)(1), Sept. 30, 1996, 110 Stat. 3009-646, provided that: “Subsections (a) and (b) (and this section and sections 112a, 115a, 122a, 1252, 1252d, 1252f, 1252g, 1232, and 1262 of this title) shall take effect on the date of the enactment of the Act [Sept. 30, 1996].”

Pub. L. 104-208, div. C, title V, § 367(a), Sept. 30, 1996, 110 Stat. 3009-688, provided that: “Except as provided in this title (enacting sections 1399 to 1371 and 1232 of this title, amending sections 1182, 1183, 1183a, 1612, 1631, 1632, 1641, and 1642 of this title, section 506 of Title 18, Crimes and Criminal Procedure, section 1991 of Title 20, Education, and sections 402, 12209-7, and 1496a of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section, sections 112a, 115a, 122a, 1252, 1252d, 1252f, and 1262 of this title, and sections 402 and 1496a of Title 42, and repealing provisions set out as a note under section 1183a of this title), this title and the amendments made by this title shall take effect on the date of the enactment of the Act [Sept. 30, 1996].”

Pub. L. 104-208, div. C, title VI, § 671(a), Sept. 30, 1996, 110 Stat. 3009-721, provided that: “The amendments made by subsection (a) (amending this section and section 112a of this title) 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 90-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.”

Pub. L. 104-208, div. C, title VI, § 671(b)(4), Sept. 30, 1996, 110 Stat. 3009-722, provided that: “Except as otherwise provided in this subsection [amending this section and sections 1144, 1251, 1252, 1253, and 1254 of this title, and provisions set out as a note under section 1252 of this title] shall be effective as if included in the enactment of the VCCA [Pub. L. 102-325].”

Pub. L. 104-208, div. C, title VI, § 671(b)(14), Sept. 30, 1996, 110 Stat. 3009-722, provided that: “Except as otherwise provided in this subsection [amending this section and sections 1252a, 1253b, 1253c, and 1483 of this title, enacting provisions set out as notes under sections 1161 and 1433 of this title, and amending provisions set out as notes under this section and sections 1255a, 1323, and 1401 of this title], the amendments made by this subsection shall take effect as if included in the enactment of the Act [Sept. 30, 1996], including the provisions set out as notes under sections 1161 and 1433 of this title, and amendment and providing set out as notes under this section and sections 1255a, 1323, and 1401 of this title], the amendments made by this subsection shall take effect as if included in the enactment of INCTA [Pub. L. 103-416].”

Pub. L. 104-132, title IV, § 440(f), Apr. 24, 1996, 110 Stat. 1278, provided that: “The amendments made by section (e) [amending this section] shall apply to convictions entered on or after the date of the enactment of this Act [Apr. 24, 1996], except that the amendment made by subsection (c) [amending this section] shall take effect as if included in the enactment of section 222 of the Immigration and Nationality Technical Corrections Act of 1994 [Pub. L. 103-106].”

**Effective Date of 1994 Amendments**

Pub. L. 103-416, title II, § 219(d), Oct. 25, 1994, 108 Stat. 4219, provided that: “Except as otherwise specifically provided in this title, the amendments made by this section (amending this section and sections 1151, 1153, 1154, 1160, 1188, 1251, 1252, 1252b, 1254a, 1255a, 1255c, 1255f, 1256, 1298, 1302, 1322, 1323, 1324a, 1324b, 1324c, 1330, 1336, 1421, 1424, 1449, and 1522 of this title, and repealing section 1611 of this title, amending provisions set out as notes under this section and sections 112a, 1254a, 1255a, 1255b, and 1366 of this title, and repealing provisions set out as a note under section 1256 of this title) shall be effective as if included in the enactment of the Immigration and Naturalization Act of 1990 [Pub. L. 101-649].”
§ 1101


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 1991 AMENDMENT

Pub. L. 102–232, title II, § 236, Dec. 12, 1991, 105 Stat. 1742, provided that: "The provisions of, and amendments made by, this title [amending this section and section 1184 of this title and enacting provisions set out as notes under this section and section 1184 of this title] shall take effect on April 1, 1992."


(1) sections 302 through 308 (amending this section, sections 1102, 1105a, 1151 to 1154, 1157, 1190 to 1191, 1192, 1194, 1198a to 1198, 1201, 1221, 1226, 1227, 1229, 1251, 1252, 1252b, 1254 to 1255a, 1261, 1262, 1264, 1266, 1282, 1293, 1294, 1296a to 1296c, 1297, 1297b, 1298, 1321, 1323, 1324a to 1324d, 1325, 1327, 1327b, 1328, 1329, 1331, 1332, 1333, 1334, 1411, 1413, 1414, 1442, 1443, 1444, 1445, 1452, and 1455 of this title, and sections 3753(a)(1) of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 1105a, 1153, 1158, 1160, 1164, 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 1104, 1109, 1128, 1252, 1252a, 1252b, 1254, 1255, 1325, 1326, 1327, 1328, 1331, 1333, 1334, 1335, 1412, 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]."

Pub. L. 102–110, § 2(d), Oct. 1, 1991, 105 Stat. 557, provided that: "This section [amending this section and sections 1133 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 title and the amendments made by this title [enacting section 1186b of this title, amending this section, sections 1103, 1105a to 1106, 1156, 1159, 1162, 1201, and 1251 of this title, and amending provisions set out as notes under section 1255 of this title] shall take effect on October 1, 1991, and apply beginning with fiscal year 1992.

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

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

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

(3) Section 124 (enacting provisions set out as a note under section 1153 of this title) (relating to transition for displaced Tibetans).

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

(5) Section 134 (enacting provisions set out as a note under section 1153 of this title) (relating to transition for special immigrants who are dependent on a juvenile court).

(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 preference status under section 1251(b)(1) of this title (relating to special immigrants who are dependent on a juvenile court).

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

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

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

(c) GENERAL TRANSITIONS.—

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

(A) in order to maintain the priority date with respect to such a petition, the petitioner must file (by not later than October 1, 1993) a new petition for classification of the employment under paragraph (1), (2), or (3) of section 204(b) of such Act (as amended by this title), and

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

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

(2) Any petition filed under section 204(a) of the Immigration and Nationality Act before October 1, 1991, for preference status under section 203(a)(4) or section 203(a)(5) of such Act (as in effect before such date) shall be deemed, as of such date, to be a petition filed under such section for preference status under section 1103, 1105, 1156, 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, but only insofar as such section relates to preferences under section 3304 of Title 26, Internal Revenue Code, and section 1382c of Title 42, 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 notes 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)(6) but for the amendments made by this section (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) Admissibility Standards.—When an immigrant, in possession of an unexpired immigrant visa issued before October 1, 1991, makes application for admission, the alien’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.

"(5) Exemption.—Nothing in this section shall be construed as exempting the beneficiaries of such petitions from the numerical limitations on section 203(b)(2) or 203(b)(3) of such Act.

"(6) Effective and Termination Dates of 1988 Amendment.—Amendments made by this section shall take effect on the date of the enactment of this Act [Nov. 29, 1990], except that the amendments made by section 3(d) shall apply to petitions filed on or after June 1, 1991.

Effective Date of 1989 Amendment

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

Pub. L. 101–162, title VI, §611(b), Nov. 29, 1990, 104 Stat. 5997, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1989, upon the expiration of the similar amendment made by section 20(a) of the Department of Justice Appropriations Act, 1989 (title II of Public Law 100–459, 102 Stat. 2205)."

Effective and Termination Dates of 1988 Amendment

Amendment by Pub. L. 100–525, §2(a), Oct. 24, 1988, 102 Stat. 2614, provided that: "The amendments made by this section [amending this section, sections 1180, 1181, 1184, 1186, 1187, 1188, 1251, 1254, 1255a, 1255b, 1259, 1324, 1326a, 1326b, and 1327 of this title, and section 1557 of this title, and section 1546 of Title 18, Crimes and Criminal Procedure, and section 901 of Title 20, Education, amending provisions set out as notes under this section and sections 1188 and 1255a of this title and section 1892 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. 99–590]."


Pub. L. 101–649, title V, §509(b), Nov. 29, 1990, 104 Stat. 5031, as amended by Pub. L. 101–238, title III, §306(e)(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.

Pub. L. 101–649, title VI, §601(e), Nov. 29, 1990, 104 Stat. 5077, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending section 1182 of this title] and by section 603(a) of this Act [amending this section and sections 1102, 1153, 1157, 1159, 1160, 1161, 1181, 1183, 1201, 1224, 1225, 1226, 1254a, 1255a, 1259, 1322, and 1327 of this title, repealing section 2891 of Title 22, Foreign Relations and Intercourse, amending provisions set out as notes under this section and sections 1255 and 1255a of this title, and repealing provisions set out as notes under section 1182 of this title] shall apply to applications for adjustment of status made on or after June 1, 1991.

Effective and Termination Dates of 1988 Amendment

Amendment by Pub. L. 100–525, §2(s), Oct. 24, 1988, 102 Stat. 2614, provided that: "The amendments made by this section [amending this section, sections 1180, 1181, 1184, 1186, 1187, 1188, 1251, 1254, 1255a, 1255b, 1259, 1226, 1294, 1296a, 1296b, and 1327 of this title, and section 1557 of this title, section 1546 of Title 18, Crimes and Criminal Procedure, and section 901 of Title 20, Education, amending provisions set out as notes under this section and sections 1188 and 1255a of this title and section 1892 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. 99–590]."

Pub. L. 102–232, title III, §309(b)(15), Dec. 12, 1991, 105 Stat. 1759, provided that: "The amendments made by section 8 of the Immigration Technical Corrections Act of 1988 [Pub. L. 100–525, amending this section, sections 1152, 1182, 1201 to 1202, 1201, 1202, 1204, 1256, 1409, 1431 to 1433, 1452, 1451, and 1451 of this title, and section 4195 of Title 22, Foreign Relations and Intercourse, amending provisions set out as notes under this section, sections 1153, 1201, 1409, 1451, and 1451 of this title, and section 4185 of Title 22, and amending provisions set out as notes under this section and section 1153 of this title] shall be effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986 (Public Law 99–653)."
"§ 1101

1101 tion 5(c) [set out as a note under section 1182 of this title] shall take effect on the date of the enactment of this Act [Dec. 29, 1981]."

Effective Date of 1986 Amendment

Pub. L. 99–653, §23(a), as added by Pub. L. 100–525, §8(r), Oct. 24, 1988, 102 Stat. 2618, provided that: "The amendments made by sections 2, 4, and 7 [amending this section and sections 1152, 1153, 1157, 1158, and 1159 of this title] apply to visas issued, and admissions occurring, on or after November 14, 1986."

Amendment by section 303(a) of Pub. L. 99–603 applicable to petitions and applications filed under sections 1184(c) and 1188 of this title or on and after the first day of the seventh month beginning after Nov. 6, 1986, see section 303(d) of Pub. L. 99–603, as amended, set out as an Effective Date note under section 1188 of this title.

Effective Date of 1961 Amendment

Pub. L. 97–116, §21, Dec. 29, 1981, 95 Stat. 1622, 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 1961 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]."

(2) The amendment made by section 16 [amending section 1455 of this title] shall apply to fiscal years beginning on or after October 1, 1961."

Effective Date of 1980 Amendment

Pub. L. 96–212, title II, §204(a)–(c), Mar. 17, 1980, 94 Stat. 108, 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 1521 of this title, and amending provisions set out as a note under sections 1162 and 1255 of this title] shall take effect on the date of the enactment of this Act [Mar. 17, 1980], and shall apply to fiscal years beginning with the fiscal year beginning October 1, 1979."

(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."

(2) 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 sixthtieth day after the date of the enactment of this Act [Mar. 17, 1980]."

(3) 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 208(b) of the Immigration and Nationality Act (as added by section 201(b) of this Act) [sections 1157(a) and 1159(a) 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 203(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 adjustment of status which may be made available under sections 203(a)(2) and 203(e)(2) of such Act [and sections 1158(a)(2) and 1159(a)(2) of this title], the granting of a conditional entry or adjustment of status under section 203(a)(7) or 203(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 203(e)(2), respectively, of such Act during such period."

(c) [amending this section and sections 1151 to 1153, 1181, 1182, 1253, and 1521 of this title] shall apply to aliens paroled into the United States on or after April 1, 1980, who is eligible for the benefits of section 203(a) of the Immigration and Nationality Act (as added by section 201(b) of this title) [section 1153(a)(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 1122 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 (31) or 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

Pub. L. 96–70, title III, §3201(d)(1), Sept. 27, 1979, 93 Stat. 397, 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

Pub. L. 94–484, title VI, §602(d), as added by Pub. L. 95–83, title III, §307(q)(3), Aug. 1, 1977, 91 Stat. 395, provided that: "The provisions of 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 such 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 Amendment

Pub. L. 94–571, §10, Oct. 20, 1976, 90 Stat. 2707, 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 ef-
ective 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 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 1152 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**

Act June 27, 1952, ch. 477, title IV, §407, 66 Stat. 361, 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 meridiem on the one hundred eighth day immediately following the date of its enactment [June 27, 1952]."

**Title 8—Aliens and Nationality**

**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 Teamsm through Legal Entry Act of 2006' or the 'COMPLETE 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 1162 of this title] may be cited as the 'Nursing Relief for Disadvantaged Areas Reauthorization Act of 2005'."

Pub. L. 109–376, §1, Oct. 26, 2006, 120 Stat. 2638, provided that: "This Act [enacting provisions set out as a 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'."


**Title of 2005 Amendment**

Pub. L. 109–19, div. B, §1, May 11, 2005, 119 Stat. 302, provided that: "This division [enacting section 1778 of this title, enacting this section, sections 1157 to 1159, 1162, 1184, 1227, 1229a, 1231, 1252, and 1356 of this title, and section 1628 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 1194 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'."


**Title of 2004 Amendment**

Pub. L. 108–447, div. J, title IV, §§401, Dec. 8, 2004, 118 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 1194 of this title] may be cited as the 'L-1 Visa and H-1B Visa Reform Act'."


**Title of 2003 Amendment**

Pub. L. 108–156, §1, Dec. 3, 2003, 117 Stat. 1944, provided 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, 1227, and 1356 of this title] may be cited as the 'Basic Pilot Program Extension and Expansion Act of 2003'."
§ 1101

TITILE 8—ALIENS AND NATIONALITY

Page 44

Short Title of 2002 Amendment
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 Control, Student and Visitor Travel Act of 2002.’’


Pub. L. 107–208, § 1, Aug. 6, 2002, 116 Stat. 927, provided 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.’’


Short Title of 2000 Amendment
Pub. L. 106–554, § 1(a)(4) [div. B, title XV, §1501], Dec. 21, 2000, 114 Stat. 2763, 2763A–924, provided that: ‘‘This title [amending section 1255 of this title, and enacting 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. 106–554, § 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 the ‘LIFE Act Amendments of 2000.’”

Pub. L. 106–409, § 1, Nov. 1, 2000, 114 Stat. 1767, provided that: ‘‘This Act [amending this section and enacting provisions set out as notes 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. 106–386, § 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 notes under section 1187 of this title and classified as a note under section 763 of Title 47, Telecommunications, and amending provisions set out as a note under section 1513 of this title] may be cited as the ‘Visa Waiver Permanent Program Act.’”

Pub. L. 106–386, div. B, title V, §1551, Oct. 28, 2000, 114 Stat. 1518, provided that: ‘‘This Act [amending this section, sections 1182, 1227, 1431, and 1433 of this title, and sections 611 and 1015 of Title 18, Crimes and Criminal Procedure, repealing section 1512 of this title, and enacting provisions set out as notes under this section, sections 1182, 1227, and 1431 of this title, and section 611 of Title 18] may be cited as the ‘Child Citizenship Act of 2000.’”

Pub. L. 106–232, div. B, title V, §1551, Dec. 12, 1991, 105 Stat. 733, provided that: ‘‘This Act [amending this section, sections 1162, 1165a, 1151 to 1154, 1157, 1159 to 1161, 1162, 1184, 1186a to 1186f, 1186l, 1201, 1221, 1226, 1227, 1229, 1251, 1252a, 1252b, 1254 to 1255a, 1281, 1282, 1284, 1288, 1322, 1323, 1324a to 1324c, 1325, 1356, 1357, 1421, 1423, 1424, 1433, 1439 to 1441,
Page 45

TITLE 8—ALIENS AND NATIONALITY

1443, 1445 to 1452, and 1455 of this title, and section 3753
of Title 42, The Public Health and Welfare, enacting
provisions set out as notes under this section and sections 1151, 1157, 1160, 1182, 1184, 1251, 1252, 1254a, 1255,
1356, and 1421 of this title, and amending provisions set
out as notes under this section and sections 1105a, 1153,
1158, 1160, 1184, 1201, 1251, 1254a, 1255, and 1421 of this
title] may be cited as the ‘Miscellaneous and Technical
Immigration and Naturalization Amendments of 1991’.’’
1733, 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’.’’
1736, provided that: ‘‘This title [amending this section
and section 1184 of this title and enacting provisions set
out as notes under this section and section 1184 of this
title] may be cited as the ‘O and P Nonimmigrant
Amendments of 1991’.’’
Stat. 1742, provided that: ‘‘This title [amending this
section, sections 1102, 1105a, 1151 to 1154, 1157, 1159 to
1161, 1182, 1184, 1186a to 1188, 1201, 1221, 1226, 1227, 1229,
1251, 1252, 1252a, 1252b, 1254 to 1255a, 1281, 1282, 1284, 1288,
1322, 1323, 1324a to 1324c, 1325, 1356, 1357, 1421, 1423, 1424,
1433, 1439 to 1441, 1443, 1445 to 1449, 1451, 1452, and 1455 of
this title, and section 3753 of Title 42, The Public
Health and Welfare, enacting provisions set out as
notes under this section and sections 1151, 1157, 1160,
1182, 1251, 1252, 1254a, 1255, and 1356 of this title, and
amending provisions set out as notes under this section
and sections 1105a, 1153, 1158, 1160, 1184, 1201, 1251, 1254a,
1255, and 1421 of this title] may be cited as the ‘Immigration Technical Corrections Act of 1991’.’’
that: ‘‘This Act [amending this section and sections
1153, 1255, and 1524 of this title and enacting and amending provisions set out as notes under this section] may
be cited as the ‘Armed Forces Immigration Adjustment
Act of 1991’.’’

§ 1101

tions and Intercourse, enacting provisions set out as
notes under this section and sections 1153, 1182, 1201,
1227, 1254, 1255, 1356, 1401, 1409, 1451, 1481, and 1522 of this
title and section 4195 of Title 22, amending provisions
set out as notes under this section and sections 1153,
1182, 1188, and 1255a of this title and section 1802 of Title
29, Labor, and repealing provisions set out as a note
under section 1255a of this title] may be cited as the
‘Immigration Technical Corrections Act of 1988’.’’
SHORT TITLE OF 1986 AMENDMENT

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 99–653, § 1(a), formerly § 1, Nov. 14, 1986, 100
Stat. 3655, as renumbered by Pub. L. 100–525, § 8(a)(1),
Oct. 24, 1988, 102 Stat. 2617, provided that: ‘‘this Act
[amending this section, sections 1152, 1182, 1201, 1202,
1228, 1251, 1301, 1302, 1304, 1401, 1409, 1431 to 1433, 1451,
1452, 1481, and 1483 of this title, and section 4195 of Title
22, Foreign Relations and Intercourse, and repealing
section 1201a of this title and provisions set out as
notes under section 1153 of this title] may be cited as
the ‘Immigration and Nationality Act Amendments of
1986’.’’
Pub. L. 99–639, § 1, Nov. 10, 1986, 100 Stat. 3537, provided that: ‘‘This Act [enacting section 1186a of this
title, amending sections 1154, 1182, 1184, 1251, 1255, and
1325 of this title, and enacting provisions set out as
notes under sections 1154, 1182, 1184, and 1255 of this
title] may be cited as the ‘Immigration Marriage Fraud
Amendments of 1986’.’’
Pub. L. 99–605, § 1(a), Nov. 6, 1986, 100 Stat. 3449, provided that: ‘‘This Act [amending sections 1522 to 1524 of
this title and enacting provisions set out as notes
under section 1522 of this title] may be cited as the
‘Refugee Assistance Extension Act of 1986’.’’
Pub. L. 99–603, § 1(a), Nov. 6, 1986, 100 Stat. 3359, provided that: ‘‘This Act [enacting sections 1160, 1161, 1186,
1187, 1255a, 1324a, 1324b, 1364, and 1365 of this title and
section 1437r of Title 42, The Public Health and Welfare,
amending this section, sections 1152, 1184, 1251, 1252,
1254, 1255, 1258, 1259, 1321, 1324, and 1357 of this title, section 2025 of Title 7, Agriculture, section 1546 of Title 18,
Crimes and Criminal Procedure, sections 1091 and 1096
of Title 20, Education, sections 1802, 1813, and 1851 of
Title 29, Labor, and sections 303, 502, 602, 603, 672, 673,
1203, 1320b–7, 1353, 1396b, and 1436a of Title 42, repealing
section 1816 of Title 29, enacting provisions set out as
notes under this section and sections 1152, 1153, 1160,
1186, 1187, 1253, 1255a, 1259, 1324a, and 1324b of this title,
section 1802 of Title 29, and sections 405, 502, and 1320b–7
of Title 42, and amending provisions set out as notes
under this section and section 1383 of Title 42] may be
cited as the ‘Immigration Reform and Control Act of
1986’.’’

Pub. L. 101–238, § 1, Dec. 18, 1989, 103 Stat. 2099, provided that: ‘‘This Act [amending this section and sections 1160 and 1182 of this title, enacting provisions set
out as notes under sections 1182, 1255, 1255a, and 1324a
of this title, and amending provisions set out as a note
under section 1255a of this title] may be cited as the
‘Immigration Nursing Relief Act of 1989’.’’

that: ‘‘This Act [amending sections 1522, 1523, and 1524
of this title and enacting provisions set out as a note
under section 1522 of this title] may be cited as the
‘Refugee Assistance Amendments of 1982’.’’

SHORT TITLE OF 1990 AMENDMENT
Pub. L. 101–649, § 1(a), Nov. 29, 1990, 104 Stat. 4978, provided that: ‘‘This Act [see Tables for classification]
may be cited as the ‘Immigration Act of 1990’.’’
Pub. L. 101–249, § 1, Mar. 6, 1990, 104 Stat. 94, provided
that: ‘‘This Act [enacting section 1440–1 of this title]
may be cited as the ‘Posthumous Citizenship for Active
Duty Service Act of 1989’.’’

SHORT TITLE OF 1982 AMENDMENT

SHORT TITLE OF 1988 AMENDMENT

SHORT TITLE OF 1981 AMENDMENT

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’.’’
Pub. L. 100–525, § 1(a), Oct. 24, 1988, 102 Stat. 2609, provided that: ‘‘This Act [amending this section, sections
1102, 1103, 1104, 1105a, 1152, 1154, 1157, 1160, 1161, 1182, 1184,
1186, 1186a, 1187, 1188, 1201, 1201a, 1202, 1222, 1223, 1224,
1227, 1251, 1252, 1254, 1255, 1255a, 1255b, 1259, 1301, 1302,
1304, 1305, 1324, 1324a, 1324b, 1353, 1356, 1357, 1360, 1408,
1409, 1421, 1422, 1424, 1426, 1431, 1432, 1433, 1435, 1440, 1441,
1446, 1447, 1451, 1452, 1454, 1455, 1459, 1481, 1483, 1489, 1522,
1523, and 1524 of this title, section 1546 of Title 18,
Crimes and Criminal Procedure, section 1091 of Title 20,
Education, and section 4195 of Title 22, Foreign Rela-

Pub. L. 97–116, § 1(a), Dec. 29, 1981, 95 Stat. 1611, provided that: ‘‘this Act [amending this section, sections
1105a, 1151, 1152, 1154, 1182, 1201, 1203, 1221, 1227, 1251, 1252,
1253, 1254, 1255, 1255b, 1258, 1305, 1324, 1356, 1361, 1401a,
1409, 1427, 1431, 1432, 1433, 1439, 1440, 1445, 1446, 1447, 1448,
1452, 1455, 1481, and 1483 of this title, and section 1429 of
Title 18, Crimes and Criminal Procedure, enacting provisions set out as notes under this section and sections
1151 and 1182 of this title, amending a provision set out
as a note under this section, and repealing a provision
set out as a note under section 1182 of this title] may
be cited as the ‘Immigration and Nationality Act
Amendments of 1981’.’’
SHORT TITLE OF 1980 AMENDMENT
Pub. L. 96–212, § 1, Mar. 17, 1980, 94 Stat. 102, provided:
‘‘That this Act [enacting sections 1157 to 1159 and 1521


to 1525 of this title, amending this section, sections 1151 to 1153, 1181, 1182, 1253, and 1254 of this title, and section 2001 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under this section and sections 1153, 1157, 1158, 1251, and 1522 of this title, amending provisions set out as notes under sections 1162 and 1255 of this title, and repealing provisions set out as a note under section 2001 of Title 22 may be cited as the ‘Refugee Act of 1980’.

**SHORT TITLE OF 1976 AMENDMENT**

Pub. L. 94–571, § 1, Oct. 20, 1976, 90 Stat. 2703, provided:

‘‘That this Act [amending this section and sections 1151 to 1153, 1181, 1182, 1253, and 1254 of this title, and section 2001 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under this section and sections 1153 and 1255 of this title] may be cited as the ‘Immigration and Nationality Act Amendments of 1976’.”

**SHORT TITLE**

Act June 27, 1952, ch. 477, §1, 66 Stat. 163, provided that such act, enacting this chapter, section 1429 of Title 18, Crimes and Criminal Procedure, amending sections 1358a, 13531, 1352 of this title, sections 342b, 342c, 342e of former Title 5, Executive Departments and Government Officers and Employees, sections 1114, 1546 of Title 18, sections 618, 1446 of Title 22, Foreign Relations and Intercourse, sections 1, 177 of former Title 49, Transportation, sections 1952 to 1955 and 1961 of the former Appendix to Title 50, War and National Defense, repealing section 330 of former Title 31, Money and Finance, enacting provisions set out as notes under this section and amending provisions set out as notes under sections 1435 and 1440 of this title, may be cited as the ‘‘Immigration and Nationality Act’’.

**REPEAL AND REVIVAL**


**REPEALS**

Act June 27, 1952, ch. 477, title IV, §409(b), 66 Stat. 280, 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**

Pub. L. 110–391, §2(b), Oct. 10, 2008, 122 Stat. 4193, provided that: ‘‘Not later than 30 days after the date of the enactment of this Act [Oct. 10, 2008], the Secretary of Homeland Security shall:

1) issue final regulations to eliminate or reduce fraud related to the granting of special immigrant status for special immigrants described in subclause (II) or (III) of section 101(a)(27)(C)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(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, §828, 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 106–390] [see section 1501 of Pub. L. 106–386, 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.’’


‘‘(a) The Attorney General shall prescribe regulations under title 5, United States Code, to carry out section 409(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 declaring 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 409(b)(2) of such Act, including providing a definition of the terms in section 409(b)(2)(A)(ii) and a delineation of in any other circumstances in section 409(b)(2)(A)(iii) of such Act.’’

**SAVINGS CLAUSE**

Act June 27, 1952, ch. 477, title IV, §405, 66 Stat. 280, 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 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 the possession of an unexpired immigrant visa issued prior to the effective date of this Act [this chapter], makes application for admission, his admissibility shall be determined under the provisions of law in effect on the date of the issuance of such visa. An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended [former section 155 of this title], or for adjustment of status under section 4 of the Displaced Persons Act of 1948, as amended [former section 1953 of the former Appendix to Title 50], which is pending on the date of enactment of this Act [June 27, 1952], shall be regarded as a proceeding within the meaning of this subsection.

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

(c) Except as otherwise specifically provided in this Act [this chapter], the repeal of any statute by this Act [this chapter] shall not terminate nationality here-tofore lawfully acquired nor restore nationality here-tofore 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 126(a) of title 22]), the Act of June 20, 1949 (Public Law 110, section 6, Eighty-first Congress, first session; 63 Stat. 208 [section 3308 of title 50]), the Act of June 5, 1950 (Public Law 535, Eighty-first Congress, second session [former section 1501 et seq. of title 22]), nor title V of the Agricultural Act of 1949, as amended (Public Law 78, Eighty-second Congress, first session [former sections 1461 to 1468 of title 7]).”

SEPARABILITY
Pub. L. 106–313, title I, §116, 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 invalid, the remainder of the 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.”

Pub. L. 104–208, div. C, §1(e), Sept. 30, 1996, 110 Stat. 3099–553, provided that: “If any provision of this division [see Tables for classification] or the application of such provision to any person or circumstance 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.”

Act June 27, 1952, ch. 477, title IV, §406, 66 Stat. 231, provided that: “If any particular provision of this Act [this chapter], or the application thereof to any person or circumstance, is held invalid, the remainder of the Act [this chapter] and the application of such provision to other persons or circumstances shall not be affected thereby.”

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 1501 of this title.

ADMISSION OF ALASKA AS STATE
Effectiveness of amendment of this section by Pub. L. 85–558 as dependent on admission of State of Alaska into the Union, see section 8(b) of Pub. L. 85–558, 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. 741, as required by sections 1 and 7(c) of Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding former section 491 of Title 48, Territories and Insular Possessions.

APPROPRIATIONS

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

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

“(2)(A) Funds which are authorized to be appropriated by paragraph (1), subject to the dollar limitation contained in subparagraph (B), shall be available, by application for the reimbursement of States and localities providing assistance as required by the Attorney General, to States and localities whenever—

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

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

“(iii) in any other circumstances as determined by the Attorney General. In applying clause (i), the providing of parole at a point of entry in a district shall be deemed to constitute an application for asylum in the district.

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

“(C) For purposes of paragraph (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.”


[Determination of President of the United States, No. 95–49, Sept. 28, 1995, 60 F.R. 53677.]

AVAILABILITY OF FUNDS
§1101

TITLES 8—ALIENS AND NATIONALITY

Page 48


ANNUAL REPORT ON IMMIGRATION APPLICATIONS MADE BY VICTIMS OF ABUSE

Pub. L. 113–4, title VIII, §§802, Mar. 7, 2013, 127 Stat. 110, provided that: ‘‘Not later than December 1, 2014, and annually thereafter, the Secretary of Homeland Security shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that includes the following:

‘‘(1) The number of aliens who—

‘‘(A) submitted an application for nonimmigrant status under paragraph (15)(T)(i), (15)(U)(i), or (51) of section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)(i)) during the preceding fiscal year;

‘‘(B) were granted such nonimmigrant status during such fiscal year;

‘‘(C) were denied such nonimmigrant status during such fiscal year.

‘‘(2) The mean amount of time and median amount of time between the receipt of an application for such nonimmigrant status and the issuance of work authorization to an eligible applicant for the period ending on September 30, 2015, all amounts collected pursuant to the fee 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 such 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 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 203(b)(4) of such Act (8 U.S.C. 1159(b)(4));

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

‘‘(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)(A))); and

‘‘(D) clears a background check and appropriate screening, as determined by the Secretary of Homeland Security.

‘‘(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 in Afghanistan on or after October 7, 2001, for not less than 1 year, or, if submitting a petition after September 30, 2015, for a period of not less than 2 years—

‘‘(I) by, or on behalf of, the United States Government; or

‘‘(II) by the International Security Assistance Force (or any successor name for such Force) in a capacity that required the alien—

‘‘(aa) while traveling off-base with United States military personnel stationed at International Security Assistance Force (or any successor name for such Force), to serve as an
(ii) provided faithful and valuable service to an entity or organization described in clause (ii), 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 described in clause (ii).

(B) Spouse or Child.—An alien is described in this subparagraph if 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 109–163; 8 U.S.C. 1101 note) which included the alien as an accompanying spouse or child; and

(ii) 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.—

(i) In General.—Except as provided under clause (ii), a recommendation or evaluation required under subparagraph (A)(iii) 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.

(ii) Review Process for Denial by Chief of Mission.—

(I) In General.—An applicant who has been denied Chief of Mission approval shall—

(aa) receive a written decision that provides, to the maximum extent feasible, information describing the basis for the denial, including the facts and inferences underlying the individual determination; and

(bb) be provided not more than one written appeal—

(AA) that shall be submitted not more than 120 days after the date that the applicant receives such decision in writing; and

(BB) that may request reopening of such decision and provide additional information, clarify existing information, or explain any unfavorable information.

(II) Afghan Special Immigrant Visa Coordinator.—The Secretary of State shall designate, in the Embassy of the United States in Kabul, Afghanistan, an Afghan Special Immigrant Visa Coordinator responsible for overseeing the efficiency and integrity of the processing of special immigrant visas under this section, who shall be given—

(aa) sufficient access to all security clearance information and the authority to review information supporting Chief of Mission denials if an appeal of a denial is filed; and

(bb) responsibility for ensuring that an applicant described in subclause (I) receives the information described in subclause (I)(aa); and

(cc) responsibility for ensuring that every applicant is provided a reasonable opportunity to provide additional information, clarify existing information, or explain any unfavorable information pursuant to [sub]clause (I)(bb).

(E) Evidence of Serious Threat.—A credible sworn statement depicting dangerous country conditions, together with official evidence of such country conditions from the United States Government, should be considered as a factor in determination of whether the alien has experienced or is experiencing an ongoing serious threat as a consequence of the alien's employment by the United States Government for purposes of subparagraph (A)(iv).

(F) Representation.—An alien applying for admission to the United States pursuant to this title may be represented during the application process, including at relevant interviews and examinations, by an attorney or other accredited representative. Such representation shall not be at the expense of the United States Government.

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

(C) 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 2014, the total number of principal aliens who may be provided special immigrant 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.

(D) Additional Fiscal Year.—For fiscal year 2014, the total number of principal aliens who may be provided special immigrant status under this section may not exceed 3,000, except that any unused balance of the total number of principal aliens who may be provided special immigrant status in fiscal year 2014 may be carried forward and provided through the end of fiscal year 2015, notwithstanding the provisions of paragraph (C), except that the one year period during which an alien must have been employed in accordance with subsection (b)(2)(D) shall be the period from October 7, 2001 through December 31, 2014, and except that the principal alien seeking special immigrant status under this subsection shall apply to the Chief of Mission in accordance with subsection (b)(2)(D) no later than September 30, 2014.
§ 1101

"(E) SPECIAL RULE FOR END OF CALENDAR YEAR 2014.

"(i) IN GENERAL.—During the period beginning on the date of the enactment of this subparagraph [Aug. 8, 2014] and ending on December 31, 2014, an additional 1,000 principal aliens may be provided special immigrant status under this section. For purposes of status provided under this subparagraph—

"(I) the period during which an alien must have been employed in accordance with paragraph (2)(A)(ii) must terminate on or before December 31, 2014;

"(II) the principal alien seeking special immigrant status under this subparagraph shall apply to the Chief of Mission in accordance with paragraph (2)(D) not later than December 31, 2014; and

"(III) the authority to provide such status shall terminate on December 31, 2014.

"(ii) CONSTRUCTION.—Clause (i) shall not be construed to affect the authority, numerical limitations, or terms for provision of status, under subparagraph (D).

"(F) FISCAL YEARS 2015, 2016, AND 2017.—In addition to any unused balance under subparagraph (D), for the period beginning on the date of the enactment of this subparagraph [Dec. 19, 2014] until such time that available special immigrant visas under subparagraphs (D) and (E) and this subparagraph are exhausted, [sic] the total number of principal aliens who may be provided special immigrant status under this section shall not exceed 7,000. For purposes of status provided under this subparagraph—

"(i) the period during which an alien must have been employed in accordance with paragraph (2)(A)(ii) must terminate on or before December 31, 2016;

"(ii) the principal alien seeking special immigrant status under this subparagraph shall apply to the Chief of Mission in accordance with paragraph (2)(D) not later than December 31, 2016; and

"(iii) the authority to issue visas shall commence on the date of the enactment of this subparagraph [Dec. 19, 2014] and shall terminate on the date such visas are exhausted.

"(4) APPLICATION PROCESS.—

"(A) IN GENERAL.—Not later than 120 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2014 [Dec. 26, 2013], the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall improve the efficiency by which applications for special immigrant visas under paragraph (1), are processed so that all steps under the control of the respective departments incidental to the issuance of such visas, including required screenings and background checks, should be completed not later than 9 months after the date on which an eligible alien submits all required materials to complete an application for such visa.

"(B) CONSTRUCTION.—Nothing in this section shall be construed to limit the ability of a Secretary referred to in subparagraph (A) to take longer than 9 months to complete those steps incidental to the issuance of such visas in high-risk cases for which satisfaction of national security concerns requires additional time.

"(C) 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 151(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) of this subsection or in section 1244(b) of the Refugee Crisis in Iraq Act of 2007 (Public Law 110–181; 122 Stat. 397) [8 U.S.C. 1157 note] to that of an alien lawfully admitted for permanent residence under subsection (a) of such section 245 if the alien—

"(A) was paroled or admitted as a nonimmigrant into the United States; and

"(B) is otherwise eligible for special immigrant status under—

"(I) this subsection; or

"(II) such section 1244(b); and

"(C) the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

"(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 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.

"(11) 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 Afghanistan or Iraq Act of 2007 (Public Law 110–181; 122 Stat. 396), disaggregated—

“(I) by the principal aliens applying for such status; and

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

“(iii) The number of applications referred to in clause (i) that—

“(I) were approved; or

“(II) were denied, including a description of the reason for each denial.

“(12) REPORT ON IMPROVEMENTS.—

“(A) REQUIREMENT FOR REPORT.—Not later than 120 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2014 [Dec. 26, 2013], the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall submit to the appropriate committees of Congress a report, with a classified annex, if necessary.

“(B) CONTENTS.—The report required by subparagraph (A) shall describe the implementation of improvements to the processing of applications for special immigrant visas under this subsection, including information relating to—

“(i) enhancing existing systems for conducting background and security checks of persons applying for special immigrant status, which shall—

“(I) support immigration security; and

“(II) provide for the orderly processing of such applications without significant delay;

“(ii) the financial, security, and personnel considerations and resources necessary to carry out this section;

“(iii) the number of aliens who have applied for special immigrant visas under this subsection during the preceding fiscal year;

“(iv) the reasons for the failure to process any applications that have been pending for longer than 9 months;

“(v) the total number of applications that are pending due to the failure—

“(I) to receive approval from the Chief of Mission;

“(II) of U.S. Citizenship and Immigration Services to complete the adjudication of the Form I–360;

“(III) to conduct a visa interview; or

“(IV) to issue the visa to an eligible alien;

“(vi) the average wait times for an applicant at each of the stages described in clause (v);

“(vii) the number of denials or rejections at each of the stages described in clause (v);

“(viii) the reasons for denials by the Chief of Mission based on the categories already made available to denied special immigrant visa applicants in the denial letter sent to them by the Chief of Mission.

“(13) PUBLIC QUARTERLY REPORTS.—Not later than 120 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2014 [Dec. 26, 2013], and every 3 months thereafter, the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall publish a report on the website of the Department of State that describes the efficiency improvements made in the process by which applications for special immigrant visas under this subsection are processed, including information described in clauses (ii) through (viii) of paragraph (12)(B).

“(14) REPORT.—Not later than 60 days after the date of the enactment of this paragraph [Dec. 19, 2014], the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing the following information:

“(A) The occupations of aliens who—

“(i) were provided special immigrant status under this section; and

“(ii) were considered principal aliens for such purpose.

“(B) The number of appeals submitted under paragraph (2)(D)(i)(I)(bb) from application denials by the Chief of Mission and the number of those applications that were approved pursuant to the appeal.

“(C) The number of applications denied by the Chief of Mission on the basis of derogatory information that were appealed and the number of those applications that were approved pursuant to the appeal.

“(D) The number of applications denied by the Chief of Mission for failure to establish the one-year period of employment required that were appealed and the number of those applications that were approved pursuant to the appeal.

“(E) The number of applications denied by the Chief of Mission for failure to establish the one-year period of employment by or on behalf of the United States Government that were appealed and the number of those applications that were approved pursuant to the appeal.

“(F) The number of applications denied by the Chief of Mission for failure to establish employment by or on behalf of the United States Government that were appealed and the number of those revocations that were overturned pursuant to the appeal.

“(15) REPORTS INFORMING THE CONCLUSION OF THE AFGHAN SPECIAL IMMIGRANT VISA PROGRAM.—Not later than June 1, 2016, and every six months thereafter, the Secretary of Defense, in conjunction with the Secretary of State, shall submit to the Committee on Armed Services and the Committee on the Judiciary of the Senate and the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives a report that contains—

“(A) a description of the United States force presence in Afghanistan during the previous 6 months;

“(B) a description of the projected United States force presence in Afghanistan;

“(C) the number of citizens or nationals of Afghanistan who were employed by or on behalf of the United States Government that were approved pursuant to the appeal.

“(D) the projected number of such citizens or nationals who will be employed by or on behalf of such entities.

“(E) SENSE OF CONGRESS.—It is the sense of Congress that the necessity of providing special immigrant status under this subsection should be assessed at regular intervals by the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, taking into account the scope of the current and planned presence of United States troops in Afghanistan, the current and prospective number of citizens and nationals of Afghanistan employed by or on behalf of the entities described in paragraph (2)(A)(i), and the security climate in Afghanistan.

“(F) INFORMATION REGARDING CITIZENS OR NATIONALS OF AFGHANSTAN EMPLOYED BY THE UNITED STATES OR FEDERAL CONTRACTORS IN AFGHANSTAN.—
§ 1101

(1) Requirement to compile 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 of, 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—

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

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

(4) Executive agency defined.—In this subsection, the term ‘executive agency’ has the meaning given that term in section 133 of title 41, United States Code.


(a) in general.—For purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), subject to subsection (c)(1), 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 such Act (8 U.S.C. 1101(a)(27)), if the alien—

(1) files with the Secretary of Homeland Security a petition 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

(D) 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 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.—A period of absence from the United States described in paragraph (2) shall not be considered to break any period for which continuous residence or physical presence in the United States is required for naturalization under title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.); and

(B) shall be treated as a period of residence and physical presence in the United States for purposes of determining the requirements for naturalization under such title.

“(2) PERIOD OF ABSENCE DESCRIBED.—A period of absence described in this paragraph is a period of 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 supporting the Chief of Mission or United States Armed Forces as a translator, interpreter, or in a security-related position in an executive or managerial capacity; and

(B) the person spent at least a portion of the time outside the United States working directly with the Chief of Mission or United States Armed Forces as a translator, interpreter, or in a security-related position in an executive or managerial capacity.

“(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.

“(1) FINDINGS and PURPOSE.—

(A) The purpose of this section [amending this section and sections 1182, 1184, 1255, and 1257 of this title] is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)(iii)) committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.

(B) 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 reflect 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)(B) of this section, see section 1184a of this title.

IRISH PEACE PROCESS CULTURAL AND TRAINING PROGRAM

§ 1101

TITLE 8—ALIENS AND NATIONALITY


COORDINATION OF AMENDMENTS by Pub. L. 104–208


'(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

Pub. L. 104–208, div. C, title V, §593, Sept. 30, 1996, 110 Stat. 3009–688, 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

Pub. L. 104–208, div. C, title V, §592, Sept. 30, 1996, 110 Stat. 3009–688, 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 continuation 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 CONCISE POPULATION CONTROL METHODS

Pub. L. 104–208, div. C, title VI, §601(a)(2), Sept. 30, 1996, 110 Stat. 3009–689, 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 number 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


'(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this division [see Tables for classification] should be American-made.

'(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


'(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) $238,000,000 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.

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

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

VISAS FOR OFFICIALS OF TAIWAN


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

'(2) prevention of nuclear proliferation,

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

'(4) the protection of the global environment,

'(5) the protection of endangered species, or

'(6) regional humanitarian disasters, the official shall be admitted to the United States, unless the official is otherwise inadmissible under the immigration laws of the United States.

CONSTRUCTION OF EXPEDIENT DEPORTATION REQUIREMENTS


REPORT ON ADMISSION OF CERTAIN NONIMMIGRANTS

taining 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 allowable information on the laws, regulations, and practices in effect in other countries that affect United States citizens and permanent resident aliens in the arts, entertainment, and athletics, in order to evaluate the impact of such admissions, laws, regulations, and practices on such citizens and aliens, directed Chairman of the Committee on the Judiciary of Senate to make the report available to interested parties and to hold a hearing respecting the report and directed such Committee to report to Senate its findings and any legislation it deems appropriate.


Pub. L. 101–110, §3, Oct. 1, 1991, 105 Stat. 557, 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 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. 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) section 101(a)(15) of such Act [8 U.S.C. 1101(a)(15)], but may be admitted under the terms of subparagraph (H)(i)(b) of such section (as in effect on September 30, 1991).”

Commission on Immigration Reform

Pub. L. 101–649, title I, §141, Nov. 29, 1990, 104 Stat. 5001, as amended by Pub. L. 102–232, title III, §302(c)(1), Dec. 12, 1991, 105 Stat. 1744, provided that—“(a) Establishment and Composition of Commission.—(1) Effective October 1, 1991, there is established a Commission on Immigration Reform (in this section referred to as the ‘Commission’) which shall be composed of 9 members to be appointed as follows:

‘‘(A) One member who shall serve as Chairman, to be appointed by the President.
‘‘(B) Two members to be appointed by the Speaker of the House of Representatives who shall select such members from a list of nominees provided by the Chairman of the Committee on the Judiciary of the House of Representatives.
‘‘(C) Two members to be appointed by the Minority Leader of the House of Representatives who shall select such members from a list of nominees provided by the ranking minority member of the Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary of the House of Representatives.

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

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

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

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

‘‘(b) Functions of Commission.—The Commission shall—

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

‘‘(2) transmit to the Congress—

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

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

‘‘(c) Considerations.—

‘‘(1) Particular Considerations.—In particular, the Commission shall consider the following:

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

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

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

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

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

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

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

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

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

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

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

‘‘(3) 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 1106 of this title] shall apply to the Commission in the same manner as they apply to the Commission established under such section, except that paragraph (2) of subsection (e) thereof shall not apply.

‘‘(f) Authorization of Appropriations.—(1) There are authorized to be appropriated to the Commission
such sums as may be necessary to carry out this section.

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

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

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

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

"(i) Presidential report.—The President shall conduct a review and evaluation and provide for the transmittal of reports to the Congress in the same manner as the Commission is required to conduct a review and evaluation and to transmit reports under subsection (b)."

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

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


"(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 5013 of title 5, United States Code) and has performed faithful service as such an employee for a total of three years or more, or

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

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

"(3) the principal officer in Hong Kong, in the officer’s discretion, has recomended 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 PUBL. 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 1256 of this title.

APPLICATION OF TREATY TRADER FOR CERTAIN FOREIGN STATES

Pub. L. 112–130, §1, June 8, 2012, 126 Stat. 376, provided that: "Israel shall be deemed to be a foreign state described in section 101(a)(15)(E) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)) for purposes of clauses (i) and (ii) of such section if the Government of Israel provides similar nonimmigrant status to nationals of the United States."

Pub. L. 101–649, title II, §204(b), Nov. 29, 1990, 104 Stat. 5019, 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 non-immigrant treatment to nationals of the United States:

"(1) The largest foreign state in each region (as defined in section 203(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1103(c)(1))) which (A) has 1 or more dependent areas (as determined for purposes of section 202 of such Act (8 U.S.C. 1102)) and (B) does not have a treaty of commerce and navigation with the United States.

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

"(3) The foreign state which (A) is a non-eligible foreign state [as defined in section 202(a)(2) of Pub. L. 101–649, set out as a note under section 1256 of this title] and (B) does not have a treaty of commerce and navigation with the United States."

CLAIRIFICATION OF TREATMENT OF CERTAIN INTERNATIONAL ACCOUNTING AND MANAGEMENT CONSULTING FIRMS

Pub. L. 101–649, title II, §206(a), Nov. 29, 1990, 104 Stat. 5022, as amended by Pub. L. 102–232, title III, §305(a)(9), Dec. 12, 1991, 105 Stat. 1748, Pub. L. 106–93, §§6, 8, Nov. 12, 1999, 113 Stat. 1519, provided that: "In applying sections 101(a)(15)(L) and 201(b)(1)(C) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(L), 1153(b)(1)(C)], and for no other purpose, in the case of a partnership that is organized in the United States to provide accounting or management consulting services and that markets its accounting or management consulting services under an internationally 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 organ-
nization, 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 at any time may not exceed 50.

**Extension of H-1 Immigration Status for Certain Nonimmigrants Employed in Cooperative Research and Development Projects and Coproduction Projects**

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

**Extension of H-1 Status for Certain Registered Nurses Through December 31, 1989**

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

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

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

"(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**

Pub. L. 100-505, § 12(o)(2), Oct. 24, 1988, 102 Stat. 2613, provided that: "Only for purposes of section 101(a)(27)(I) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(I)), an alien who is or was an officer or employee of an international organization (or is the unmarried son or daughter or surviving spouse of such an officer or employee or former officer or employee) is considered to be residing and physically present in the United States during a period in which the alien is residing in the United States because of the officer's or employee's need to conduct official business on behalf of the organization or because of customary leave, but only if during the period of the absence the officer or employee continues to have a duty station in the United States and, in the case of such an unmarried son or daughter, the son or daughter is not enrolled in a school outside the United States."

**Nonimmigrant Traders and Investors Under United States-Canada Free-Trade Agreement**

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

**Amarrian Immigrant**

Pub. L. 100-461, title II, Oct. 1, 1988, 102 Stat. 2288-15, as amended by Pub. L. 101-167, title II, Nov. 21, 1988, 103 Stat. 1211; Pub. L. 101-302, title I, May 25, 1990, 104 Stat. 228; Pub. L. 101-513, title II, Nov. 5, 1990, 104 Stat. 1996, provided that: "That the provisions of subsection (c) of 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 [set out below], shall apply to an individual who (1) departs from Vietnam after the date of the enactment of this Act [Oct. 1, 1988], and (2) is described in subsection (b) of such section, but who is not a person on the list set out below who is described in subsection (c) of such section and who is described in section 101(e) of Public Law 100-202 [set out below] who is described in subsection (b) of such section but who is not a person on the list set out below who is described in subsection (c) of such section and who was described in subsection (d) of such section in the case of an alien who was described in subsection (c) of such section in the case of an alien who is withdrawn from the list set out below."

§ 1101  TITLE 8—ALIENS AND NATIONALITY  Page 58

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

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

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

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

“(3) Notwithstanding section 221(c) of the Immigration and Nationality Act [8 U.S.C. 1221(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 that he or she is the natural mother of the principal alien involved and that 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) is admitted to the United States, the natural mother of the principal alien involved shall, thereafter, be accorded any right, privilege, or status under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] by virtue of such parentage.

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

“(c) Any alien admitted (or awaiting admission) to the United States under this section shall be eligible for benefits under chapter 2 of title IV of the Immigration and Nationality Act [8 U.S.C. 1322 et seq.] to the same extent as individuals admitted (or awaiting admission) to the United States under section 207 of such Act [8 U.S.C. 1157].

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

“(e) Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section and notwithstanding this section shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

*[Pub. L. 102-222, title III, §307(h)(8), Dec. 12, 1991, 105 Stat. 1757, provided that the amendment made by section 307(h)(8) to section 101(e) [§584(a)(2)] of Pub. L. 100-202, set out above, is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101-449.]*


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

*[Pub. L. 99-603, title I, §111, Nov. 6, 1986, 100 Stat. 3381, provided that:]*

“(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 EEOIR.—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, $222,000,000, and for fiscal year 1988, $419,000,000; and

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

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

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

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

ELIGIBILITY OF H-2 AGRICULTURAL WORKERS FOR CERTAIN LEGAL ASSISTANCE

Pub. L. 99–603, title III, §305, Nov. 6, 1986, 100 Stat. 3434, 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

Pub. L. 99–603, title III, §315(d), Nov. 6, 1986, 100 Stat. 3440, provided that: ‘‘(1) Except as provided in paragraph (2), during the one-year period beginning on the date of the enactment of this Act [Nov. 6, 1986], an alien may not be admitted to the United States as an alien crewman (under section 101(a)(15)(D) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(D)) for the purpose of performing service on board a vessel or aircraft at a time when there is a strike in the bargaining unit of the employer in which the alien intends to perform such service.

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

SENSE OF CONGRESS RESPECTING CONSULTATION WITH MEXICO

Pub. L. 99–603, title IV, §407, Nov. 6, 1986, 100 Stat. 3443, 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

Pub. L. 99–603, title VI, §601, Nov. 6, 1986, 100 Stat. 3444, 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 United States and mutually beneficial reciprocal trade and investment programs to alleviate conditions leading to 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.

TREATMENT OF DEPARTURES FROM GUAM

Pub. L. 99–505, §2, Oct. 21, 1986, 100 Stat. 1806, 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

Pub. L. 99–83, Oct. 30, 1984, 98 Stat. 3437, provided: ‘‘That an alien lawfully admitted to the United States for permanent residence shall be considered, for purposes of section 101(a)(27)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(A)), to be temporarily visiting abroad during any period (before or after the date of the enactment of this Act [Oct. 30, 1984]) in which the alien is employed by the American University of Beirut.’’

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

Pub. L. 97–116, §5(e), Dec. 29, 1981, 95 Stat. 1614, directed Secretary of Health and Human Services, after consultation with Attorney General, Secretary of State, and Director of the International Communications 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 subsection (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

Pub. L. 96–70, title III, §323(c), Sept. 27, 1979, 93 Stat. 497, 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 subsection (a)(27) of this section, of which not more than 5,000 could be admitted in any fiscal year, prior to repeal by Pub. L. 103-416, title II, § 212(a), Oct. 25, 1994, 108 Stat. 4314.

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

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

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

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

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

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

(a) irrevocable waiver of the 2-year home country residence requirement that may be exercised until January 1, 1994, for such PRC nationals;
(b) maintenance of lawful status for purposes of adjustment of status or change of nonimmigrant status for such PRC nationals who were in lawful status at any time on or after June 5, 1989, up to and including the date of this order;
(c) authorization for employment of such PRC nationals through January 1, 1994; and
(d) notice of expiration of nonimmigrant status (if applicable) rather than the institution of deportation proceedings, and explanation of options available for such PRC nationals eligible for deferral of enforced departure whose nonimmigrant status has expired.

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

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

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

Sec. 7. This order shall be effective immediately.

GEORGE BUSH

DETERMING ILLEGAL IMMIGRATION

Memorandum of President of the United States, Feb. 7, 1995, 60 F.R. 7885, provided:

Memorandum for the Heads of Executive Departments and Agencies

It is a fundamental right and duty for a nation to protect the integrity of its borders and its laws. This Administration shall stand firm against illegal immigration and the continued abuse of our immigration laws. By closing the back door to illegal immigration, we will continue to open the front door to legal immigrants.

My Administration has moved swiftly to reverse the course of a decade of failed immigration policies. Our initiatives have included increasing overall Border personnel by over 50 percent since 1993. We also are strengthening worksite enforcement and work authorization verification to deter employment of illegal aliens. Asylum rules have been reformed to end abuse by those falsely claiming asylum, while offering protection to those in genuine fear of persecution. We are cracking down on smugglers of illegal aliens and reforming criminal alien deportation for quicker removal. And we are the first Administration to obtain funding to reimburse States for a share of the costs of incarcerating criminal illegal aliens.

While we already are doing more to stem the flow of illegal immigration than has any previous Administration, more remains to be done. In conjunction with the Administration's unprecedented budget proposal to support immigration initiatives, this directive provides a blueprint of policies and priorities for this Administration's continuing work to curtail illegal immigration. With its focus on strong border deterrence backed up by effective worksite enforcement, removal of criminal and other deportable aliens and assistance to states, this program protects the security of our borders, our jobs and our communities for all Americans—citizens and legal immigrants alike.

COMPREHENSIVE BORDER CONTROL STRATEGY

A. Detering 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.

B. Detering 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 integrity 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 within 30 days on the structure 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 necessary reforms to curtail visa overstayers 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 DETENTION

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 advantage 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 help 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 detention 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 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 deterrence 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 taxpayer-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 other services and benefits for immigrants. This Administration to address this primary responsibility squarely.

INTERNATIONAL COOPERATION

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.

DEFINITIONS

Pub. L. 104–208, div. C, §1(c), Sept. 30, 1996, 110 Stat. 3009–546, provided that: “Except as otherwise specifically provided in this division [see Tables for classification], for purposes of titles I [enacting section 1225a of this title and section 758 of Title 18, Crimes and Criminal Procedure, amending this section and sections 1103, 1182, 1251, 1255, 1356, and 1357 of this title, and enacting provisions set out as notes under this section, sections 1103, 1182, 1251, 1255, and 1356 of this title, and section 758 of Title 18] and VI [enacting sections 1363b and 1372 to 1375 of this title and section 116 of Title 18, amending this section, sections 1105a, 1151, 1152, 1154, 1157, 1158, 1160, 1182, 1184, 1187, 1189, 1201, 1202, 1251, 1252b, 1255 to 1255b, 1258, 1258b, 1258f, 1323, 1324, 1324b, 1356, and 1522 of this title, section 112 of Title 32, National Guard, and section 191 of Title 50, War and National Defense, enacting provisions set out as notes under sections 1153, 1155, 1161, 1182, 1187, 1189, 1202, 1255, 1433, and 1448 of this title, section 301 of Title 5, Government Organization and Employees, section 116 of Title 18, and section 405 of Title 42, The Public Health and Welfare, and amending provisions set out as notes under sections 1159, 1182, 1252, 1255a, 1253, 1401, and 1430 of this title] of this division, the terms ‘alien’, ‘Attorney General’, ‘border crossing identification card’, ‘citizen’ ‘immigrant’, ‘immigrant visa’, ‘lawfully admitted for permanent residence’, ‘national’, ‘naturalization’, ‘refugee’, ‘State’, and ‘United States’ shall have the meaning given such terms in section 101(a) of the Immigration and Nationality Act [§8 U.S.C. 1101(a)].”


“(1) the terms ‘alien’, ‘Attorney General’, ‘national’, ‘naturalization’, ‘State’, and ‘United States’ shall have the meaning given such terms in section 101(a) of the Immigration and Nationality Act [§8 U.S.C. 1101(a)]; and

“(2) the term ‘child’ shall have the meaning given such term in section 101(c) of the Immigration and Nationality Act.”

Pub. L. 89–351, §14, Sept. 11, 1957, 71 Stat. 643, provided that: “Except as otherwise specifically provided in this Act, the definitions contained in subsections (a) and (b) of section 101 of the Immigration and Nationality Act [§8 U.S.C. 1101(a)], (b) shall apply to sections 4, 5, 6, 7, 8, 9, 12, 13, and 15 of this Act [enacting sections 1182b, 1182c, 1182d, 1182f, 1182h, 1182i, 1182k, and 1182l of this title and provisions set out as notes under section 1153 of this title and section 1971a of the former Appendix to ‘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 chapter, 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 re-
requirements of passports and visas as a means of identification and documentation necessary to establish their qualifications under such paragraphs (A) through (C) of section 1122(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 1122(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 1122(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. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter, as amended.

AMENDMENTS


1991—Pars. (1) to (3). Pub. L. 102–232 substituted “subparagraphs (A) through (C) of section 1122(a)(3) of this title” for “paragraph (3) (other than subparagraph (E)) of section 1122(a) of this title”. Pub. L. 100–525 substituted “other than subparagraph (E)” for “other than paragraph (E)” 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


“(a) IN GENERAL.—The President shall use his authority, including the authorities contained in section 6 of the United Nations Headquarters Agreement Act (Pub. L. 89–537) [Aug. 4, 1947, ch. 482, 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—

“(1) has been found to have been engaged in espionage activities or a terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iii))) directed against the United States or its allies; and

“(2) 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.”


(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 as provided in 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 employees 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 pre-clearance 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 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 as may be delegated to him by 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 aliens who have not been admitted or have been removed from the United States, on the number of applications filed and granted for cancellation of removal, and on the number of aliens estimated to be present unlawfully in the United States in each fiscal year.

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

(e) Annual report

(1) The Commissioner shall submit to Congress annually a report which contains a summary of the information collected under subsection (d) 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.


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 Table for Sections referred to in this section.


CODIFICATION


AMENDMENTS

2009—Subsec. (h). Pub. L. 111–123 struck out subsec. (h), 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(a) of Pub. L. 107–296, to reflect the probable intent of Congress. See 2002 Amendment notes below.


Subsec. (a). Pub. L. 107–296, §1102(a), as added by Pub. L. 108–7, §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.


Pub. L. 107–296, §1102(b)(3), formerly §1102(b)(A), as redesignated by Pub. L. 108–7, §105(a)(2), redesignated par. (6), relating to Attorney General authority 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. (a)(8) to (11). Pub. L. 107–296, §1102(b)(D), formerly §1102(b)(B), as redesignated by Pub. L. 108–7, §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.


Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 108–208, §373(2), 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.”


Subsec. (d)(2). Pub. L. 108–208, §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. 108–208, §102(d)(1)(A). See above.

Pub. L. 108–208, §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. 108–208, §102(d)(1)(A). See above.


Pub. L. 108–208, §102(d)(1)(A), redesignated subsec. (d) as (e).


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

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

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

**Effective Date of 2002 Amendment**


**Effective Date of 1996 Amendment**

Pub. L. 104–208, div. C, title I, §134(b), Sept. 30, 1996, 110 Stat. 3009–564, provided that: "The amendment made by subsection (a) [amending this section] shall take effect 90 days after the date of the enactment of this Act [Sept. 30, 1996]."


**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 by 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 military offices 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 fingerprint cards for applicants residing abroad applying for immigration benefits."

**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, complete construction of reinforced fencing along the miles identified under clause (i).

"(C) CONSULTATION.—(1) IN GENERAL.—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.

"(ii) 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.

"(2) 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.

"(3) SAFETY FEATURES.—The Attorney General, while constructing the additional fencing required under this subsection, shall incorporate such safety features 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) 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


"(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:

IJ–1 .............. 70% of the next to highest rate of basic pay for the Senior Executive Service
IJ–2 .............. 80% of the next to highest rate of basic pay for the Senior Executive Service
IJ–3 .............. 90% of the next to highest rate of basic pay for the Senior Executive Service
IJ–4 .............. 92% of the next to highest rate of basic pay for the Senior Executive Service.

"(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 198 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 under paragraph (3)(A), that they have served as an immigration judge, and in no case shall be paid less after the effective date than the rate of pay prior to the effective date."


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 and specified agencies and organizations to contribute law enforcement data for the system, authorized appropriations for the program, and required continuing full implementation in fiscal years 1996, 1997, and 1998, by all participating agencies, was repealed by Pub. L. 102–583, §6(e)(1), Nov. 2, 1992, 106 Stat. 4933.
§ 1103

TITLE 8—ALIENS AND NATIONALITY

IMMIGRATION AND NATURALIZATION SERVICE PERSONNEL ENHANCEMENT

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

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

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

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

“(b) HIRING OF INVESTIGATIVE AGENTS.—

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

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

PILOT PROGRAM TO ESTABLISH OR IMPROVE COMPUTER CAPABILITIES

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

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

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

EMERGENCY PLANS FOR REGULATION OF NATIONALS OF ENEMY COUNTRIES

Attorney General to develop national security emergency plans for regulation of immigration, regulation of nationals of enemy countries, and plans to implement laws for control of persons entering or leaving the United States, see section 1101(4) of Ex. Ord. No. 12586, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

EX. ORD. NO. 13404, TASK FORCE ON NEW AMERICANS

Ex. Ord. No. 13404, 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).

SIC. 2. Membership and Operation. (a) The Task Force shall be limited to the following members or employees designated by them at no less 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 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.

SIC. 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, 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.

SIC. 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) Of Police, Fire, and Other Public Safety;
(iii) Of Education, Community Services, and Housing;
(iv) Of the Environment, Energy, and the Economy;
(v) Of Transportation and Infrastructure Development;
(vi) The Director of the Office of Management and Budget; and
(vii) The Administrator of the Small Business Administration.
(d) Within 120 days of the date of this memorandum, the Task Force shall report to the President.
(e) The President may, at any time, determine that the Task Force is no longer needed and discontinue its existence.

Memorandum of President of the United States, Nov. 21, 2014, 79 F.R. 70765, provided:
Memorandum for the Heads of Executive Departments and Agencies

Our country has long been a beacon of hope and opportunity for people from around the world. Nearly 40 million foreign-born residents nationwide contribute to their communities every day, including 3 million refugees who have resettled here since 1975. These new Americans significantly improve our economy. They make up 13 percent of the population, but are over 16 percent of the labor force and start 28 percent of all new businesses. Moreover, immigrants or their children have founded more than 40 percent of Fortune 500 companies, which collectively employ over 10 million people worldwide and generate annual revenues of $4.2 trillion.

By focusing on the civic, economic, and linguistic integration of new Americans, we can help immigrants and refugees in the United States contribute fully to our economy and their communities. Civic integration provides new Americans with security in their rights and liberties. Economic integration empowers immigrants to be self-sufficient and allows them to give back to their communities and contribute to economic growth. English language acquisition allows new Americans to attain employment or career advancement and be more active civic participants.

Our success as a Nation of immigrants is rooted in our ongoing commitment to welcoming and integrating newcomers into the fabric of our country. It is important that we develop a Federal immigrant integration strategy that is innovative and competitive with those of other industrialized nations and supports mechanisms to ensure that our Nation’s diverse people are contributing to society to the fullest potential.

Therefore, I am establishing a White House Task Force on New Americans, an interagency effort to identify and support State and local efforts at integration that are working and to consider how to expand and replicate successful models. The Task Force, which will engage with community, business, and faith leaders, as well as State and local elected officials, will help determine additional steps the Federal Government can take to ensure its programs and policies are serving diverse communities that include new Americans.

By the authority vested in me as President of the Constitution and the laws of the United States of America, I hereby order as follows:

(a) There is established a White House Task Force on New Americans (Task Force) to develop a coordinated Federal strategy to better integrate new Americans into communities and support State and local efforts to do the same. It shall be co-chaired by the Director of the Domestic Policy Council and Secretary of Homeland Security, or their designees. In addition to the Co-Chairs, the Task Force shall consist of the following members:
(i) the Secretary of State;
(ii) the Attorney General;
(iii) the Secretary of Agriculture;
(iv) the Secretary of Commerce;
(v) the Secretary of Labor;
(vi) the Secretary of Health and Human Services;
(vii) the Secretary of Housing and Urban Development;
(viii) the Secretary of Transportation;
(ix) the Secretary of Education;
(x) the Chief Executive Officer of the Corporation for National and Community Service;
(xi) the Director of the Office of Management and Budget;
(xii) the Administrator of the Small Business Administration;
(xiii) the Senior Advisor and Assistant to the President for Intergovernmental Affairs and Public Engagement;
(xiv) the Director of the National Economic Council;
(xv) the Assistant to the President for Homeland Security and Counterterrorism; and
(xvi) the Director of the Office of Science and Technology Policy.
(b) A member of the Task Force may designate a senior-level official who is from the member’s department, agency, or office, and is a full-time officer or employee of the Federal Government, to perform day-to-day Task Force functions of the member. At the direction of the Co-Chairs, the Task Force may establish subgroups consisting exclusively of Task Force members or their designees under this subsection, as appropriate.
(c) The Secretary of Homeland Security shall appoint an Executive Director who will determine the Task Force’s agenda, convene regular meetings of the Task Force, and supervise work under the direction of the Co-Chairs. The Department of Homeland Security shall provide funding and administrative support for the Task Force to the extent permitted by law and subject to the availability of appropriations. Each executive department or agency shall bear its own expenses for participating in the Task Force.

(a) The Task Force shall, consistent with applicable law, work across executive departments and agencies to:
(i) review the policies and programs of all relevant executive departments and agencies to ensure they are responsive to the needs of new Americans and the receiving communities, and identify ways in which such programs can be used to increase meaningful engagement between new Americans and the receiving communities;
(ii) identify and disseminate best practices at the State and local level;
(iii) provide technical assistance, training, or other support to existing Federal grantees to increase their coordination and capacity to improve long-term integration and foster welcoming community climates;
(iv) collect and disseminate immigrant integration data, policies, and programs that affect numerous executive departments and agencies, as well as State and local governments and nongovernmental actors;
(v) conduct outreach to representatives of nonprofit organizations, State and local government agencies, elected officials, and other interested persons that can assist with the Task Force’s development of recommendations;
(vi) work with Federal, State, and local entities to measure and strengthen equitable access to services and programs for new Americans, consistent with applicable law; and
(vii) share information with and communicate to the American public regarding the benefits that result from integrating new Americans into communities.
(b) Within 120 days of the date of this memorandum, the Task Force shall develop and submit to the President an Integration Plan with recommendations for agency actions to further the integration of new Americans. The Integration Plan shall include:
(i) an assessment by each Task Force member of the status and scope of the efforts by the member’s department, agency, or office to further the civic, economic, and linguistic integration of new Americans, including
§ 1104

(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.

References in Text

This chapter, referred to in subsecs. (a), (b), and (e), 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)(2). Pub. L. 103–236, § 162(h)(2)(B), substituted ‘‘the Administrator’’ for ‘‘the Bureau of Consular Affairs’’.

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

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

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


Subsec. (b). Pub. L. 95–105, §109(b)(1)(B), substituted ‘‘Consular Affairs, to be headed by an Assistant Secretary of State for Consular Affairs’’ for ‘‘Security and Consular Affairs, to be headed by an administrator (with an appropriate title to be designated by the Secretary of State), with rank equal to that of an Assistant Secretary of State’’.

Subsec. (c). Pub. L. 95–105, §109(b)(1)(C), struck out ‘‘and references have and exercise any authority vested by law in any such 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’’.


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, 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 1964 Amendment**

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

**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, and section 161(d) of Pub. L. 103–236, set out as a note under section 2651a of Title 22.

**Assumption of Duties by Administrator of Bureau of Security and Consular Affairs**

Pub. L. 95–105, title I, §109(b)(4), Aug. 17, 1977, 91 Stat. 847, 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**

Pub. L. 95–105, title I, §109(b)(5), Aug. 17, 1977, 91 Stat. 847, 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) 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


Amendments

2001—Pub. L. 107–56 inserted ‘‘data exchange’’ after ‘‘security officers’’ in section catchline, designated existing provisions as subsections (a), inserted ‘‘and border before ‘‘security of the United States’’, and added subsections (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. 345, provided that: ‘‘Nothing in this section [enacting section 1379 of this title, amending this section, and enacting provisions set out as a note under this section], or in any other law, shall be construed to limit the authority of the Attorney General or the Director of the Federal Bureau of Investigation to provide access to the criminal history record information contained in the National Crime Information Center’s (NCIC) Interstate Identification Index (NCIC-III), or to any other information maintained by the NCIC, to any Federal agency or officer authorized to enforce or administer the immigration laws of the United States, for the purpose of such enforcement or administration, upon forms that are consistent with the National Crime Prevention and Privacy Compact Act of 1998 (subtitle A of title II of Public Law 105–251; 42 U.S.C. 14611–16) and section 552a of title 5, United States Code.’’

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.

Reporting Requirement

Pub. L. 107–56, title IV, §403(b), 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].’’

§1105a. Employment authorization for battered spouses of certain nonimmigrants

(a) In General

In the case of an alien spouse admitted under subparagraph (A), (E)(iii), (G), or (H) of section 1101(a)(15) of this title who is accompanying or following to join a principal alien admitted under subparagraph (A), (E)(iii), (G), or (H) of such section, respectively, the Secretary of Homeland Security may 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 if the alien spouse demonstrates that during the marriage the alien spouse or a child of the alien spouse has been battered or has been the subject of extreme cruelty perpetrated by the spouse of the alien spouse. Requests for relief under this section shall be handled under the procedures that apply to aliens seeking relief under section 1154(a)(1)(A)(iii) of this title.

(b) Construction

The grant of employment authorization pursuant to this section shall not confer upon the alien any other form of relief.


Prior Provisions


Section, act June 27, 1952, ch. 477, title IV, § 401, 66 Stat. 274, provided for establishment of Joint Committee on Immigration and Nationality, including its composition, necessity of membership on House or Senate Committee on the Judiciary, vacancies and election of chairman, functions, reports, submission of regulations to Committee, hearings and 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 601(1) of Pub. L. 91-510, set out as an Effective Date of 1970 Amendment note under section 4301 of Title 2, The Congress.

Abolition of Joint Committee on Immigration and Nationality
Pub. L. 91-510, title IV, § 421, Oct. 26, 1970, 84 Stat. 1189, abolished the Joint Committee on Immigration and Nationality established by former subsec. (a) of this section.

§ 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 investigations that are being conducted during the previous six months and the resources devoted to such investigations (or that were conducted during the previous six months), and the number not to exceed in any fiscal year the number specified in subsection (c) 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), are as follows:

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) 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

2) Employment-based immigrants described in section 1153(b) of this title (or who are admitted under section 1181(a) of this title on the basis of a prior issuance of a visa to their accompanying parent under section 1153(b) of this title) in a number not to exceed in any fiscal year the number specified in subsection (d) 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.

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 (d) 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), are as follows:

1) Aliens described in paragraph (A) or (B) of section 1101(a)(27) of this title.

2) Aliens who are admitted under section 1157 of this title or whose status is adjusted under section 1229b(a) of this title.

3) Aliens whose status is adjusted to permanent residence under section 1160 or 1255a of this title.

4) Aliens whose removal is canceled under section 2292(a) of this title.

5) Aliens provided permanent resident status under section 1255a of this title.

(c) 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)(i) 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) who were issued immigrant visas or who otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year.

(3)(A) The number computed under this paragraph for fiscal year 1992 is zero.

(B) The number computed under this paragraph for fiscal year 1993 is the difference (if any) between the worldwide level established under paragraph (1) for the previous fiscal year and the number of visas issued under section 1153(a) of this title (relating to family-sponsored immigrants) during the previous fiscal year and the number of visas issued under that section during that year.

c) 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)(1), 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).

(2) Age on parent’s naturalization 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)(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), 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) 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.


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) of this title concerning the status of an immediate relative 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.’" before "and was not legally separated" in second sentence.


1996—Subsec. (b)(1)(D). Pub. L. 104–208, § 308(g)(8)(A)(i), substituted "‘section 1229b(a)’ for ‘section 1254(a)’.

1992—Pub. L. 104–208, § 308(e)(5), substituted "removal is canceled" for "deportation is suspended.""


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 pursuant to section 1101(a)(27)(H) of this title or section 19 of the Immigration and Nationality Amendments of 1981, exceed the annual numerical limitation in effect, to reduce to such extent the annual numerical limitation in effect for the following fiscal year.

1980—Subsec. (a). Pub. L. 96–212 inserted provisions relating to aliens admitted or granted 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 notwithstanding 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 immigration pool, limitation on total numbers, and admissions 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 cent of portion of national population of continental United States in 1920 attributable by national origin of that quota area and setting a minimum quota of 100 for each quota area.

Subsec. (b). Pub. L. 89–236 substituted provisions defining "immediate relatives" for provisions calling for a determination of annual quota for each quota area by Secretaries of State and Commerce and Attorney General, and proclamation of quotas by President.

Subsec. (c). Pub. L. 89–236 substituted provisions allowing carryover through June 30, 1968, of quotas for quota areas in effect on June 30, 1965, and redistribution of unused quota numbers, for provisions which limited issuance of immigrant visas.

Subsec. (d). Pub. L. 89–236 substituted provisions creating an immigration pool and allocating its numbers without reference to the quotas to which an alien is chargeable, for provisions allowing issuance of 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)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) 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)(i) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)(i)) 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; or
"(II) the alien and the citizen spouse were married for less than 2 years at the time of the citizen spouse’s death; and

"(h) Treatment of Immediate Relatives.—In the case of an alien who was the spouse of a citizen of the United States at the time of the citizen’s death and who was not legally separated from the citizen at the time of the citizen’s death, if the citizen served honorably in an active duty status in the military, air, or naval forces of the United States and died as a result of injury or disease incurred in or aggravated by combat, the alien shall be considered, for purposes of section 201(b) of such Act, to remain an immediate relative after the date of the citizen’s death, but only if the alien files a petition under section 204(a)(1)(A)(i) of such Act (8 U.S.C. 1154(a)(1)(A)(i)) within 2 years after such date and only until the date the alien remarries. For purposes of such section 204(a)(1)(A)(i), an alien granted relief under the preceding sentence shall be considered an alien spouse described in the second sentence of section 201(b)(2)(A)(i) of such Act.

"(2) CHILDREN.—
"(A) IN GENERAL.—In the case of an alien who was the child of a citizen of the United States at the time of the citizen’s death, if the citizen served honorably in an active duty status in the military, air, or naval forces of the United States and died as 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 peti-
tion 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 section 203(a)(2) of such Act (8 U.S.C. 1182(a)(4)).

"(2) Self-Petitions.—Any spouse or child of an alien described in paragraph (1) who is not a beneficiary of a petition for classification as a family-sponsored immigrant may file a petition for such classification under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) with the Secretary of Homeland Security, but only if the spouse or child files a petition within 2 years after such date. Such spouse or child shall be eligible for deferred action, advance parole, and work authorization.

"(3) Alien Described.—An alien is described in this paragraph if the alien—

"(A) served honorably 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. 1140-1).

"(d) Parents of Lawful Permanent Resident Aliens.—

"(1) Self-Petitions.—Any parent of an alien described in paragraph (2) may file a petition for classification under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) but only if the parent files a petition within 2 years after such date. For purposes of such Act (8 U.S.C. 1101 et seq.), such petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)). Such parent shall be eligible for deferred action, advance parole, and work authorization.

"(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. 1140-1).

"(e) Waiver of Ground for Inadmissibility.—In determining the admissibility of any alien accorded an immigration benefit under this section for purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the ground for inadmissibility specified in section 204(a)(4) of such Act (8 U.S.C. 1154(a)(4)) shall not apply.''

"(Section 1703 of Pub. L. 108–136, set out above, effective as if enacted on Sept. 11, 2001, see section 1705(a) of Pub. L. 108–136, set out as an Effective Date of 2003 Amendment note under section 1439 of this title.)

Temporary Reducion in Diversity Visas

"(1) Beginning in fiscal year 1999, subject to paragraph (2), the number of visas available for a fiscal year under section 201(e) of the Immigration and Nationality 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 subsection (a) (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 1101 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
§ 1151a  TITLE 8—ALIENS AND NATIONALITY  Page 78

[ttitle II of Pub. L. 105–100, see Short Title of 1997 Amendments note set out under section 1101 of this title] as of the end of the previous fiscal year; exceeds the total of the reductions in available visas under this subsection for all previous fiscal years."

TRANSMISSION RELATING TO DEATH OF CITIZEN SPOUSE

Pub. L. 101–649, title I, §101(c), as added by Pub. L. 102–232, title III, §302(a)(2), Dec. 12, 1991, 105 Stat. 1742, provided that: "In applying the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act [8 U.S.C. 1153(b)(2)(A)(i)] (as amended by subsection (a)) in the case of a [sic] alien whose citizen spouse died before the date of the enactment of this Act (Nov. 29, 1990), notwithstanding the deadline specified in such section the alien spouse may file the classification petition referred to in such sentence within 2 years after the date of the enactment of this Act."

INAPPLICABILITY OF NUMERICAL LIMITATIONS FOR CERTAIN ALIENS RESIDING IN THE UNITED STATES VIRGIN ISLANDS

The numerical limitations described in subsec. (a) of this section not to apply in the case of certain aliens residing in the Virgin Islands seeking adjustment of their status to permanent resident alien status, and such adjustment of status not to result in any reduction in the number of aliens who may acquire the status of aliens lawfully admitted to the United States for permanent resident 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

Pub. L. 97–116, §19, Dec. 29, 1981, 95 Stat. 1621, provided that: "The numerical limitations contained in sections 201 and 202 of the Immigration and Nationality Act [sections 1153 and 1154 of this title] shall not apply to any alien who is present in the United States and who, on or before June 1, 1978—

(1) qualified as a nonpreference immigrant under section 203(a)(b) of such Act [section 1153(a)(8) of this title] (as in effect June 1, 1978);

(2) was determined to be exempt from the labor certification requirement of section 212(a)(14) of such Act [former section 1182(a)(14) of this title] because the alien had actually invested, before such date, capital in an enterprise in the United States of which the alien became a principal manager and which employed a person or persons (other than the spouse or children of the alien) who are citizens of the United States or aliens lawfully admitted for permanent residence; and

(3) applied for adjustment of status to that of an alien lawfully admitted for permanent residence."

SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

Pub. L. 95–412, §4, Oct. 5, 1978, 92 Stat. 907, as amended by Pub. L. 96–132, §23, Nov. 30, 1979, 93 Stat. 1051, provided for the establishment of a Select Commission on Immigration and Refugee Policy to study and evaluate existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States, to make such administrative and legislative recommendations to the President and Congress as appropriate, and to submit a final report no later than Mar. 1, 1981, at which time it ceased to exist although it was authorized to function for up to 60 days thereafter to wind up its affairs.

SELECT COMMISSION ON WESTERN HEMISPHERE IMMIGRATION

Pub. L. 93–292, 93 Stat. 292, 921, established a Select Commission on Western Hemisphere Immigration to study the operation of the immigration laws of the United States as they pertain to Western Hemisphere nations, with emphasis on the adequacy of such laws from the standpoint of fairness and the impact of such laws on employment and working conditions within the United States, and to make a final report to the President on or before Jan. 15, 1968, and terminate not later than 60 days after filing the final report.

TERMINATION OF QUOTA DEDUCTIONS

Pub. L. 85–316, §10, Sept. 11, 1957, 71 Stat. 662, provided that the quota deductions required under the provisions of former subsec. (e) of this section, the Displaced Persons Act of 1948, the act of June 30, 1950, and the act of April 9, 1962, were terminated effective July 1, 1957.


Section, Pub. L. 89–236, §21(e), Oct. 3, 1965, 79 Stat. 921, limited total number of special immigrants under section 1101(a)(27)(A) of this title, less certain exclusions, to 120,000 for fiscal years beginning July 1, 1966, or later.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 60 days after Oct. 20, 1976, see section 10 of Pub. L. 94–571, set out as an Effective Date of 1976 Amendment note under section 1101 of this title.

§1152. Numerical limitations on individual foreign states

(a) Per country level

(1) Nondiscrimination

(A) Except as specifically provided in paragraph (2) and in sections 1101(a)(27), 1151(b)(2)(A)(i), and 1153 of this title, no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence.

(B) Nothing in this paragraph shall be construed to limit the authority of the Secretary of State to determine the procedures for the processing of immigrant visa applications or the locations where such applications will be processed.

(2) Per country levels for family-sponsored and employment-based immigrants

Subject to paragraphs (3), (4), and (5), the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsections (a) and (b) of section 1153 of this title in any fiscal year may not exceed 7 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under such subsections in that fiscal year.

(3) Exception if additional visas available

If because of the application of paragraph (2) with respect to one or more foreign states or dependent areas, the total number of visas made available under both subsections (a) and (b) of section 1153 of this title for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, paragraph (2) shall not apply to visas made available to such states or areas during the remainder of such calendar quarter.
§ 1152

(4) Special rules for spouses and children of lawful permanent resident aliens

(A) 75 percent of 2nd preference set-aside for spouses and children not subject to per country limitation

(i) In general

Of the visa numbers made available under section 1153(a) of this title to immigrants described in section 1153(a)(2)(A) of this title in any fiscal year, 75 percent of the 2-A floor (as defined in clause (ii)) shall be issued without regard to the numerical limitation under paragraph (2).

(ii) "2-A floor" defined

In this paragraph, the term "2-A floor" means, for a fiscal year, 77 percent of the total number of visas made available under section 1153(a) of this title to immigrants described in section 1153(a)(2) of this title in the fiscal year.

(B) Treatment of remaining 25 percent for countries subject to subsection (e)

(i) In general

Of the visa numbers made available under section 1153(a) of this title to immigrants described in section 1153(a)(2)(A) of this title in any fiscal year, the remaining 25 percent of the 2-A floor shall be available in the case of a state or area that is subject to subsection (e) only to the extent that the total number of visas issued in accordance with subparagraph (A) to natives of the foreign state or area is less than the subsection (e) ceiling (as defined in clause (ii)).

(ii) "Subsection (e) ceiling" defined

In clause (i), the term "subsection (e) ceiling" means, for a foreign state or dependent area, 77 percent of the maximum number of visas that may be made available under section 1153(a) of this title to immigrants who are natives of the state or area under section 1153(a)(2) of this title consistent with subsection (e).

(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) applies, the number of immigrant visas that may be made available to natives of the state or area under section 1153(a)(2)(B) of this title may not exceed—

(i) 23 percent of the maximum number of visas that may be made available under section 1153(a) of this title to immigrants of the state or area described in section 1153(a)(2) of this title consistent with subsection (e), or

(ii) the number (if any) by which the maximum number of visas that may be made available under section 1153(a) of this title to immigrants of the state or area described in section 1153(a)(2) of this title consistent with subsection (e) 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) applies, if the total number of visas issued under section 1153(a)(2) of this title exceeds the maximum number of visas that may be made available to immigrants of the state or area under section 1153(a)(2) of this title consistent with subsection (e) (determined without regard to this paragraph), in applying paragraphs (3) and (4) of section 1153(a) of this title under subsection (e)(2) 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)

In the case of a foreign state or dependent area to which subsection (e) 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) (determined without regard to this paragraph), in applying subsection (e) 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) when approved by the Secretary of State. All other inhabited lands shall be attributed to a foreign state specified by the Secretary of State. For the purposes of this chapter the foreign state to which an immigrant is chargeable shall be determined by birth within such foreign state except that (1) an alien child, when accompanied by or following to join his alien parent or parents, may be charged to the foreign state of either parent if such parent has received or would be qualified for an immigrant visa, if necessary to prevent the separation of the child from the parent or parents, and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached a numerical level established under subsection (a)(2) for that fiscal year; (2) if an alien is chargeable to
a different foreign state from that of his spouse, the foreign state to which such alien is chargeable may, if necessary to prevent the separation of husband and wife, be determined by the foreign state of the spouse he is accompanying or following to join, if such spouse has received or would be qualified for an immigrant visa and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached a numerical level established under subsection (a)(2) for that fiscal year; (3) an alien born in the United States shall be considered as having been born in the country of which he is a citizen or subject, or, if he is not a citizen or subject of any country, in the last foreign country in which he had his residence as determined by the consular officer; and (4) an alien born within any foreign state in which neither of his parents was born and in which neither of his parents had a residence at the time of such alien’s birth may be charged to the foreign state of either parent.

(c) Chargeability for dependent areas

Any immigrant born in a colony or other component or dependent area of a foreign state overseas from the foreign state, other than an alien described in section 1151(b) of this title, shall be chargeable for the purpose of the limitation set forth in subsection (a), 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) 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 total number of visas 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), the proportion of the visa numbers made available under each of paragraphs (1) through (4) of section 1153(a) of this title is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 1153(a) of this title, and

(3) except as provided in subsection (a)(5), the proportion of the visa numbers made available under each of paragraphs (1) through (5) of section 1153(b) of this title is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 1153(b) of this title.

Nothing in this subsection shall be construed as limiting the number of visas that may be issued to natives of a foreign state or dependent area under section 1153(a) or 1153(b) of this title.

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

1920—Subsec. (a)(2). Pub. L. 66–237, 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.

References in Text

And provided further

And provided further
tion in effect for such year pursuant to this section, the Secretary of State shall reduce to such extent the numerical limitation in effect for the natives of the same foreign state pursuant to this section for the following fiscal year.”

Subsec. (b). Pub. L. 101–649, §102(2), inserted heading and substituted, reference to subsec. (a) of this section for reference to numerical limitation set forth in proviso to subsec. (a) of this section, wherever appearing.

Subsec. (c). Pub. L. 101–649, §102(3), inserted heading and substituted “an alien described in section 1151(b) of this title” for “a special immigrant, as defined in section 1101(a)(27) of this title, or an immediate relative of a United States citizen, as defined in section 1151(b) of this title” and struck out “, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed 5,000 in any one fiscal year” after “to the foreign state”.


Subsec. (c). Pub. L. 100–525, §9(f)(1), substituted “subsection (a)” for “section 202(a)” in original, which for purposes of codification had been translated as “subsection (a)”.

Subsec. (e). Pub. L. 100–525, §9(f)(2), substituted this section for “section 202” in original, which for purposes of codification had been translated as “this section”.

1985—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 accompanying or following to join his alien” for “when accompanied by his alien”, “charged to the foreign state of either parent” for “charged to the same foreign state as the accompanying parent or of either accompanying parent”, “of his accompanying parent”, “and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached the numerical” for “and if the foreign state to which such parent has been or would be chargeable has not exceeded the numerical” in cl. (2) substituting “of his spouse” for “of his accompanying spouse”, “and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached the numerical” for “and if the foreign state to which such spouse has been or would be chargeable has not exceeded the numerical” and in cl. (3) substituting “subject, or, if” for “subject, or if” and “country there in” for “country then in”.

1981—Subsec. (a). Pub. L. 97–116, §20(b), inserted proviso authorizing Secretary of State, to the extent that in a particular fiscal year the number of natives who are issued visas or who otherwise acquire the status of aliens lawfully admitted for permanent residence, and who are subject to the numerical limitation of this section, together with the alien from the same foreign state who adjust their status to aliens lawfully admitted for permanent residence pursuant to section 1903(a)(27) of this title and section 19 of the Immigration and Nationality Amendments of 1980, exceed the annual numerical limitation in effect for such year, to reduce to such extent the numerical limitation in effect for the natives of the same foreign state for the following fiscal year.

Subsec. (b). Pub. L. 97–116, §18(c), inserted “and” before “(4)”.

Subsec. (c). Pub. L. 96–212, §203(b)(3), (7), in introductory text struck out provisions relating to applicability to conditional entries, in par. (2) substituted “(26)” for “(20)”, struck out par. (7) relating to availability of conditional entries, and redesignated par. (8) as (7) and substituted “through (6)” for “through (7)”.

1976—Subsec. (c). Pub. L. 95–412 substituted “limitation set forth in subsection (a) of this title, for “limitations set forth in section 1151(a) and subsection (a), to the hemisphere in which such colony or other component or dependent area is located, and to the foreign state, respectively,” and “six hundred” for “600”.

1975—Subsec. (a). Pub. L. 94–571, §3(1), struck out last proviso which read: “Provided further, That the foregoing proviso shall not operate to reduce the number of immigrants who may be admitted under the quota of any quota area before June 30, 1968”.

Subsec. (c). Pub. L. 94–571, §3(2), in revising provisions, substituted “overseas from the foreign state, other than a special immigrant, as defined in section 1101(a)(27) of this title, or an immediate relative of a United States citizen, as defined in section 1151(b) of this title, shall be chargeable for the purpose of the limitations set forth in section 1151(a) of this title and subsection (a) of this section, to the hemisphere in which such colony or other component or dependent area is located, and to the foreign state, respectively, and the number of immigrant visas available to each such colony or other component or dependent area overseas from the foreign state chargeable to the foreign state in any one fiscal year shall not exceed 1 per centum of the maximum number of immigrant visas available to such foreign state”.


1965—Subsec. (a). Pub. L. 89–236 substituted provisions prohibiting preferences or priorities or discrimination in the issuance of an immigrant visa because of race, sex, nationality, place of birth, or place of residence, setting a limit of 20,000 per year on the total number of entries available to natives of any single foreign state, and prohibiting the 20,000 limitation from reducing the number of immigrants under the quota of any quota area before June 30, 1968, for provisions calling for the charging of immigrants, with certain exceptions, to the annual quota of the quota area of his birth.

Subsec. (b). Pub. L. 89–236 substituted provisions calling for treatment of each independent country, self-governing dominion, mandate, or possession of the United States, which no specific quota are set chargeable to, as the accompanying parent or of either accompanying parent, for “country there in”, “student, or, if” for “subject, or if” and “country there in” for “county there in”.


1963—Subsec. (c). Pub. L. 89–236 substituted provisions prohibiting preferences or priorities or discrimination in the issuance of an immigrant visa because of race, sex, nationality, place of birth, or place of residence, setting a limit of 20,000 per year on the total number of entries available to natives of any single foreign state, and prohibiting the 20,000 limitation from reducing the number of immigrants under the quota of any quota area before June 30, 1968, for provisions calling for the charging of immigrants, with certain exceptions, to the annual quota of the quota area of his birth.

Subsec. (d). Pub. L. 89–236 substituted provisions calling for treatment of each independent country, self-governing dominion, mandate, or possession of the United States, which no specific quota are set chargeable to, as the accompanying parent or of either accompanying parent, for “country there in”, “student, or, if” for “subject, or if” and “country there in” for “county there in”.

§ 1153

TITLE 8—ALIENS AND NATIONALITY

Page 82

tructions to all diplomatic and consular offices, for provisions that the terms of an immigration quota for a quota area do not constitute recognition of the transfer of territory or of a government not recognized by the United States.

Subsec. (e). Pub. L. 89–236 repealed subsec. (e) which allowed revision of quotas.

1961—Subsec. (e). Pub. L. 87–301 provided that if an area undergoes a change of administrative arrangements, boundaries, or other political change, the annual quota of the newly established area, or the visas authorized to be issued shall not be less than the total of quotas in effect or visas authorized for the area immediately preceding the change, and deleted provisions which in the event of an increase in minimum quota areas above twenty in the Asia-Pacific triangle, would proportionately decrease each quota of the area so the sum of all area quotas did not exceed two thousand.

Effective Date of 1991 Amendment

Effective Date of 1990 Amendment

Effective Date of 1988 Amendment

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.

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

Pub. L. 101–649, title I, §102, Nov. 29, 1990, 104 Stat. 4985, 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, 1976

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, 1976, 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. 1536, 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

(a) Preference allocation for family-sponsored immigrants

Aliens subject to the worldwide level specified in section 1151(c) of this title for family-sponsored immigrants shall be allotted visas as follows:

(1) Unmarried sons and daughters of citizens

Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allotted visas in a number not to exceed 23,400, plus any visas not required for the class specified in paragraph (4).

(2) Spouses and unmarried sons and unmarried daughters of permanent resident aliens

Qualified immigrants—

(A) who are the spouses or children of an alien lawfully admitted for permanent residence, or

(B) who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence,

shall be allotted 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 seeks to enter the United States 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—

(i) 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 alien physician from that of a nonimmigrant 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) 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) prior to November 1, 1998, the Attorney General shall grant a national interest waiver pursuant to subsection (b)(2)(B) 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 (I) 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 1½ of 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 ½ 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), (2), and (3) of this subsection in the fiscal year shall be reduced by ½ of the number of visas made available in the previous fiscal year to special immigrants described in section 1101(a)(27)(K) of this title who are natives of the foreign state.

(c) Diversity immigrants

(1) In general

Except as provided in paragraph (2), aliens subject to the worldwide level specified in section 1151(e) of this title for diversity immigrants shall be allotted visas each fiscal year as follows:

(A) Determination of preference immigration

The Attorney General shall determine for the most recent previous 5-fiscal-year period for which data are available, the total number of aliens who are natives of each foreign state and who (i) were admitted or otherwise
provided lawful permanent resident status (other than under this subsection) and (ii) were subject to the numerical limitations of section 1151(a) of this title (other than paragraph (3) thereof) or who were admitted or otherwise provided lawful permanent resident status as an immediate relative or other alien described in section 1151(b)(2) of this title.

(B) Identification of high-admission and low-admission regions and high-admission and low-admission states

The Attorney General—

(i) shall identify—

(I) each region (each in this paragraph referred to as a “high-admission region”) for which the total of the numbers determined under subparagraph (A) for states in the region is greater than 1% 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 subsection 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), 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) 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) (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) and to rely upon such estimates in authorizing the issuance of visas. The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within 2 years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond the alien’s control.

(h) Rules for determining whether certain aliens are children

(1) In general

For purposes of subsections (a)(2)(A) and (d), 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), 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 is—

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

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

(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), 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-petitions

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)(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)(i) to (iii). Pub. L. 107–273, §11066(a)(1)(B), (C), redesignated cls. (i) and (iii) as (i) and (ii), respectively, and struck out former cl. (i) which read as follows: “which the alien has established.”.


2000—Subsec. (b)(4). Pub. L. 106–538 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). (g) 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.”

1994—Subsec. (b)(5)(B), (C). Pub. L. 103–416, §219(c), substituted “Targeted” and “targeted” for “Targetted” and “targetted”, respectively, wherever appearing in headings and text.

Subsec. (b)(6)(C). Pub. L. 103–416, §212(b), struck out subpar. (C) which related to application of separate numerical limitations.


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(e)(3), substituted “Authorization for issuance” for “Presumption” in heading, struck out at beginning “Every immigrant shall be presumed not to be described in subsection (a) or (b) of this section, section 1101(a)(27) of this title, or section 1151(b)(2) of this title, until the immigrant establishes to the satisfaction of the consular officer that the immigrant is so described.”, and substituted “1151(b)(2) of this title or in subsection (a), (b), or (c)” for “1151(b)(1) of this title or in subsection (a) or (b)”.

1990—Subsec. (a). Pub. L. 101–649, §111(2), added subsec. (a) and struck out former subsec. (a) which related to allocation of visas of aliens subject to section 1151(a) limitations.


Subsec. (b). Pub. L. 101–649, §§111(1), 121(a), added subsec. (b) and redesignated former subsec. (b) as (d).

Subsec. (c). Pub. L. 101–649, §§111(1), 131, added subsec. (c) and redesignated former subsec. (c) as (e).

Subsec. (d). Pub. L. 101–649, §162(a)(1), added subsec. (d) which related to order of consideration given applications for immigrant visas.

Pub. L. 101–649, §111(1), redesignated former subsec. (b) as (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 101–649, §162(a)(1), added subsec. (e) and struck out former subsec. (e) which related to order of issuance of immigrant visas.

Pub. L. 101–649, §111(1), redesignated subsec. (c) as (e). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 101–649, §162(a)(1), added subsec. (f) and struck out former subsec. (f) which related to presumption of nonpreference status and grant of status by consular officers.


Subsec. (g). Pub. L. 101–649, §162(a)(1), added subsec. (g) and struck out former subsec. (g) which related to estimates of anticipated numbers of visas to be issued, termination and reinstatement of registration of aliens, and revocation of approval of petition.

Pub. L. 101–649, §111(1), redesignated subsec. (e) as (g).

1990—Subsec. (a). Pub. L. 96–232, §203(c)(1)–(6), in introductory text struck out applicability to conditional entry, in par. (2) substituted “(20)” for “(20)”, struck out par. (7) relating to availability of conditional entries, redesignated former par. (8) as (7) and struck out applicability to number of conditional entries and visas available under former par. (7), and redesignated former par. (9) as (8) and substituted provisions relating to applicability of pars. (1) to (7) to visas for provisions relating to applicability of pars. (1) to (8) to conditional entries.

Subsec. (d). Pub. L. 96–212, §203(c)(7), substituted “preference status under paragraphs (1) through (6)” for “preference status under paragraphs (1) through (7)”.

Subsec. (f). Pub. L. 96–212, §203(c)(8), struck out subsec. (f) which related to reports to Congress of refugees conditionally entering the United States.

Subsec. (g). Pub. L. 96–212, §203(c)(8), struck out subsec. (g) which set forth provisions respecting inspection and examination of refugees after one year.

Pub. L. 96–212, §203(i), substituted provisions relating to inspection and examination of refugees after one year for provisions relating to inspection and examination of refugees after two years.

Subsec. (h). Pub. L. 96–212, §203(c)(8), struck out subsec. (h) which related to the retroactive readjudication of refugee status as an alien lawfully admitted for permanent residence.

1978—Subsec. (a)(1) to (7). Pub. L. 95–412 substituted “1151(a) of this title” for “1151(a)(1) or (2) of this title” wherever appearing.

Subsec. (a)(8). Pub. L. 95–417 inserted provisions requiring a valid adoption home-study prior to the granting of a nonpreference visa for children adopted abroad or coming for adoption by United States citizens and requiring that no other nonpreference visa be issued to an unmarried child under the age of 16 unless accompanying or following to join his natural parents.

1976—Subsec. (a). Pub. L. 94–571, §4(1)–(3), substituted “section 1151(a)(1) or (2) of this title” for “section 1151(a)(1) of this title” in pars. (1) to (7); made visas available, in par. (3), to qualified immigrants whose services in the professions, sciences, or arts are sought by an employer in the United States; and required, in par. (5), that the United States citizens be at least twenty-one years of age.

Subsec. (e). Pub. L. 94–571, §4(4), substituted provision requiring Secretary of State to terminate the registration of an alien who fails to apply for an immigrant visa within one year following notification of the availability of such visa, including provision for reinstatement of a registration upon establishment within two years following the notification that the failure to apply was due to circumstances beyond the alien’s control for prior provision for discretionary termination of the registration on a waiting list of an alien failing to evidence continued intention to apply for a visa as prescribed by regulation and inserted provision for automatic revocation of approval of a petition under section 1154(b)(2) of this title upon such termination.
lish any claim to a preference.

for immigrants and requiring the immigrant to establish his preference as claimed and prohibiting consular officers from granting status of immediate relative of a United States citizen or preference until authorized to do so, for provisions spelling out the preferences under the quotas based on the previous national origins quota systems.

Subsec. (a). Pub. L. 89–236 substituted provisions requiring that consideration be given applications for immigrant visas in the order in which the classes of which they are members are listed in subsec. (h), 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. (b). Pub. L. 89–236 substituted provisions requiring each immigrant to establish his preference as claimed and prohibiting consular officers from granting status of immediate relative of a United States citizen or preference until authorized to do so, for provisions spelling out the order for consideration of applications for quota immigrant visas under the various prior classes.

Subsec. (c). 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 of 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)(3). Pub. L. 86–363, §2, substituted “unmarried sons or daughters” for “sons, or daughters”, increased percentage limitation from 25 to 50 per cent, 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. 1153, provided that: ‘‘The amendments made by this section [amending this section and section 11086(b) 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. 1153(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. 1160a(c)(1)(A)) to remove the conditional basis of an alien’s permanent resident status.”’

Amendment by Pub. L. 107–208 effective Aug. 6, 2002, and applicable to certain beneficiary aliens, see section 8 of “so. L. 107–208, set out as a note under section 1151 of this title.

Effective Date of 2000 Amendment

Pub. L. 106–596, (b)(b)(2), Nov. 22, 2000, 114 Stat. 2561, provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall apply to visas made available in any fiscal year beginning on or after October 1, 2000.’’

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

Effective Date of 1980 Amendment

Amendment by section 203(c) of Pub. L. 96–212 effective, except as otherwise provided, Apr. 1, 1980, and amendment by section 203(d) of Pub. L. 96–212 effective immediately before Apr. 1, 1980, see section 201 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.

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 year 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.

(ii) Maximum.—The total number of visas made available under paragraph (1) from unused visas from fiscal years 2001 through 2004 may not exceed 50,000.

(C) Construction.—Nothing in this paragraph shall be construed as affecting the application of section 201(m)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1153(m)(3)(C)).

(3) Employment-based visas defined.—For purposes of this subsection, the term employment-based visa means an immigrant visa which is issued pursuant to the numerical limitation under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)).

TEMPORARY REDUCTION IN WORKERS’ VISAS


(1) Beginning in the fiscal year following the fiscal year in which a visa has been made available under section 203(b)(3)(A)(i)(II) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(3)(A)(i)(II)) for all aliens who are the beneficiary of a petition approved under section 204 of such Act (8 U.S.C. 1154) as of the date of the enactment of this Act [Nov. 19, 1997] for classification under section 203(b)(3)(A)(ii) of such Act, subject to paragraph (2), visas available under section 203(b)(3)(A)(ii) of that Act 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) the number computed under subsection (d)(2)(A) [section 203(d)(2)(A) of Pub. L. 105–100, 8 U.S.C. 1151 note]; exceeds

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

DIVERSITY IMMIGRANT LOTTERY FEE

Pub. L. 104–208, div. C, title VI, §636, Sept. 30, 1996, 110 Stat. 3009–703, provided that: ‘‘The Secretary of State may establish a fee to be paid by each applicant for an immigrant visa described in section 203(c) of the Immigration and Nationality Act (8 U.S.C. 1153(c)). Such fee may be set at a level that will ensure recovery of the cost to the Department of State of allocating visas under such section, including the cost of processing all applications thereunder. All fees collected under this section shall be used for providing consular services. All fees collected under this section shall be deposited as an offsetting collection to any Department of State appropriation and shall remain available for obligations until expended. The provisions of the Act of August 18, 1856 (11 Stat. 58; 22 U.S.C. 4212–4214), concerning accounting for consular fees, shall not apply to fees collected under this section.’’

ELIGIBILITY FOR VISAS FOR POLISH APPLICANTS FOR 1995 DIVERSITY IMMIGRANT PROGRAM


(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—

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

(2) applied for adjustment of status to that of an alien lawfully admitted for permanent residence pursuant to section 245 of such Act (8 U.S.C. 1255) during fiscal year 1995, and whose application, and any associated fees, were accepted by the Attorney General, in accordance with applicable regulations;

(3) was not determined by the Attorney General to be excludeable under section 212 of such Act (8 U.S.C. 1182) or ineligible under section 213(c) of such Act (8 U.S.C. 1153(c)(2)); and

(4) did not become an alien lawfully admitted for permanent residence during fiscal year 1995;

(b) Priority.—The aliens selected under subsection (a) shall be considered to have been selected for diversity immigrant visas for fiscal year 1997 prior to any alien selected under any other provision of law.

(c) Reduction of immigrant visa number.—For purposes of applying the numerical limitations in sections 201 and 213(c) of the Immigration and Nationality Act (8 U.S.C. 1151, 1153(c)), aliens selected under subsection (a) who are granted an immigrant visa shall be treated as aliens granted a visa under section 203(c) of such Act.’’

SOVIET SCIENTISTS IMMIGRATION


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

(2) any actions necessary to carry out such Act.’’
TITLE 8—ALIENS AND NATIONALITY


“(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 a program to implement the provisions of such section. Such 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 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, 2015 to include such aliens as are eligible for admission under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) and this section, as well as spouses or children which are eligible, under the terms of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), to accompany or follow to join such aliens.

“(c) In determining compliance with section 203(b)(5)(A)(ii)(I) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)(I)) 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 program described in this section. Notwithstanding section 610(e) of the Immigration and Nationality 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.”


§ 1153

Title 8—Aliens and Nationality

(Pub. L. 107–273, div. C, title I, §11037(b), Nov. 2, 2002, 116 Stat. 2467, provided that: "The amendments made by subsection (a) of section 11037 of this title [amending 8 U.S.C. 1153(a)(2)] and the amendments made by sections 112(a)(1) and 112(a)(2) of this title [amending 8 U.S.C. 1255a] shall apply to petitions filed on or after the date of the enactment of this Act (Nov. 2, 2002).

(1) any proposal for a regional center pending before the Attorney General (whether for an initial determination 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. 1154(a)(1)(H)) (or any predecessor provision) or any preexistent status under section 204(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. 1186b(c)(1)(A)) to remove the conditional basis of an alien’s permanent resident status.

(Pub. L. 105–119, title I, §116(b), Nov. 26, 1997, 111 Stat. 2467, provided that: The amendment made by subsection (a) shall be deemed to have become effective on October 6, 1992.

Transition for Spouses and Minor Children of Legalized Aliens


(1) any proposal for a regional center pending before the Attorney General (whether for an initial determination 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 1154(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision) or any preexistent status under section 1153(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. 1186b(c)(1)(A)) to remove the conditional basis of an alien’s permanent resident status.


Additional Visa Numbers

(1) Treatment of Principals.—In the case of any alien described in paragraph (3) or paragraph (2) as the spouse or child of such an alien) with respect to whom a classification petition has been filed and approved under subsection (b), there shall be made available, in addition to the immigrant visas otherwise available in each of fiscal years 1991 through 1993 and without regard to section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a)), up to 12,000 additional immigrant visas. If the full number of such visas is not made available in fiscal year 1992, the shortfall shall be added to the number of such visas to be made available under this section in the succeeding fiscal year.

(2) Derivative Relatives.—A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)(A), (B), (C), (D), (E))) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under this section, be entitled to the same status, and the same order of consideration, provided under this section, if accompanying, or following to join, the alien’s spouse or parent.

(3) Employees of Certain United States Businesses Operating in Hong Kong.—An alien is described in this paragraph if the alien—

(A) is a resident of Hong Kong and is employed in Hong Kong except for temporary absences at the request of the employer and has been employed in Hong Kong for at least 12 consecutive months as an officer or supervisor or in a capacity that is managerial, executive, or involves specialized knowledge, by a business entity which (i) is owned and organized in the United States (or is the subsidiary or affiliate of a business owned and organized in the United States), (ii) employs at least 100 employees in the United States and at least 50 employees outside the United States, and (iii) has a gross annual income of at least $50,000,000, and

(B) has an offer of employment from such business entity in the United States as an officer or supervisor or in a capacity that is managerial, executive, or involves specialized knowledge, which offer (i) is effective from the time of filing the petition for classification under this section through and including the time of entry into the United States and (ii) provides for salary and benefits comparable to the salary and benefits provided to others with similar responsibilities and experience within the same company.

(b) Petitions.—Any employer desiring and intending to employ within the United States an alien described in subsection (a)(3) may file a petition with the Attorney General for such classification. No visa may be issued under subsection (a)(1) until such a petition has been approved.

(c) Allocation.—Visa numbers made available under subsection (a) shall be made available in the order which petitions under subsection (b) are filed with the Attorney General.

(d) Definitions.—In this section:

(1) Executive Capacity.—The term ‘executive capacity’ has the meaning given such term in section 101(a)(44)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(44)(B)), as added by section 123 of this Act.

(2) Managerial Capacity.—The term ‘managerial capacity’ has the meaning given such term in section 101(a)(44)(A) of the Immigration and Nationality Act, as added by section 123 of this Act.

(3) Officer.—The term ‘officer’ means, with respect to a business entity, the chairman or vice-chairman of the board of directors of the entity, the chairman or vice-chairman of the executive committee of the board of directors, the president, any vice-president, any assistant vice-president, any senior trust officer, the secretary, any assistant secretary, the treasurer, any assistant treasurer, any trust officer or associate trust officer, the controller, any ac-
sistant controller, or any other officer of the entity customarily performing functions similar to those performed by any of the above officers.

(4) SPECIALIZED KNOWLEDGE.—The term ‘specialized knowledge’ has the meaning given such term in section 214(c)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(B)), as amended by section 203(c)(2) of this Act.

(5) SUPERVISOR.—The term ‘supervisor’ means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, discipline, discharge, assign, or otherwise reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

Section 121 of Pub. L. 101–649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.

DIVERSITY TRANSITION FOR ALIENS WHO ARE NATIVES OF OR CERTAIN ADVERSELY AFFECTED FOREIGN STATES


“(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 1992, 1993, and 1994 and in fiscal year 1995 a 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) REQUIREMENTS.—Notwithstanding any other provision of law, for the purpose of carrying out the extension of the diversity transition program under the amendments made by subsection (a), the requirement of section 132(b)(2) of the Immigration Act of 1990 shall not apply to applicants under such extension and the requirement of section 203(c)(2) of the Immigration and Nationality Act shall apply to such applicants.”


“(a) IN GENERAL.—Notwithstanding the numerical limitations in sections 201 and 202 of the Immigration and Nationality Act (8 U.S.C. 1151, 1152), there shall be made available to qualified immigrants described in subsection (b) (or in subsection (d) as the spouse or child of such an alien) 40,000 immigrant visas in each of fiscal years 1992, 1993, and 1994 and in fiscal year 1995 a number of immigrant visas equal to the number of such visas provided (but not made available) under this section in previous fiscal years if 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 a native 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 the rules of 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 1101(b)(14)(A), (B), (C), (D), or (E) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(14)(A), (B), (C), (D), (E))) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under this section, be entitled to the same status, and the same order of consideration, provided under this section, if accompanying, or following to join, his spouse or parent.

“(e) WAIVERS OF GROUNDS OF EXCLUSION.—In determining the admissibility of an alien provided a visa number under this section, the Attorney General shall waive the ground of exclusion specified in paragraph (6)(C) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), unless the Attorney General finds that such a waiver is not in the national interest.

“(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.”


ONE-YEAR DIVERSITY TRANSITION FOR ALIENS WHO HAVE BEEN NOTIFIED OF AVAILABILITY OF NP-5 VISAS

Pub. L. 101–649, title I, §132, Nov. 29, 1990, 104 Stat. 5000, provided that, notwithstanding numerical limitations in sections 1151 and 1152 of this title, there were to be made available in fiscal year 1991, immigrant visa numbers for qualified immigrants who were notified by the Secretary of State before May 1, 1996, of their eligibility for issuance of visa under section 314 of Pub. L. 99–603, formerly set out as a note below, and were qualified for
issuance of such visa but for numerical and fiscal year limitations on issuance of such visas, former section 1153(a)(19) of this title or section 1153(e) of this title, or for which immigrant status under section 1151 of this title was, or was not, a native of foreign state described in section 314 of Pub. L. 99–663.

TRANSITION FOR DISPLACED TIBETANS

Pub. L. 101–649, title I, §134, Nov. 29, 1990, 104 Stat. 5001, as amended by Pub. L. 102–232, title III, §302(b)(7), Dec. 12, 1991, 105 Stat. 1744, provided that, notwithstanding 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 3-fiscal-year period beginning with fiscal year 1991.

EXPEDITED ISSUANCE OF LEBANESE SECOND AND FIFTH PREFERENCE VISAS


"(a) In General.—In the issuance of immigrant visas to certain Lebanese immigrants described in subsection (b) in fiscal years 1991 and 1992 and notwithstanding section 203(c) or section 203(e), in the case of fiscal year 1993, of the Immigration and Nationality Act [8 U.S.C. 1153(c), (e)] (to the extent inconsistent with this section), the Secretary of State shall provide that immigrant visas which would otherwise be made available in the fiscal year shall be made available as early as possible in the fiscal year.

"(b) Lebanese Immigrants Covered.—Lebanese immigrants described in this subsection are aliens who—

"(1) are natives of Lebanon;

"(2) are not firmly resettled in any foreign country outside Lebanon, and

"(3) as of the date of the enactment of this Act [Nov. 29, 1990], are the beneficiaries of a petition approved to accord status under section 203(a)(2) or 203(a)(5) of the Immigration and Nationality Act [8 U.S.C. 1153(a)(2), (b)] (as in effect as of the date of the enactment of this Act), or who are the spouse or child of such an alien if accompanying or following to join the alien.""

(Section 155 of Pub. L. 101–649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.)

ORDER OF CONSIDERATION


MAKING VISAS AVAILABLE TO IMMIGRANTS FROM UNDERREPRESENTED COUNTRIES TO ENHANCE DIVERSITY IN IMMIGRATION

Pub. L. 101–649, §3, Nov. 15, 1988, 102 Stat. 3908, provided that, notwithstanding numerical limitations in section 1151(a) of this title, subject to numerical limitations in section 1152 of this title, there were to be made available to qualified immigrants who were natives of underrepresented countries, 10,000 visa numbers in each of fiscal years 1990 and 1991.

MAKING VISAS AVAILABLE TO NONPREFERENCE IMMIGRANTS

Pub. L. 99–663, title III, §314, Nov. 6, 1986, 100 Stat. 3439, as amended by Pub. L. 100–362, §2(a), Nov. 15, 1988, 102 Stat. 3908, provided that, notwithstanding numerical limitations in section 1151(a) of this title, subject to numerical limitations in section 1152 of this title, there were to be made available to qualified immigrants described in section 1153(a)(7) of this title, 5,000 visa numbers in each of fiscal years 1987 and 1988 and 15,000 visa numbers in each of fiscal years 1989 and 1990.

REFERENCES TO CONDITIONAL ENTRY REQUIREMENTS OF SUBSECTION (a)(7) OF THIS SECTION IN OTHER FEDERAL LAWS

Pub. L. 96–212, §203(h), Mar. 17, 1980, 94 Stat. 108, provided that: "Any reference in any law (other than the Immigration and Nationality Act [this chapter] or this Act [see Short Title of 1976 Amendment note set out under section 1101 of this title]) in effect on April 1, 1980, to section 203(a)(7) of the Immigration and Nationality Act [subsec. (a)(7) of this section] shall be deemed to be a reference to such section as in effect before such date and to sections 207 and 208 of the Immigration and Nationality Act [sections 1157 and 1158 of this title]."

RETROACTIVE ADJUSTMENT OF REFUGEE STATUS

For adjustment of the status of refugees paroled into the United States pursuant to section 1182(d)(5) of this title, see section 5 of Pub. L. 95–412, set out as a note under section 1182 of this title.

ENTITLEMENT TO PREFERENTIAL STATUS

Pub. L. 94–571, §9, Oct. 20, 1976, 90 Stat. 2707, 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 adjustment of the status of refugees paroled into the United States pursuant to section 1182(d)(5) of this title, as amended by the Act of October 3, 1965 (79 Stat. 921) [which provided that unless legislation inconsistent therewith was enacted on or before June 30, 1968, the number of special immigrants within the meaning of section 1101(a)(27)(A) of this title, exclusive of special immigrants who were immediate relatives of United States citizens as described in section 1151(b) of this title, should not, in the fiscal year beginning July 1, 1968, or in any fiscal year thereafter, exceed a total of 120,000] who established a priority date at a consular office on the basis of entitlement to immigrant status under statutory or regulatory provisions in existence on the day before the effective date of this Act [see Effective Date of 1976 Amendment note set out under section 1101 of this title], on the basis of a petition filed with the Attorney General prior to such effective date.

"(b) An alien chargeable to the numerical limitation contained in section 21(e) of the Act of October 3, 1965 (79 Stat. 921) [which provided that unless legislation inconsistent therewith was enacted on or before June 30, 1968, the number of special immigrants within the meaning of section 1101(a)(27)(A) of this title, exclusive of special immigrants who were immediate relatives of United States citizens as described in section 1151(b) of this title, should not, in the fiscal year beginning July 1, 1968, or in any fiscal year thereafter, exceed a total of 120,000] who established a priority date at a consular office on the basis of entitlement to immigrant status under statutory or regulatory provisions in existence on the day before the effective date of this Act [see Effective Date of 1976 Amendment note set out under section 1101 of this title] shall be deemed to be entitled to immigrant status under section 203(a)(7) of the Immigration and Nationality Act [subsec. (a)(7) of this section] and shall be accorded the priority date previously established by him. Nothing in this section shall be construed to preclude the acquisition by such an alien of a preference status under section 203(a) of the Immigration and Nationality Act [subsec. (a) of this section], as amended by section 4 of this Act. Any petition filed by, or in behalf of, such an alien to accord him a preference status under section 203(a) [subsec. (a) of this section] shall, upon approval, be deemed to have been filed as of the priority date previously established by such alien. The numerical limitation to which such an alien shall be chargeable shall be determined as provided in sections 201 and 202 of the Immigration and Nationality Act [sections 1151 and 1152 of this title], as amended by
this Act [see Short Title of 1976 Amendment note set out under section 1101 of this title].”)

**Nonquota Immigrant Status of Certain Relatives of United States Citizens; Issuance of Nonquota Immigrant Visas on Basis of Petitions Filed Prior to January 1, 1962**


**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**


**Nonquota Immigrant Status of Spouses and Children of Certain Aliens**

Pub. L. 86–363, §4, Sept. 22, 1959, 73 Stat. 644, providing that an alien registered on a consular waiting list was eligible for quota immigrant status on basis of a petition approved prior to Jan. 1, 1959, along with the spouse and children of such alien, was repealed by Pub. L. 87–301, §24(a)(7), Sept. 26, 1961.

[Repeal of section 4 of Pub. L. 86–363 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87–301, set out as a note under former section 1255a of this title.]

**Issuance of Nonquota Immigrant Visas on Basis of Petitions Approved Prior to July 1, 1957**

Pub. L. 85–316, §12, Sept. 11, 1957, 71 Stat. 642, which provided that aliens eligible for quota immigrant status on basis of a petition approved prior to July 1, 1957, would be held to be nonquota immigrants, and if otherwise admissible, be issued visas, was repealed by Pub. L. 87–301, §24(a)(3), Sept. 26, 1961, 75 Stat. 657.

[Repeal of section 12 of Pub. L. 85–316 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87–301, set out as a note under former section 1255a of this title.]

**Issuance of Nonquota Immigrant Visas on Basis of Petitions Approved Prior to July 1, 1958**

Pub. L. 85–316, §12A, as added by Pub. L. 85–700, §2, Aug. 21, 1958, 72 Stat. 699, providing that aliens eligible for quota immigrant status on basis of a petition approved prior to July 1, 1958, would be held to be nonquota immigrants and issued visas, was repealed by Pub. L. 87–301, §24(a)(6), Sept. 26, 1961, 75 Stat. 657.

[Repeal of section 12A of Pub. L. 85–316 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87–301, set out as a note under former section 1255a of this title.]

§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.

**Special Nonquota Immigrant Visas for Refugees**

Pub. L. 86–363, §6, Sept. 22, 1959, 73 Stat. 645, 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 filed by a person admitted under former section 1971 et seq., of the former Appendix to Title 50, was repealed by Pub. L. 87–301, §24(a)(7), Sept. 26, 1961, 75 Stat. 657.

[Repeal of section 6 of Pub. L. 86–363 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87–301, set out as a note under former section 1255a of this title.]
(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;

(bb) 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;

(dd) who is a person of good moral character; (ee) 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 classified 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)(i)(A) of this title or would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry; and

(v) demonstrates to the Attorney General that the alien has not been classified under clause (iii) of 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; and

(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)(I) 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)(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) of this title 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

1 So in original. Probably should be “(II)”. 
(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 paragraph is an alien—

(aa) who resides, or has resided in the past, with the alien's spouse or intended spouse;

(bb) who is a person of good moral character;

(cc) who has resided with the alien's spouse or parent after the filing of a petition under that clause shall not adversely affect approval of the petition, and, for an approved petition, 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 permanent resident based on an approved self-petition under clause (ii) or (iii).

(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 Immigration 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 divorce 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 determination 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 petitioner to be of good moral character under subparagraph (A) if the Attorney General finds that the act or conviction 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 subsection (a)(1)(A) or subsection (a)(1)(B)(iii) that was filed or approved before the date on which the child attained 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 admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a VAWA self-petitioner with the same priority date assigned to the self-petition filed under clause (iv) of subsection (a)(1)(A) or subsection (a)(1)(B)(iii). No new petition shall be required to be filed.

(II) Any individual described in subclause (I) is eligible for deferred action and work authorization.

(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 admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a VAWA self-petitioner with the same priority date as that assigned to the petitioner in any petition described in clause (ii). No new petition 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.
§ 1154

A petition filed by an alien under subparagraph (f) of this section shall be construed to limit or deny any right or benefit provided under this subparagraph.

(ii) The petition referred to in clause (i)(III) is a petition filed by an alien under subparagraph (A)(iii), (A)(iv), (B)(ii) or (B)(iii) in which the child is included as a derivative beneficiary.

(iii) Nothing in the amendments made by the Child Status Protection Act shall be construed to limit or deny any right or benefit provided under this subparagraph.

(iv) Any alien who benefits from this subparagraph may adjust status in accordance with subsection (a) and (c) of section 1255 of this title as an alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii).

(v) For purposes of this paragraph, an individual who is not less than 21 years of age, who qualifies to file a petition under subparagraph (A)(iv) or (B)(iii) as of the day before the date on which the individual attained 21 years of age, and who did not file such a petition before such day, shall be treated as having filed a petition under such subparagraph as of such day if a petition is filed for the status described in such subparagraph before the individual attains 25 years of age and the individual shows that the abuse was at least one central reason for the filing delay. Clauses (i) through (iv) of this subparagraph shall apply to an individual described in this clause in the same manner as an individual 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)(6) of this title may file a petition with the Attorney General for such classification.

(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.

(ii) 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.

The Secretary of State shall designate a period for the filing of petitions with respect to visas which may be issued under section 1153(c) of this title for the fiscal year beginning after the end of the period.

(II) Aliens who qualify, through random selection, for a visa under section 1153(c) of this title shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.

(iii) A petition under this subparagraph shall be in such form as the Secretary of State may by regulation prescribe and shall contain such information and be supported by such documentary evidence as the Secretary of State may require.

(J) In acting on petitions filed under clause (i) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the Attorney General shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

(K) Upon the approval of a petition as a VAWA self-petitioner, the alien—

(i) is eligible for work authorization; and

(ii) may be provided an “employment authorized” endorsement or appropriate work permit incidental to such approval.

(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 (or individual’s child’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 a

---

2 So in original. Probably should be “child’s”.

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) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

(d) Recommendation of valid home-study

(1) Notwithstanding the provisions of subsections (a) and (b) 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, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency licensed in the United States.

(2) Notwithstanding the provisions of subsections (a) and (b), 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 immigration and adoption, in accordance with such convention and the Intercountry Adoption Act of 2000 [42 U.S.C. 11011 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 1151(b), 1153(a)(1), or 1153(a)(3) of this title, as appropriate. After an investigation of the facts of each case the Attorney General shall, if the conditions described in paragraph (2) are met, approve the petition and forward one copy to the Secretary of State.

(2) The Attorney General may approve a petition for an alien under paragraph (1) if—

(A) he has reason to believe that the alien (i) was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after 1950 and before October 22, 1982, and (ii) was fathered by a United States citizen;

(B) he has received an acceptable guarantee of legal custody and financial responsibility described in paragraph (4); and

(C) in the case of an alien under eighteen years of age, (i) the alien’s placement with a sponsor in the United States has been arranged by an appropriate public, private, or State child welfare agency licensed in the United States and actively involved in the intercountry placement of children, and (ii) the alien’s mother or guardian has in writing irrevocably released the alien for emigration.

(3) In considering petitions filed under paragraph (1), the Attorney General shall—

(A) consult with appropriate governmental officials and officials of private voluntary organizations in the country of the alien’s birth in order to make the determinations described in subparagraphs (A) and (C)(ii) of paragraph (2); and

(B) consider the physical appearance of the alien and any evidence provided by the petitioner, including birth and baptismal certificates, local civil records, photographs of, and letters or proof of financial support from, a putative father who is a citizen of the United States, and the testimony of witnesses, to the extent it is relevant or probative.

(4)(A) A guarantee of legal custody and financial responsibility for an alien described in paragraph (2) must—

(i) be signed in the presence of an immigration officer or consular officer by an individual (hereinafter in this paragraph referred to as the “sponsor”) who is twenty-one years of age or older, is of good moral character, and is a citizen of the United States or alien lawfully admitted for permanent residence, and

(ii) provide that the sponsor agrees (I) in the case of an alien under eighteen years of age, to
assume legal custody for the alien after the alien’s departure to the United States and until the alien becomes eighteen years of age, in accordance with the laws of the State where the alien and the sponsor will reside, and (II) to furnish, during the five-year period beginning on the date of the alien’s acquiring the status of an alien lawfully admitted for permanent residence, or during the period beginning on the date of the alien’s acquiring the status of an alien lawfully admitted for permanent residence and ending on the date on which the alien becomes twenty-one years of age, whichever period is longer, such financial support as is necessary to maintain the family in the United States of which the alien is a member at a level equal to at least 125 per centum of the current official poverty line (as established by the Director of the Office of Management and Budget, under section 9902(2) of title 42 and as revised by the Secretary of Health and Human Services under the second and third sentences of such section) for a family of the same size as the size of the alien’s family.

(B) A guarantee of legal custody and financial responsibility described in subparagraph (A) may be enforced with respect to an alien against his sponsor in a civil suit brought by the Attorney General in the United States district court for the district in which the sponsor resides, except that a sponsor or his estate shall not be liable under such a guarantee if the sponsor dies or is adjudicated a bankrupt under title 11.

g Restriction on petitions based on marriages entered while in exclusion or deportation proceedings

Notwithstanding subsection (a), 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 based on a marriage which was entered into during the period described in section 1255(e)(2) of this title, until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

h Survival of rights to petition

The legal termination of a marriage may not be the sole basis for revocation under section 1155 of this title of a petition filed under subsection (a)(1)(A)(iii) or a petition filed under subsection (a)(1)(B)(ii) pursuant to conditions described in subsection (a)(1)(A)(ii)(I). Remarriage of an alien whose petition was approved under subsection (a)(1)(B)(ii) or (a)(1)(A)(iii) or marriage of an alien described in clause (iv) or (vi) of subsection (a)(1)(A) or in subsection (a)(1)(B)(iii) 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) 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) 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)(1) of this title);

(B) the beneficiary of a pending or approved petition for classification under section 1158(a) or (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” nonimmigrant status as described in section 1101(a)(15)(T)(ii) of this title or in “U” nonimmigrant status as described in section 1101(a)(15)(U)(ii) of this title;

(F) a child of an alien who filed a pending or approved petition for classification or application for adjustment of status or other benefit specified in section 1101(a)(5) of this title as a VAWA self-petitioner; or

(G) an asylee (as described in section 1182(a)(3) of this title).


REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1)(A)(ii)(1)(aa)(BB), (B)(ii)(1)(aa)(BB), 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.


Subsection (a)(4)(D) and subsection (a)(1)(D), referred to in subsecs. (i)(1) and (j), probably should refer to subsec. (a)(1)(F) of this section. The reference to subsec. (a)(4)(D) probably should have been to subsec. “(a)(1)(D)”, as no par. (4) of subsec. (a) has been enacted. Subsec. (a)(1)(D) of this section was redesignated subsec. (a)(1)(F) by Pub. L. 106–386, §1503(d)(1). See 2000 Amendment note below.

AMENDMENTS

2013—Subsec. (a)(1)(i)(iv). Pub. L. 113–6 temporarily added cl. (iv). Text read as follows: “Each petition to compete for consideration for a visa under section 1153(c) of this title shall be accompanied by a fee equal to $30. All amounts collected under this clause shall be deposited into the Treasury as miscellaneous receipts.” See Effective and Termination Dates of 2013 Amendment note below.

Subsec. (b)(2)(F), (G), Pub. L. 113–4 added subpar. (F) and redesignated former subpar. (F) as (G).


§ 1154

Par. (K).

Applicable,''.

Section 1153(a) of this title, whichever paragraph is applicable.

Amended cl. (iii) generally. Prior to amendment, cl. (iii) 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 1151(b)(2)(A)(ii) of this title, and who has resided in the United States with the citizen 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. (b). Pub. L. 106–279 designated 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. 106–208, § 1507(h), inserted at end ‘‘Remarriage of an alien whose petition was approved under subsection (a)(1)(B)(ii) or (a)(1)(A)(iii) or marriage of an alien described in clause (iv) or (vi) of subsection (a)(1) or in subsection (a)(1)(B)(ii) shall not be the basis for revocation of a petition approval under section 1155 of this title.’’


Subsec. (e). Pub. L. 104–208, §308(b)(2)(A), substituted ‘‘be admitted’’ for ‘‘enter’’.


1991—Subsec. (a)(1). Pub. L. 102–232, §302(e)(1), inserted first sentence as cl. (i) and second sentence as cl. (ii) and added cls. (iii) and (iv), in subpar. (B), designated existing provisions as cl. (i) and added cls. (ii) and (iii), and added subpar. (H).

Subsec. (a)(1)(A). Pub. L. 103–165 inserted ‘‘spouse’’ after ‘‘alien’’ and ‘‘of the alien (and any child of the alien)’’ after ‘‘for classification’’. Subsec. (a)(1)(A)(ii) and (vi) inserted ‘‘in a relationship of marriage or domestic partnership’’ after ‘‘in the common law relationship’’.


1991—Subsec. (a)(1)(A). Pub. L. 102–232, §302(e)(1), inserted first sentence as cl. (i) and second sentence as cl. (ii) and added cls. (iii) and (iv), in subpar. (B), designated existing provisions as cl. (i) and added cls. (ii) and (iii), and added subpar. (H).

Subsec. (a)(1)(A). Pub. L. 103–165 inserted ‘‘spouse’’ after ‘‘alien’’ and ‘‘of the alien (and the alien’s children)’’ after ‘‘for classification’’. Subsec. (a)(2). Pub. L. 103–322, §40701(a), in subpar. (A), substituted ‘‘for the classification of the spouse of an alien if the alien, for the classification of the spouse of an alien if the alien, for ‘‘filed by an alien who, in introductory provisions and in subpar. (B), substituted ‘‘the classification of the spouse of an alien if the prior marriage of the alien’’ for ‘‘by an alien whose prior marriage’’.


1990—Subsec. (a)(1). Pub. L. 101–649, §182(b)(1), added par. (1) and struck out former par. (1) which read as follows: ‘‘Any citizen of the United States claiming that...
an alien is entitled to a preference status by reason of a relationship described in paragraph (1), (4), or (5) of section 1153(a) of this title, or to an immediate relative status under section 1153(b) of this title, or any alien lawfully admitted for permanent residence claiming that an alien is entitled to a preference status by reason of the relationship described in section 1153(a)(2) of this title, or any alien desiring to be classified as a preference immigrant under section 1153(a)(3) of this title (or any person on behalf of such an alien), or any person desiring and intending to employ within the United States an alien entitled to classification as a preference immigrant under section 1153(a)(6) of this title, may file a petition with the Attorney General for such classification. The petition shall be in such form as the Attorney General may by regulations prescribe and shall contain such information and be supported by such documentary evidence as the Attorney General may require. The petition shall be made under oath administered by any individual having authority to administer oaths, if executed in the United States, but, if executed outside the United States, administered by a consular officer or an immigration officer.

Subsec. (b). Pub. L. 101–649, § 162(b)(2), substituted reference to section 1153(b)(2) or 1153(b)(3) of this title for reference to section 1153(a)(3) or (6) of this title, and reference to preference under section 1153(a) or (b) of this title for reference to a preference status under section 1153(a) of this title.

Subsec. (e). Pub. L. 101–649, § 162(b)(3), substituted “immigrant under subsection (a), (b), or (c) of section 1153(a) of this title” for “preference immigrant under section 1153(a) of this title”.

Subsec. (f). Pub. L. 101–649, § 162(b)(5), (6), redesignated subsec. (g) as (f) and struck out former subsec. (f) which related to applicability of provisions to qualified immigrants specified in section 1153(e) of this title.


Subsec. (g). Pub. L. 101–649, § 702(b), as amended by Pub. L. 102–232, § 308(b),inserted “except as provided in section 1255(e)(3) of this title,” after “Notwithstanding subsection (a).”

Pub. L. 101–649, § 162(b)(6), redesignated subsec. (h) as (g). Former subsec. (g) redesignated as (f).

Subsec. (h). Pub. L. 101–649, § 162(b)(6), redesignated subsec. (h) as (g).

1988—Subsec. (c). Pub. L. 100–505, § 9(g)(1), substituted “an immediate relative” for “a nonquota”.

Subsec. (g)(2). Pub. L. 100–505, § 9(g)(2), substituted “(C)(ii) of paragraph (2)” for “(C)(i) of paragraph 2”, “(C)(i) of paragraph (2)” for “(C)(ii) of paragraph 2”.

1986—Subsec. (a). Pub. L. 99–638, § 3(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 99–638, § 6(a), inserted “‘1f’ and ‘‘, or has sought to be accorded,” and added cl. (2).


1981—Subsec. (a). Pub. L. 97–116, § 18(d), substituted “of a relationship described in paragraph” for “of the relationships described in paragraphs”.

Subsec. (d). Pub. L. 97–116, § 3, redesignated subsec. (e) as (d). Former subsec. (d), directing that the Attorney General forward to the Congress a Statistical summary covering the granting of preferential status.


Effective and Termination Dates of 2013 Amendment


Effective Date of 2002 Amendment


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**

Amendment by sections 302(e)(4), (5) and 308(b) of Pub. L. 102–232 effective as if included in the enactment of section 1151 of this title.

**Effective Date of 1990 Amendment**

Amendment by section 302(e)(4) of Pub. L. 102–232 effective as if included in the enactment of section 1154 of this title.

**Effective Date of 1988 Amendment**

Pub. L. 99–639, §4(b), Nov. 10, 1986, 100 Stat. 3543, provided that: "The amendments made by this section [amending section 1154 of this title] shall apply to petitions 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. 29, 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 1101 of this title.

**Construction of 2009 Amendment**

Pub. L. 111–83, title V, §5304(c), Dec. 17, 2004, 118 Stat. 3366, provided in part: "Nothing in the amendment made by this section [amending section 1154 of this title] shall be construed to limit or affect any other provision of the Immigration Act of 1965, Pub. L. 89–236, or any other provision of the Immigration and Naturalization Act that authorizes the Attorney General to conclude the removal of an alien from the United States or to surrender the alien to an officer of another country for removal.

**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.

§ 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.

...
married son or unmarried daughter instead of child, or by any United States citizen claiming that an immigrant is his married son or married daughter instead of son or daughter, and prohibited approval of petition for quota immigrant status or preference of alien without proof of parent relationship of the petitioner to such alien.

Subsec. (c). Pub. L. 86–363, §5(b), limited approval to two petitions for one petitioner in behalf of a child as defined in section 1101(b)(1)(E) of this title unless necessary to prevent separation of brothers and sisters.

**Effective Date of 2004 Amendment**

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 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 deported” 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.

§ 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), 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)), 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), the number of refugees who may be admitted under this section in any fiscal year after fiscal year 1982 shall be such number as the President determines, before the beginning of the fiscal year and after appropriate consultation, is justified by humanitarian concerns or is otherwise in the national interest.

(3) Admissions under this subsection shall be allocated among refugees of special humanitarian concern to the United States in accordance with a determination made by the President after appropriate consultation.

(4) In the determination made under this subsection for each fiscal year (beginning with fiscal year 1992), the President shall enumerate, with the respective number of refugees so determined, the number of aliens who were granted asylum in the previous year.

(b) Determinations by President respecting number of admissions for humanitarian concerns

If the President determines, after appropriate consultation, that (1) an unforeseen emergency refugee situation exists, (2) the admission of certain refugees in response to the emergency refugee situation is justified by grave humanitarian concerns or is otherwise in the national interest, and (3) the admission to the United States of these refugees cannot be accomplished under subsection (a), 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), 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.
§ 1157

1157

spouse or child of the alien) may be terminated

(d) Oversight reporting and consultation re-

section 1101(a)(42) of this title at the time of the

the Attorney General determines that the alien

mission shall be charged against the numerical

child’s admission to the United States, such ad-

grant under this chapter. Upon the spouse’s or

child’s admission (except as other-

waiver by the Attorney General shall be in writ-

tuation, the progress of refugee admissions,

and the necessary number of refugee admis-

with respect to the number of refugee admis-

under subsection (a) or with respect to the

admission of refugees in response to an emer-

gen refugee situation under subsection (b), the

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 (b), that the number of refugee

admissions should be increased because of an

 unforeseen emergency refugee situation, to the ex-

tent 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 de-

tails of the proposal would jeopardize the lives or

safety of individuals.

(B) After the President initiates appropriate

consultation prior to making a determination,

subsections (a) and (b), the committees on the

Senate and the House of Representatives shall

cause to be printed in the Congressional Record

the following information:

(1) A description of the nature of the refugee

situation.

(2) A description of the number and alloca-

tion of the refugees to be admitted and an

analysis of conditions within the countries

from which they came.

(3) A description of the proposed plans for

their movement and resettlement and the esti-

mated cost of their movement and resettlement.

(4) An analysis of the anticipated social, eco-

nomic, and demographic impact of their ad-

mission to the United States.

(5) A description of the extent to which

other countries will admit and assist in the re-

settlement of such refugees.

(6) An analysis of the impact of the partici-

pation of the United States in the resettlement

of such refugees on the foreign policy in-

terests 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)(1), (2)(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 this title and Tables.

PRIOR PROVISIONS

A prior section 1157, act June 27, 1952, ch. 477, title II, ch. 1, § 207, 66 Stat. 181, 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. 89–236, § 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 (32)” and “other than paragraph (2)(C) or subparagraphs (A), (B), (C), or (E) of paragraph (3)” for “other than paragraph (27), (29), or (33) and other than so much of paragraph (23) as relates to trafficking in narcotics”.

1988—Subsec. (c)(1). Pub. L. 100–525 substituted “otherwise” for “otherwise”.

Section (with the exception of subsec. (c) which is effective Apr. 1, 1980) effective, except as otherwise provided, Mar. 17, 1980, and applicable to fiscal years beginning with the fiscal year beginning Oct. 1, 1979, see section 204 of Pub. L. 96–212, set out as an Effective Date of 1980 Amendment note under section 1101 of this title.

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 FUNCTIONS

For delegation of Congressional reporting functions of President under subsec. (d) of this section, see section 1 of Ex. Ord. No. 13131, July 31, 2003, 68 F.R. 46073, set out as a note under section 301 of Title 3, The President.

IRAQ REFUGEE CRISIS


“SEC. 1241. SHORT TITLE.

“This subtitle may be cited as the ‘Refugee Crisis in Iraq Act of 2007’.

“SEC. 1242. PROCESSING MECHANISMS.

“(a) IN GENERAL.—The Secretary of State, in consultation with the Secretary of Homeland Security, shall establish or use existing refugee processing mechanisms in Iraq and in countries, where appropriate, in the region in which—

“(1) aliens described in section 1241 may apply and interview for admission to the United States as refugees; and

“—continued—

Page 107  TITLE 8—ALIENS AND NATIONALITY §1157

Effective Date of 2005 Amendment


Effective Date of 2002 Amendment


Effective Date of 1991 Amendment

Pub. L. 102–232, title III, § 307(f), Dec. 12, 1991, 105 Stat. 1756, provided that the amendments made by that section (amending this section, sections 1159, 1161, 1187, 1188, 1254a, 1255a, and 1322 of this title, and provisions set out as notes under sections 1151 and 1255 of this title) are effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.

Effective Date of 1990 Amendment

Amendment by section 104(b) of Pub. L. 101–649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Amendment by section 603(a)(4) of Pub. L. 101–649 applicable to individuals entering United States on or after June 1, 1991, see section 661(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Effective Date

Section (with the exception of subsec. (c) which is effective Apr. 1, 1980) effective, except as otherwise provided, Mar. 17, 1980, and applicable to fiscal years beginning with the fiscal year beginning Oct. 1, 1979, see section 204 of Pub. L. 96–212, set out as an Effective Date of 1980 Amendment note under section 1101 of this title.

Transfer of functions, and treatment of related references, see note set out under section 1551 of this title.
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)(2) 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(c) of the National Security Act of 1947 (50 U.S.C. 401a(4)) (now 50 U.S.C. 3003(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 should 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. 1244. 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) or an agent acting on behalf of the alien, submits a petition for classification under section 203(b)(4) of such Act (8 U.S.C. 1133(b)(4));

(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, or 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 an official and documented contract, award, grant, or cooperative agreement; 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.

(3) Treatment of Surviving Spouse or Child.—An alien is described in subsection (b) if the alien—

(A) 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. 1101 note), which included the alien as an accompanying spouse or child; and

“(B) 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.

“(4) APPROVAL BY CHIEF OF MISSION REQUIRED.—

“(A) In general.—Except as provided under subparagraph (B), 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 to confirm employment and faithful and valuable service to the United States Government prior to approval of a petition under this section.

“(B) REVIEW PROCESS FOR DENIAL BY CHIEF OF MISSION.—

“(i) IN GENERAL.—An applicant who has been denied Chief of Mission approval required by subparagraph (A) shall—

“(I) receive a written decision that provides, to the maximum extent feasible, information describing the basis for the denial, including the facts and inferences underlying the individual determination; and

“(II) be provided not more than one written appeal—

“(aa) that shall be submitted not more than 120 days after the date that the applicant receives such decision in writing; and

“(bb) that may request reopening of such decision and provide additional information, clarify existing information, or explain any unfavorable information.

“(ii) IRAQI SPECIAL IMMIGRANT VISA COORDINATOR.—The Secretary of State shall designate, in the Embassy of the United States in Baghdad, Iraq, an Iraqi Special Immigrant Visa Coordinator responsible for overseeing the efficiency and integrity of the processing of special immigrant visas under this section, who shall be given—

“(I) sufficiently high security clearance to review information supporting Chief of Mission denials if an appeal of a denial is filed;

“(II) responsibility for ensuring that an applicant described in clause (i) receives the information described in clause (i)(I); and

“(III) responsibility for ensuring that every applicant is provided a reasonable opportunity to provide additional information, clarify existing information, or explain any unfavorable information pursuant to clause (i)(II).

“(5) EVIDENCE OF SERIOUS THREAT.—A credible sworn statement depicting dangerous country conditions, together with official evidence of such country conditions from the United States Government, should be considered as a factor in determination of whether the alien has experienced or is experiencing an ongoing serious threat as a consequence of the alien’s employment by the United States Government for purposes of paragraph (1)(D).

“(c) 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 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)).

“(3) CARRY FORWARD.—

“(A) 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.

“(B) 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.

“(C) LIMITATION ON NUMBER OF VISAS.—

“(i) IN GENERAL.—The total number of principal aliens who may be provided special immigrant status under this section after January 1, 2014, shall be not more than 2,500.

“(ii) EMPLOYMENT PERIOD.—The 1-year period during which the principal alien is required to have been employed by or on behalf of the United States Government in Iraq under subsection (b)(1)(B) shall begin on or after March 20, 2003, and end on or before September 30, 2013.

“(iii) APPLICATION DEADLINE.—The principal alien seeking special immigrant status under this subparagraph shall apply to the Chief of Mission in accordance with subsection (b)(4) not later than September 30, 2014.

“(d) VISA AND PASSPORT ISSUANCE AND FEES.—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 shall 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.

“(e) 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.

“(f) 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.

“(g) 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. 1157) to the same extent, and for the same periods of time, as such refugees.


“SEC. 124. 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’).

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 other 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 and whose claim 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)) provided that the motion is filed within 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 Iraqi 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 in the term in section 4(1) 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.

“(f) REPORT ON IMPROVEMENTS.—

“(1) IN GENERAL.—Not later than 120 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2014 (Dec. 26, 2013), the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall submit a report, with a classified annex, if necessary, to—

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

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

“(2) CONTENTS.—The report submitted under paragraph (1) shall describe the implementation of improvements to the processing of applications for special immigrant visas under section 1244(a), including information relating to—

“(A) enhancing existing systems for conducting background and security checks of persons applying for special immigrant status, which shall—

“(i) support immigration security;

“(ii) provide for the orderly processing of such applications without significant delay;

“(B) the financial, security, and personnel considerations and resources necessary to carry out this subtitle;

“(C) the number of aliens who have applied for special immigrant visas under section 1244 during each month of the preceding fiscal year;

“(D) the reasons for the failure to process any applications that have been pending for longer than 9 months;

“(E) the total number of applications that are pending due to the failure—

“(i) to receive approval from the Chief of Mission;

“(ii) of U.S. Citizenship and Immigration Services to complete the adjudication of the Form I-360;

“(iii) to conduct a visa interview; or

“(iv) to issue the visa to an eligible alien;

“(F) the average wait times for an applicant at each of the stages described in subparagraph (E);

“(G) the number of denials or rejections at each of the stages described in subparagraph (E); and

“(H) the reasons for denials by the Chief of Mission based on the categories already made available to U.S. Citizenship and Immigration Services to complete the adjudication of the Form I-360.

“(2) SENIOR COORDINATING OFFICIALS.—

“(1) REQUIREMENT TO DESIGNATE.—The Secretary of Homeland Security, the Secretary of State, and the Secretary of Defense shall each designate a senior coordinating official, with sufficient expertise, authority, and resources, to carry out the duties described in paragraph (2), with regard to the issuance of special immigrant visas under this subtitle and the Afghan Allies Protection Act of 2009 (title VI of div. F of Pub. L. 111–4) (8 U.S.C. 1310 note).

“(2) DUTIES.—Each senior coordinating official designated under paragraph (1) shall—

“(A) develop proposals to improve the efficiency and effectiveness of the process for issuing special immigrant visas under this subtitle and the Afghan Allies Protection Act of 2009;

“(B) coordinate and monitor the implementation of such proposals;

“(C) include such proposals in the report required by subsection (f) and in each quarterly report required by subsection (g); and

“(D) implement appropriate actions as authorized by law to carry out the improvements described in the report required by subsection (f) and in each quarterly report required by subsection (g).

“(g) SUBMISSION TO CONGRESS.—Not later than 30 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2014 (Dec. 26, 2013), the Secretary of Homeland Security, the Secretary of State, and the Secretary of Defense shall each submit to the committees set out in subparagraphs (A) and (B) of subsection (f)(1) the name and title of the senior coordinating official designated under paragraph (1) by each such Secretary, along with a description of the relevant expertise, authority, and resources of such official.

“SEC. 1299. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated such sums as may be necessary to carry out this subtitle.

“[Pub. L. 110–242, § 1(c), which directed amendment of section 1244(c)(1) of Pub. L. 110–181, set out above, by substituting ‘fiscal years 2008 through 2012’ for ‘each of the five fiscal years beginning after the date of the enactment of this Act’, was executed by making the substitution ‘each of the five fiscal years beginning after the date of the enactment of this Act’ to reflect the probable intent of Congress.]"

“Bring Them Home Alive Program


“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Bring Them Home Alive Act of 2000’.

“SEC. 2. AMERICAN VIETNAM WAR POW/MIA AMNESTY PROGRAM.

“(a) ASYLUM FOR ELIGIBLE ALIENS.—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 a living American Vietnam 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 Vietnam 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 ALIENS.—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 ALIENS.—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.—

"(1) IN GENERAL.—Except as provided in paragraph (2), an alien described in this subsection is—

"(A) any alien who—

"(i) is a national of Iraq or a nation of the Greater Middle East Region, 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));

"(ii) was performing service in Kuwait, Iraq, or another nation of the Greater Middle East Region; or

"(iii) was performing service in the Greater Middle East Region in direct support of military operations in Kuwait or Iraq.

"(2) 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 30 hours of the programming described in subsection (a)(1) in 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.

"(b) "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, to the maximum extent feasible, information on the information required to be broadcast by subsection (a)(1).

"(e) "Definition."—The term ‘international broadcasting’ means the International Broadcasting Bureau of the United States Information Agency or, on and after the effective date of title XII of the Foreign Affairs Reform and Restructuring Act of 1998 (as contained in division G of Public Law 105–277) [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 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 the 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).

"(3) "Aliens who are (or were) nationals of an independent state of the former Soviet Union or of Estonia, Latvia, or Lithuania and who are Chinese members of, and demonstrate public, active, and continuous participation (or attempted participation) in the religious activities of, the Ukrainian Catholic Church or the Ukrainian Orthodox Church, shall be deemed a category of alien established under paragraph (1)(A).

"(4) "Aliens who are (or were) nationals of Vietnam, Laos, or Cambodia 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 shall be in writing and shall, 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 is not covered by subsection (c)(2) of this section by August 14, 1988, and before the date of the enactment of this Act (Nov. 21, 1989) was denied refugee status shall be permitted to reapply for such status. Such an application shall be determined taking into account the application of this section.

“(e) PERIOD OF APPLICATION.—

“(1) Subsections (a) and (b) shall take effect on the date of the enactment of this Act [Nov. 21, 1989] and shall only apply to applications for refugee status submitted before October 1, 2016.

“(2) Subsection (c) shall apply to decisions made after the date of the enactment of this Act and before October 1, 2016.

“(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, 2016.’’


[Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of Title 22, Foreign Relations and Intercourse, and section 161(d) of Pub. L. 103–306, set out as a note under section 2651a of Title 22.]

EL SALVADORAN REFUGEES

Pub. L. 97–113, title VII, § 731, Dec. 29, 1981, 95 Stat. 1557, provided that: ‘‘It is the sense of the Congress that the administration should continue to review, on a case-by-case basis, petitions for extended voluntary departure made by citizens of El Salvador who claim that they are subject to persecution in their homeland, and should take full account of the civil strife in El Salvador in making decisions on such petitions."

TIME FOR DETERMINATIONS BY PRESIDENT FOR FISCAL YEAR 1980

Pub. L. 96–212, title II, § 204(d)(1), Mar. 17, 1980, 94 Stat. 109, provided that: ‘‘Notwithstanding section 207(a) of the Immigration and Nationality Act (as added by section 201(b) of this title [subsec. (a) of this section]), the President may make the determination described in the first sentence of such section not later than forty-five days after the date of the enactment of this Act [Mar. 17, 1980] for fiscal year 1980.’’

PRESIDENTIAL DETERMINATION CONCERNING ADMISSION AND ADJUSTMENT OF STATUS OF REFUGEES

Determinations by the President pursuant to this section concerning the admission and adjustment of status of refugees for particular fiscal years were contained in the following Presidential Determinations:

Presidential Determination No. 2015-14, Sept. 29, 2015, 80 F.R. 62433.


Presidential Determination No. 02-04, Nov. 21, 2001, 66 F.R. 63467.


Presidential Determination No. 86-2, Oct. 11, 1985, 47 F.R. 34617.

President's Decision No. 85-2, Oct. 9, 1984, 46 F.R. 55233.

President's Decision No. 84-28, Sept. 30, 1980, 45 F.R. 68365.

Ex. Ord. No. 12208, CONSULTATIONS ON THE ADMISSION OF REFUGEES

including the Refugee Act of 1980 (P.L. 96–212; 8 U.S.C. 1101 note), the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.), and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

1-101. Exclusive of the functions otherwise delegated, or reserved to the President, by this Order, there are hereby delegated to the Secretary of State and the Secretary of Homeland Security, or either of them, the functions of initiating and carrying out appropriate consultations with members of the Committees on the Judiciary of the Senate and of the House of Representatives for purposes of Sections 101(a)(42)(B) and 207(a), (b), (d), and (e) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(42)(B) and 1157(a), (b), (d), and (e)).

1-102. There are reserved to the President the following functions under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.):

(a) To specify special circumstances for purposes of qualifying persons as refugees under Section 101(a)(42)(B).
(b) To make determinations under Sections 207(a)(1), 207(a)(2), 207(a)(3) and 207(b) (8 U.S.C. 1157(a)(1) to (3) and (b)).
(c) To fix the number of refugees to be admitted under Section 207(b).

1-103. Except to the extent inconsistent with this Order, all actions previously taken pursuant to any function delegated or assigned by this Order shall be deemed to have been taken and authorized by this Order.

§ 1158. Asylum
(a) Authority to apply for asylum
(1) In general

Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted 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).

(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 clause (ii) or (iii) of subparagraph (A).

An unmarried alien who seeks to accompany, or follow to join, such alien.

(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 1159(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.

(e) Asylum status

(1) In general

In the case of an alien granted asylum under subsection (b), 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) 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) owing to a fundamental change in circumstances;

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

(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). The Attorney General may require applicants to submit fingerprints and a photograph at such time and in such manner as 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(h) 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 1355(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 consequences, 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 who is 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 applica-
tion for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this chapter, effective as of the date of a final determination on such application.

(7) No private right of action

Nothing in this subsection shall be 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. 77, 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


2005—Subsec. (b)(1). Pub. L. 109–13, § 101(a)(1), (2), designated existing provisions as subpar. (A), inserted subpar. (B), and substituted “The Secretary of Homeland Security or the Attorney General” for “The Attorney General” and “The Secretary of Homeland Security” or the Attorney General” for “the Attorney General” in two places.


Subsec. (b)(2)(A)(V). Pub. L. 109–13, § 101(b), substituted “described in” for “inadmissible under” in two places and struck out “removable under” before “section”.

2002—Subsec. (b)(3). Pub. L. 107–206 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) or (IV)” 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 excluded under subsection (I), (II), or (III) of section 1182(a)(3)(B)(i) of this title or deportable under section 1227(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 705(b) of Pub. L. 110–229, set out as an Effective Date note under section 1806 of Title 48.

Effective Date of 2005 Amendment


“(1) The amendments made by paragraphs (1) and (2) of subsection (a) [amending this section] shall take effect as if enacted on March 1, 2003.

“(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


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

Pub. L. 104–208, div. C, title VI, § 604(c), Sept. 30, 1996, 110 Stat. 3009–694, 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].”

Pub. L. 104–132, title IV, § 421(b), Apr. 24, 1996, 110 Stat. 1270, 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 1252(b)(2) 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) **RESCUE 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)(i) and 208(b)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C. 1221(b)(3)(B)(i); 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 expedient 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.

**Expedited Removal for Denied Asylum Applicants**


“(a) **IN GENERAL.**—The Attorney General may provide for the expedited adjudication of asylum claims and the expedient removal of asylum applicants whose applications have been finally denied, unless the applicant remains in an otherwise valid nonimmigrant status.

“(b) **EMPLOYMENT AUTHORIZATION.**—[Amended this section.]

“(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section—

“(1) $61,000,000 for fiscal year 1995;

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

“(3) $53,000,000 for fiscal year 1997; and

“(4) $93,000,000 for fiscal year 1998.”

**Time for Establishment of Asylum Procedure by Attorney General**

Pub. L. 96–212, title II, §204(d)(2), Mar. 17, 1980, 94 Stat. 109, provided that: “The Attorney General shall establish the asylum procedure referred to in section 208(a) of the Immigration and Nationality Act (as added by section 201(b) of this title) (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)) 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 residency 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 an alien lawfully admitted for permanent residence the status of any alien granted asylum who—

(1) applies for such adjustment,

(2) has been physically present in the United States for at least one year after being granted asylum,

(3) continues to be a refugee within the meaning of section 1101(a)(42)(A) of this title or a spouse or child of such a refugee,

(4) is not forcibly resettled in any foreign country, and

(5) is admissible (except as otherwise provided under subsection (c)) 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 residency 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 appli-
cable 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.


Pub. L. 109-13, §104(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—


Effective Date of 1991 Amendment


Effective Date of 1990 Amendment

Pub. L. 101-649, title I, §104(a)(2), Nov. 29, 1990, 104 Stat. 4985, 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 603(a)(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


“(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. 1158(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. 1158(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 such section on or before June 1, 1990.

“(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
§ 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).

(2) Adjustment to permanent residence

The Attorney General shall adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence on the following date:

(A) Group 1

Subject to the numerical limitation established under subparagraph (C), in the case of an alien who has established, at the time of application for temporary residence under paragraph (1), that the alien performed seasonal agricultural services in the United States for at least 90 man-days during each of the 12-month periods ending on May 1, 1984, 1985, and 1986, the adjustment shall occur on the first day after the end of the one-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).

(B) Group 2

In the case of aliens to which subparagraph (A) does not apply, the adjustment shall occur on the day after the last day of the two-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).

(C) Numerical limitation

Subparagraph (A) shall not apply to more than 350,000 aliens. If more than 350,000 aliens meet the requirements of such subparagraph, such subparagraph shall apply to the 350,000 aliens whose applications for adjustment were first filed under paragraph (1) and subparagraph (B) shall apply to the remaining aliens.

(3) Termination of temporary residence

(A) During the period of temporary resident status granted an alien under paragraph (1), the Attorney General may terminate such status only upon a determination under this chapter that the alien is deportable.

(B) Before any alien becomes eligible for adjustment of status under paragraph (2), the Attorney General may deny adjustment to permanent status and provide for termination of the temporary resident status granted such alien under paragraph (1) if—

(i) the Attorney General finds by a preponderance of the evidence that the adjustment to temporary resident status was the result of fraud or willful misrepresentation as set out in section 1182(a)(6)(C)(I) of this title, or

(ii) the alien commits an act that (I)

makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (c)(2), or (II) is convicted of a felony or 3 or more misdemeanors committed in the United States.

(4) Authorized travel and employment during temporary residence

During the period an alien is in lawful temporary resident status granted under this subsection, the alien has the right to travel abroad (including commutation from a residence abroad) and shall be granted authorization to engage in employment in the United States and shall be provided an “employment authorized” endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence.

(5) In general

Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under paragraph (1), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 1101(a)(20) of this title), other than under any provision of the immigration laws.

(b) Applications for adjustment of status

(1) To whom may be made

(A) Within the United States

The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

(i) with the Attorney General, or
(ii) with a designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Attorney General.

(B) Outside the United States

The Attorney General, in cooperation with the Secretary of State, shall provide a procedure whereby an alien may apply for adjustment of status under subsection (a)(1) at an appropriate consular office outside the United States. If the alien otherwise qualifies for such adjustment, the Attorney General shall provide such documentation of authorization to enter the United States and to have the alien’s status adjusted upon entry as may be necessary to carry out the provisions of this section.

(2) Designation of entities to receive applications

For purposes of receiving applications under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, community, farm labor organizations, and associations of agricultural employers, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 1159 or 1255 of this title, Public Law 89-732 [8 U.S.C. 1255 note], or Public Law 95-145 [8 U.S.C. 1255 note].

(3) Proof of eligibility

(A) In general

An alien may establish that he meets the requirement of subsection (a)(1)(B)(ii) 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) 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)).

(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) 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), 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 an 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 fur-
nished 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)—
(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):

(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) and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) (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) 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) the Service may grant temporary admission to the
§ 1160

(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 upon 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 1255a 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), 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 (3) of section 1255a(h) of this title shall apply in the same manner as they apply with respect to paragraph (1) of such section and, for this purpose, any reference in section 1255a(h)(3) of this title to paragraph (1) is deemed a reference to the previous sentence.

(g) Treatment of special agricultural workers

For all purposes (subject to subsections (a)(5) and (f)) an alien whose status is adjusted under this section to that of an alien lawfully admitted for permanent residence, such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence (within the meaning of section 1101(a)(20) of this title).

(h) "Seasonal agricultural services" defined

In this section, the term "seasonal agricultural services" means the performance of field work related to planting, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.

References in Text


AMENDMENTS

1996—Subsec. (b)(5). Pub. L. 104–132, §431(b)(1), inserted before period at end "except as allowed by a court order issued pursuant to paragraph (6) of this subsection".

Subsec. (b)(6). Pub. L. 104–208, §623(b), amended par. (6) generally, substituting subpars. (A) to (D) 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. (e)(3)(A). Pub. L. 104–208, §308(g)(2)(B), inserted "(as in effect before October 1, 1996)" after "section 1105a of this title".

Subsec. (f). Pub. L. 104–193 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)(A). Pub. L. 102–232, §309(b)(6)(D), substituted "period described in" for "period as defined in", and "Service" for "INS", and made technical amendment to reference to this chapter involving corresponding provision of original act.


Pub. L. 102–232, §309(b)(6)(G), made technical amendment to reference to subsection (b)(1)(A) of this section involving corresponding provision of original act.

1990—Subsec. (a)(3)(B)(iv)(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)".

Pub. L. 101–649, §603(a)(5)(G), struck out subcl. (V) which referred to par. (3).

Pub. L. 101–649, §603(a)(5)(H), substituted "1182(a)(4)(" for "1182(a)(1)")


EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 308(g)(2) 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.

Pub. L. 104–208, div. C, title III, §384(d)(2), Sept. 30, 1996, 110 Stat. 3009–653, provided that the amendments made by this subsection [amending this section and section 1255a 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 substantially modified programs and continuance in office of Assistant Secretary for Family Support, and rules 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


EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 applicable to applications for adjustment of status made on or after June 1,


Effective Date of Repeal

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) 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) shall not apply to an alien whom the Attorney General admits to the United States under section 1157 of this title.

Amendments

Effective Date of 1990 Amendment
Amendment by Pub. L. 101–649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Effective Date of 1980 Amendment
Amendment by Pub. L. 96–212 effective Mar. 17, 1980, and applicable to fiscal years beginning with the fiscal year beginning Oct. 1, 1979, see section 204 of Pub. L. 96–212, set out as a note under section 1101 of this title.

Effective Date of 1976 Amendment
Amendment by Pub. L. 94–571 effective on first day of first month which begins more than sixty days after Oct. 20, 1976, see section 10 of Pub. L. 94–571, set out as a note under section 1101 of this title.


**Effective Date of 1965 Amendment**

For effective date of amendment by Pub. L. 89–236, see section 20 of Pub. L. 89–236, set out as a note under section 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.

§ 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 in consultation with the Attorney General)—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or

(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).

(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)(1) 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.

(2) Criminal and related grounds

(A) Conviction and related grounds

(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), re-
§ 1182

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, or colluder 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 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,

(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).

(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 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 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, 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.

(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 or has reason to believe 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) 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 (vi)(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
§ 1182

known, that the organization was a terrorist organization;

(V) to solicit any individual—

(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 on a timely basis the chairmen of the Committees on the Judiciary and Foreign Affairs of the House of Representatives and of the Committees on the Judiciary and Foreign Relations of the Senate of the identity of the alien and the reasons for the determination.

(D) Immigrant membership in totalitarian party

(i) In general

Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is 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, 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.

(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 shall at a minimum consider the alien’s—

   (I) age;
   (II) health;
   (III) family status;
   (IV) assets, resources, and financial status; and
   (V) education and skills.

(ii) In addition to the factors under clause (i), 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.

(E) Special rule for qualified alien victims

Subparagraphs (A), (B), and (C) shall not apply to an alien who—

(i) is a VAWA self-petitioner;

(ii) is an applicant for, or is granted, nonimmigrant status under section 1101(a)(15)(U) of this title; or

(iii) is a qualified alien described in section 1611(c) of this title.

(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

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 for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is 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), 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 Attorney General in consultation with the Secretary of Health and Human Services, verifying that—

(I) the alien’s education, training, license, and experience—

(aa) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application; and

(bb) 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 Serv-
ices, 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) 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) 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) 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) 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) 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) 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.
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).

(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).

(G) Student visa abusers

An alien who obtains the status of a non-immigrant under section 1101(a)(15)(F)(i) of this title and who violates a term or condition of such status under section 1184(i) 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 1153 of this title,

is inadmissible.

(ii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (k).

(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).

(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 non-immigrant 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

2See References in Text note below.
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) 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 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.

3So in original. Probably should be a reference to section 1229c of this title.
(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 subjection 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, 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), or
(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 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.

(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), 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 or classes of inadmissible aliens.

(3) Paragraph (1) does not apply to any alien inadmissible under paragraph (2) or (3) of subsection (a).

*So in original. Probably should be preceded by “ineligible for”.*
(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) (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. The Attorney General, after the alien’s admission into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (ii) who is inadmissible under subsection (a) (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) (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 exacting of such bonds as may be necessary, to control and regulate the admission and return of inadmissible aliens applying for temporary admission under this paragraph.


(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) (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) (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 exacting of such bonds as may be necessary, to control and regulate the admission and return of inadmissible aliens applying for temporary admission under this paragraph.

(4) Either or both of the requirements of paragraph (7)(B)(i) of subsection (a) 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 1223(c) of this title.

(5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe 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

or support terrorist activity on behalf of, or has voluntarily and knowingly received military-type training from a terrorist organization that is described in subclause (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 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 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 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 State and the Secretary of Homeland Security shall each provide to the Committees on the Judiciary of the Senate, the Committee on International Relations of the House of Representatives, the Committee on Foreign Relations of the Senate, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Homeland Security and Governmental Affairs 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.

(5)(B) If 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 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) 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)(vi), 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
§ 1182

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) (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 proviso. 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.


(10) 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) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily 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.

(11) The Attorney General may, in his discretion for humanitarian purposes or to assure family unity, waive application of clause (i) of subsection (a)(6)(E) 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)(A) of this title or under section 1153(a) of this title,

if no previous civil money penalty was imposed against the alien under section 3224 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) 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) 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); and

(ii) any other provision of subsection (a) (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) 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) (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 his last residence, (ii) who at the time of admission or acquisition of status under section 1101(a)(15)(J) of this title was a national or resident of a country which the Director of the United States Information Agency, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training.
shall be eligible to apply for an immigrant visa, or for permanent residence, or for a non-immigrant 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 the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien’s spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, 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(a) 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; or

(B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; or

(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) 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

3. subsection (a)(1)(A)(iii) 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.

(h) Waiver of subsection (a)(2)(A)(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) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if—

1. (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that—

(i) the alien is inadmissible only under subparagraph (D)(i) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien’s application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established
§ 1182

in the case of an alien who has previously been admitted to the United States as an alien lawfully resident spouse, parent, son, or daughter of such alien; or

(C) the alien is a VAWA self-petitioner; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an immigrant who is coming to the United States under a program under which he will receive graduate medical education or training as referred to in section 1101(a)(15)(J) of this title for an 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) 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), (III) 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.

(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) 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 alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the citizen 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) 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.

(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 attests that the alien (i) is in good standing in the program of graduate medical education or training in which the alien is participating, and (ii) will return to the country of his nationality or last residence upon completion of the education or training for which he came to the United States.

(2) An alien who is a graduate of a medical school and who is coming to the United States to perform services as a member of the medical profession may not be admitted as a nonimmigrant under section 1101(a)(15)(H)(i)(b) of this title unless—

(A) the alien is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency, or

(B)(i) the alien has passed the Federation licensing examination (administered by the Federation of State Medical Boards of the United States) or an equivalent examination as determined by the Secretary of Health and Human Services, and

(ii)(I) has competency in oral and written English or (II) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States).

(3) 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), 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 the admissibility of the alien at the port of entry into Guam or 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. 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 country where the alien obtained nursing education or has received nursing education in the United States;

(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 or is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses.

(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, authorize the alien to perform nursing services at any worksite other than a worksite controlled by the facility; or 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.

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 (i)); 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 30 days of the date of the determination.

(iv) If the Secretary of Labor finds, after notice and opportunity for a hearing, that a facility (for which an attestation is made) has failed to meet a condition attested to or that there was a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per 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)(i)(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)(i)(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 the following:

(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)(i)(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 those 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 subsection and section 1101(a)(15)(H)(i)(c) of this title, the term “facility” means a subsection (d) hospital (as defined in section 1386d(b)(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 254e 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 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 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 application.

(ii) An application described in this clause is an application filed on or after the date final regulations are first promulgated to carry out this subparagraph, and before by an H–1B-dependent employer (as defined in paragraph (3)) or by an employer that has been found, on or after October 21, 1998, under paragraph (2)(C) or (5) to have committed a willful failure or misrepresentation during the 5-year period

*So in original.*
preceding the filing of the application. An application is not described in this clause if the only H–1B nonimmigrants sought in the application are exempt H–1B nonimmigrants.

(F) In the case of an application described in subparagraph (E)(i), the employer will not place the nonimmigrant with another employer (regardless of whether or not such other employer is an H–1B-dependent employer) where—

(i) the nonimmigrant performs duties in whole or in part at one or more worksites owned, operated, or controlled by such other employer; and

(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer;

unless the employer has inquired of the other employer as to whether, and has no knowledge that, within the period beginning 90 days before and ending 90 days after the date of the placement of the nonimmigrant with the other employer, the other employer has displaced or intends to displace a United States worker employed by the other employer.

(G) In the case of an application described in subparagraph (E)(ii), subject to clause (ii), the employer, prior to filing the application—

(I) has taken good faith steps to recruit, in the United States using procedures that meet industry-wide standards and offering compensation that is at least as great as that required to be offered to H–1B nonimmigrants under subparagraph (A), United States workers for the job for which the nonimmigrant or nonimmigrants is or are sought; and

(II) has offered the job to any United States worker who applies and is equally or better qualified for the job for which the nonimmigrant or nonimmigrants is or are sought.

(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 are necessary). The Secretary shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under this subsection. Such list shall include the wage rate, number of aliens sought, period of intended employment, and date of need. The Secretary shall make such list available for public examination in Washington, D.C. The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall provide the certification described in section 1103(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 (5)(A), the Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner’s failure to meet a condition specified in an application submitted under paragraph (1) or a petitioner’s misrepresentation of material facts in such an application. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively.

The Secretary shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

(B) Under such process, the Secretary shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C). If the Secretary determines that such a reasonable basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, within 60 days after the date of the determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary may consolidate the hearings under this subparagraph on such complaints.

(C)(i) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1)(B), (1)(E), or (1)(F), a substantial failure to meet a condition of paragraph (1)(C), (1)(D), or (1)(G)(i)(I), 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 1154(c) of this title during a period of at least 1 year for aliens to be employed by the employer.

(ii) If the Secretary 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 application, or a violation of clause (iv)—

(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 $5,000 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 2 years for aliens to be employed by the employer.

(iii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (I) or a willful misrepresentation of material fact in an application, 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 supported by the 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 $35,000 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 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 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.

(vi)(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 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.

(vi)(III) 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.

(vi)(IV) This clause does not apply to a failure to pay wages to an H–1B nonimmigrant for non-productive 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.

(vi)(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—

(a) the nonimmigrant agrees to the commencement of any condition of the nonimmigrant’s authorization under this chapter to remain in the United States.

(b) 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 clause (ii) of subparagraph (G)(i), (G)(ii), or (G)(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 the Secretary of Labor) shall personally certify that reasonable cause exists and shall approve commencement of the investigation. The investigation may be initiated for reasons 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 have knowledge 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)(i)(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 or any other Act.

*So in original. Probably should be “or”.*
§ 1182

(1) 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)(b) of this title shall not be considered a receipt of information for purposes of clause (ii).

(vi) No investigation described in clause (i) (or hearing described in clause (viii) based on such investigation) may be conducted with respect to information about a failure to meet a condition described in clause (i), 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 10 (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 10 (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)(i)(D), 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, 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 the Secretary of Labor determines 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.

10So in original. Probably should be "clause".

(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.

(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)(b) of this title shall not be considered a receipt of information for purposes of clause (ii).

(vi) No investigation described in clause (i) (or hearing described in clause (viii) based on such investigation) may be conducted with respect to information about a failure to meet a condition described in clause (i), 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 10 (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 10 (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)(i)(D), 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, 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 the Secretary of Labor determines 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.

10So in original. Probably should be "clause".

(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.

(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)(b) of this title shall not be considered a receipt of information for purposes of clause (ii).

(vi) No investigation described in clause (i) (or hearing described in clause (viii) based on such investigation) may be conducted with respect to information about a failure to meet a condition described in clause (i), 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 10 (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 10 (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)(i)(D), 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, 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 the Secretary of Labor determines 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.

10So in original. Probably should be "clause".
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.

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 10 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 paragraph (1)(G)(i)(II) or has misrepresented a material fact with respect to such condition, unless the Attorney General reverses or modifies the finding under subparagraph (D)(ii)—

(i) the Attorney General may impose administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation or $5,000 per violation in the case of a willful failure or misrepresentation) as the Attorney General determines to be appropriate; and
(ii) the Attorney General is authorized to not approve petitions filed, with respect to that employer and for aliens to be employed by the employer, under section 1154 or 1158(c) of this title—
(I) during a period of not more than 1 year; or
(II) in the case of a willful failure or willful misrepresentation, during a period of not more than 2 years.

(F) The Attorney General shall not delegate, to any other employee or official of the Department of Justice, any function of the Attorney General under this paragraph, until 60 days after the Attorney General has submitted a plan for such delegation to the Committees on the Judiciary of the United States House of Representatives and the Senate.

(o) Omitted

(p) Computation of prevailing wage level

(1) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) in the case of an employee of—
(A) an institution of higher education (as defined in section 1001(a) of title 20), or a related or affiliated nonprofit entity; or
(B) a nonprofit research organization or a Governmental research organization,
the prevailing wage level shall only take into account employees at such institutions and organizations in the area of employment.

(2) With respect to a professional athlete (as defined in subsection (a)(5)(A)(iii)(II)) when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules or regulations shall be considered as not adversely affecting the wages of United States workers similarly employed and be considered the prevailing wage.

(3) The prevailing wage required to be paid pursuant to subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) shall be 100 percent of the wage determined pursuant to those sections.

(4) Where the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision. Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level.

(q) 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 longer 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)(1) 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.

(r) Exception for certain alien nurses

Subsection (a)(5)(C) 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) 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) 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) 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) is inadmissible under subsection (a)(4) or ineligible to receive an immigrant visa or otherwise to adjust to the status of permanent resident by reason of subsection (a)(4), 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.

(t) 11 Nonimmigrant professionals; labor attestations

(1) No alien may be admitted or provided status as a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section

11 So in original. Two subsecs. (t) have been enacted.
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)(b1) of this title or section 1101(a)(15)(E)(iii) of this title wages that are at least—

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

(II) the prevailing wage level for the occupational classification in the area of employment,

whichever is greater, based on the best information available as of the time of filing the 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 non-immigrants under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title are sought.

(D) A specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage 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, at the employer’s principal place of business or worksite, a copy of each such attestation (and such accompanying documents as are necessary).

(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.

(ii) The Secretary of Labor shall make such list available for public examination in Washington, D.C.

(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)(b1) 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 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 failure to meet a condition of paragraph (1)(B), 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 $1,000 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 1 year 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 will-
ful 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 $5,000 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)(b), 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)(b), 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)(b) 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)(b) 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)(b) 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.

(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)(b) of this title or section 1101(a)(15)(E)(iii) 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 such a nonimmigrant for such hours as are designated on the attestation consistent with the rate of pay identified on the attestation.

(III) In the case of a nonimmigrant under section 1101(a)(15)(H)(i)(b) of this title or section 1101(a)(15)(E)(iii) 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.

(IV) 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)(iii) 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)(iii) 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)(iii) 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.

(1) Foreign residence requirement

(1) Except as provided in paragraph (2), no person admitted under section 1101(a)(15)(Q)(i)(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

12So in original. Two subsecs. (t) have been enacted.
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.


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 Short Title note set out under section 1101 of this title and Tables.

Section 3(a) of the Torture Victim Protection Act of 1991, referred to in subsec. (a)(3)(E)(ii), is section 3(a) of Pub. L. 102–256, which is set out as a note under section 1359 of Title 28, Judicial and Judicial Procedure.

Section 301 of the Immigration Act of 1990, referred to in subsec. (a)(6)(E)(ii), (iii), is section 301 of Pub. L. 101–649, which is set out as a note under section 1255a of this title.


Section 1184(d) of this title, referred to in subsec. (a)(6)(G), probably means the subsec. (I) of section 1184.


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.

CODIFICATION

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. 106–168, as amended, set out as a note under section 1113 of Title 31. Money and Finance. See, also, page 93 of House Document No. 103–7.

AMENDMENTS


2010—Subsec. (a)(1)(C)(II). Pub. L. 111–227 substituted “subparagraph (F) or (G) of section 1101(b)(1) of this title,” for “section 1101(b)(1)(F) of this title.”

2009—Subsec. (a)(3)(E)(II). Pub. L. 111–122 struck out “‘conduct outside the United States that would, if committed in the United States or by a United States national, be’ before ‘‘genocide’’.

2008—Subsec. (a)(1)(A)(i). Pub. L. 110–293 substituted a semicolon for “,” which shall include infection with the etiologic agent for acquired immune deficiency syndrome.”

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 “who is listed in a report submitted pursuant to section 710(b) of title 22, or who the consular officer”.


Subsec. (a)(7)(X)(iii). Pub. L. 110–229, §702(b)(2), amended cl. (iii) generally. Prior to amendment, text read as follows: “For provision authorizing waiver of clause (i) in the case of visitors to Guam, see subsection (l) of this section.”


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 unreviewed discretion that subsection (a)(3)(B)(i)(IV)(bb) or (a)(3)(B)(i)(VII) of this section shall not apply to an alien, that subsection (a)(3)(B)(i)(VII) of this section shall not apply with respect to any material support an alien afforded to an organization or individual engaged in a terrorist activity, or that subsection (a)(3)(B)(i)(VII)(III) of this section shall not apply to a group solely by virtue of having a subgroup within the scope of that section. 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.’’


Subsec. (a)(9)(C)(ii). Pub. L. 109–271, §6(b)(1)(C), substituted “the Secretary of Homeland Security has consented to the alien’s reapplying for admission,” for “the Attorney General has consented to the alien’s reapplying for admission.”

Subsec. (g)(1)(C). Pub. L. 109–271, §6(b)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “qualifies for classification under clause (iii) or (iv) of section 1154a(a)(1)(A) of this title or classification under clause (ii) or (iii) of section 1154a(a)(1)(B) of this title,”.

Subsec. (h)(1)(C). 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 (ii) or (iii) of section 1154a(a)(1)(A) of this title or classification under clause (ii) or (iii) of section 1154a(a)(1)(B) of this title; and”.

Subsec. (i)(1). Pub. L. 109–271, §6(b)(4), substituted “a VAWA self-petitioner” for “an alien granted classification under clause (ii) or (iii) of section 1154a(a)(1)(A) of this title or clause (ii) or (iii) of section 1154a(a)(1)(B) of this title”.

2005—Subsec. (a)(3)(B)(i). Pub. L. 109–13, §103(a), reenacted heading without change and amended first sentence of cl. (i) generally, substituting general provisions relating to inadmissibility of aliens engaging in terrorist activities for former provisions relating to inadmissibility of any alien who had engaged in a terrorist activity, any alien who a consular officer or the Attorney General knew or reasonably believed had engaged in terrorist activity, any alien who had incited terrorist activity, any alien who was a member of a foreign terrorist organization, any alien who had used the alien’s position of prominence to endorse terrorist activity, and any alien who was the spouse or child of an alien who had been found inadmissible, if the activity causing the alien to be found inadmissible had occurred within the last 5 years.
Subsec. (a)(3)(B)(iv). Pub. L. 109–13, §103(b), reenacted heading without change and amended text of cl. (iv) generally, substituting provisions defining the term "engage in terrorist activity" in subcls. (I) to (VI) generally, including provisions relating to demonstration of certain knowledge by clear and convincing evidence, for provisions defining the term "engage in terrorist activity" in somewhat similar subcls. (I) to (VI) which did not include provisions relating to demonstration of certain knowledge by clear and convincing evidence.

Subsec. (a)(3)(B)(vi). Pub. L. 109–13, §183(c), amended heading and text of cl. (vi) generally. Prior to amendment, text read as follows: "As used in clause (i)(VI) and clause (iv), 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, as a terrorist organization, after finding 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 further 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, redesignated existing provisions as subpars. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).


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 4602 of title 22, and the spouse and children, if any, are inadmissible."

Subsec. (a)(3)(E). Pub. L. 108–458, §5501(a)(3), which directed substitution of "(i) Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing for "Participants in Nazi persecution or genocide" in heading, was executed by making the substitution for "Participants in Nazi persecutions or genocide" to reflect the probable intent of Congress.

Subsec. (a)(3)(E)(i). 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 person subject to its jurisdiction, be genocide, as defined in section 1181(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. (d)(3)(A). Pub. L. 108–458, §5503, substituted "and clauses (i) and (ii) of paragraph (3)(E)" for "and (3)(E)"


Subsec. (m)(2)(H). Pub. L. 108–458, §424(b), added subpar. (H) and redesignated former subpar. (H) as (I).

Subsec. (p). Pub. L. 108–449, §1(b)(2)(A), which directed redesignation of text of cl. (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.


Subsec. (d)(13)(B)(i). Pub. L. 108–193, §4(b)(4)(B)(i), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "paragraphs (1) and (4) of subsection (a) of this section; and".


Subsec. (p). Pub. L. 108–77, §107(c), 402(b)(1), temporarily redesignated subsec. (p), relating to consideration of benefits received as battered alien in determination of inadmissibility as likely to become public charge, as (s). See Effective and Termination Dates of 2003 Amendment note below.


Subsec. (s). Pub. L. 108–77, §107(c), 402(b)(1), temporarily redesignated subsec. (p), relating to consideration of benefits received as battered alien in determination of inadmissibility as likely to become public charge, as (s). See Effective and Termination Dates of 2003 Amendment note below.


2002—Subsec. (a)(4)(C)(ii). Pub. L. 107–150 substituted "and any additional sponsor required under section 1183(a) of this title or any alternative sponsor permitted under paragraph (3)(B) of such section" for "(including any additional sponsor required under section 1183(a) of this title)"

Subsec. (e). Pub. L. 107–273 substituted "section 1184(i)" for "section 1184(i)(2)".


Subsec. (a)(3)(B)(i)(IV). Pub. L. 107–56, §411(a)(1)(A)(i), amended subcl. (IV) generally. Prior to amendment, subcl. (IV) read as follows: "is a representative (as defined in clause (iv)) of a foreign terrorist organization, as designated by the Secretary under section 1189 of this title, or".


Subsec. (a)(3)(B)(i)(VI). Pub. L. 107–56, §411(a)(1)(A)(III), which directed addition of subcls. (VI) and (VII) at end of cl. (i), was executed by making the addition after subsec. (V) and before concluding provisions of cl. (i) to reflect the probable intent of Congress.

§1182

TITLE 8—ALIENS AND NATIONALITY

Page 156

Subsec. (a)(3)(B)(iii). Pub. L. 107–56, §411(a)(1)(E)(i), inserted heading without change and amended text of (iv). Generally, prior to amendment, text read as follows: "As used in this chapter, the term 'engage in terrorist activity' means to commit, in an individual capacity or as a member of an organization, an act of terrorism or an act which the actor knows, or reasonably should know, affords material support to any individual, organization, or government in conducting a terrorist activity at any time, including any of the following acts:

(I) The preparation or planning of a terrorist activity.

(II) The gathering of information on potential targets for terrorist activity.

(III) The providing of any type of material support, including a safe house, transportation, communications, funds, false 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, terrorist government, or to engage in a terrorist activity,"


Subsec. (a)(6)(C)(i). Pub. L. 106–386, §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 1324a 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), (iv), or (v) 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 subcl. (i) and (ii).

Subsec. (a)(10)(D). Pub. L. 106–386, §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.
read as follows: “If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), a substantial failure to meet a condition of paragraphs (1)(C) or (1)(D), a willful failure to meet a condition of paragraph (1)(A), or a representation 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 116(c) of this title during a period of at least 1 year for aliens to be employed by the employer.’’


Subsec. (n)(2)(G). Pub. L. 105–277, § 413(e), temporarily added subpar. (G). See Effective and Termination Dates for heading and text generally. Prior to amendment, text read as follows: ‘‘An alien who is the parent of a citizen of the United States is ineligible for visas or admission.’’


Subsec. (a)(2)(D)(ii). Pub. L. 104–208, § 308(d)(1)(A), substituted ‘‘is inadmissible’’ for ‘‘is inadmissible’’ wherever appearing in pars. (1) to (5), (6)(C) to (E), (G), (7), (8), (10)(A), (C)(i), (D), and (E).

Subsec. (a)(2)(D)(i). Pub. L. 104–208, § 308(d)(1)(B), substituted ‘‘aliens ineligible for visas or admission’’ for ‘‘excludable aliens in heading and subheading ‘‘Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and who shall be excluded from admission into the United States:’’ for ‘‘Except as otherwise provided in this chapter, the following describes classes of excludable aliens who are ineligible to receive visas and who shall be excluded from admission into the United States:’’ in introductory provisions.

Subsec. (a)(3)(A)(i) to (iv). Pub. L. 104–208, § 341(a), added cl. (ii) and redesignated former cls. (i) and (iii) as (ii) and (iv), respectively.


Subsec. (a)(3)(B)(i)(IV). Pub. L. 104–208, § 355, inserted ‘‘who the alien knows or should have known is a terrorist organization’’ after ‘‘1198 of this title.’’

Subsec. (a)(4). Pub. L. 104–208, § 531(a), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ‘‘Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is excludable.’’

Pub. L. 104–208, § 305(c), which directed amendment of par. (4) by substituting ‘‘1227(a)(5)(B)’’ for ‘‘1221(a)(5)(B)’’ each place it appears, could not be executed because ‘‘1221(a)(5)(B)’’ did not appear in par. (4).


Pub. L. 104–208, § 308(d)(1)(D), substituted ‘‘inadmissibility’’ for ‘‘exclusion’’.

Subsec. (a)(5)(D). Pub. L. 104–208, § 343(1), redesignated subpar. (C) as (D).

Subsec. (a)(6)(A). Pub. L. 104–208, § 301(c)(i), amended heading and text generally. Prior to amendment, text read as follows: ‘‘Any alien who—

(i) has been arrested and deported, and

(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 1322(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)(B). Pub. L. 104–208, § 301(c)(ii), amended heading and text generally. Prior to amendment, text read as follows: ‘‘Any alien who—

(i) has been arrested and deported,

(ii) has been removed as an alien enemy, and

(iv) has been removed at Government expense in lieu of deportation pursuant to section 1322(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)(C)(ii), (iii). Pub. L. 104–208, § 344(a), added cl. (ii) and redesignated former cl. (i) as (iii).

Subsec. (a)(6)(F). Pub. L. 104–208, § 350(a), amended heading and text of par. (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)(9). Pub. L. 104–208, § 301(b)(1), added par. (9) which redesignated (10).

Subsec. (a)(10). Pub. L. 104–208, § 301(b)(1), redesignated par. (9) as (10).

Subsec. (a)(10)(B). Pub. L. 104–208, § 308(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 1227(e) of this title, whose protection or guardianship is required by the alien ordered excluded and deported, is excludable.’’


Subsec. (b). Pub. L. 104–208, § 308(d)(1)(F), which directed amendment of par. (2) by striking ‘‘or ineligible for entry’’, was executed by striking the language in
sensible” for “excludable” wherever appearing. See below.

Par. (1)(B) before “or adjustment”, to reflect the probable intent of Congress and the intervening redesignation of par. (2) as par. (1)(B) by Pub. L. 104–132, §1412(1).


Pub. L. 104–132, §112, designated existing provisions as par. (2). Substituted “Subject to paragraphs (2) and (3), if” for “If”, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, realigned margins, and added pars. (2) and (3).

Subsec. (c). Pub. L. 104–208, §304(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 (9) 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 1161(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)(i), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which 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, §440(d)(2), as amended by Pub. L. 104–208, §§306(d), 308(d)(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 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, §440(d)(1), substituted “This” for “The first sentence of this” in third sentence.


Subsec. (d)(4). Pub. L. 104–208, §308(g)(1), substituted “section 1229(c)” for “section 1229(b)”.

Subsec. (d)(5)(A). Pub. L. 104–208, §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. 104–208, §308(e)(4)(B), substituted “section 1227(a)” for “section 1227(a)”.

Pub. L. 104–208, §308(e)(2)(A), substituted “removed” for “deported”.

Pub. L. 104–208, §308(d)(1)(G), substituted “denied admission” for “excluded from admission”.


Pub. L. 104–208, §351(a), inserted “an individual who at the time of such action was” after “added only”.

Pub. L. 104–208, §308(e)(1)(C), substituted “removal” for “deportation”.


Subsec. (e). Pub. L. 104–208, §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. 104–208, §124(b)(1), inserted at end “Whenever the Attorney General finds that a commercial air carrier 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.”

Subsec. (g). Pub. L. 104–208, §341(b), substituted a semicolon for “,” 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 pars. (2) and (3) for former par. (2) and concluding provisions which read as follows:

(2) subsection (a)(1)(A)(i) 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, may suspend the entry of some or all aliens of national origin, race, religion, or sex on behalf of an alien defendant in a criminal proceeding, if the Attorney General finds that the alien defendant 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 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. 104–208, §340(g)(3)(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.


Pub. L. 104–208, §308(d)(1)(H), substituted “denial of admission” for “exclusion”.

Subsec. (i). Pub. L. 104–208, §349, amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: “The Attorney General may, in his discretion, waive application of clause (i) of subsection (a)(6)(C) of this section—

(1) in the case of an immigrant who is the spouse, parent, or son or daughter of a United States citizen or of an immigrant lawfully admitted for permanent residence, or

(2) if the fraud or misrepresentation occurred at least 10 years before the date of the immigrant’s application for a visa, entry, or adjustment of status and it is established to the satisfaction of the Attorney General that the admission to the United States of such immigrant would not be contrary to the national welfare, safety, or security of the United States.”


Pub. L. 104–208, §308(d)(1)(D), substituted “removed” for “deportation”.


Pub. L. 104–208, §308(d)(1)(D), substituted “inadmissibility” for “exclusion”.


Pub. L. 104–208, §308(d)(1)(D), substituted “inadmissibility” for “exclusion”.


Subsec. (d)(11). Pub. L. 103–416, §219(e), substituted “voluntarily” for “voluntary”.

Subsec. (e). Pub. L. 103–416, §220(a), in first proviso, inserted “(or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent)” after “interested United States Government agency” and except that in the case of a waiver requested by a State Department of Public Health, or its equivalent the waiver shall be subject to the requirements of section 1164(e)(4) of this title.

Subsec. (b). Pub. L. 103–416, §219(a)(3), inserted before period at end “or, an attempt or conspiracy to commit murder or a criminal act involving torture”.


Subsec. (o). Pub. L. 103–317, §506(a), (c), temporarily added subsec. (o) which read as follows: “An alien who has been physically present in the United States shall not be eligible to receive an immigrant visa within nine days following departure therefrom unless—

(1) the alien was maintaining a lawful non-immigrant status at the time of such departure, or

(2) the alien is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 1160 or 1255a of this title or section 202 of the Immigration Reform and Control Act of 1986 at any date, who—

(A) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 1160 or 1255a of this title or section 202 of the Immigration Reform and Control Act of 1986; and

(B) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

(C) applied for benefits under section 301(a) of the Immigration Act of 1990.”

See Effective and Termination Dates of 1994 Amendment note below.

1991—Subsec. (a)(1)(A)(ii). Pub. L. 101–641 inserted at end “which shall include infection with the etiologic agent for acquired immune deficiency syndrome,”.

Pub. L. 102–232, §219(a)(1), (b)(1), substituted “or” for “and” at end.


Subsec. (a)(17). Pub. L. 102–232, §302(e)(9), inserted “and” before “to an alien who is a national of a foreign state that is a signatory country”.


Subsec. (c). Pub. L. 102–232, §307(b)(2), substituted paragraphs (3) and (9)(C) for subparagraphs (A), (B), (C), or (E) of paragraph (3).

Pub. L. 102–232, §306(a)(10), substituted “one or more aggravated felonies and has served for such felony or felonies” for “an aggravated felony and has served”.


Subsec. (d)(11). Pub. L. 102–232, §307(a)(1), 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 “subsection (a)(1)(A)”.


Subsec. (h)(1). Pub. L. 102–232, §307(f)(2), designated existing provisions as subpar. (A) and inserted “in the case of any immigrant” in introductory provisions, redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, struck out “and” at end of cl. (i), substituted “or” for “and” at end of cl. (iii), and added subpar. (B).

Subsec. (i). Pub. L. 102–232, §307(g), substituted “immigrant” and “immigrant’s” for “alien” and “alien’s”, respectively, wherever appearing.


Subsec. (j)(2). Pub. L. 102–232, §306(a)(6)(B), added par. (2) and struck out former par. (2) which read as follows: “(I) which relate to the applicability of par. (1)(A) and (B)(ii)(I) requirements between effective date of subsec. and Dec. 31, 1983.


Subsec. (m)(2)(A). Pub. L. 102–232, §302(e)(9), inserted, after first sentence of closing provisions, sentence relating to attestation that facility will not replace nurse with nonimmigrant for period of one year after.

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)(2)(A)(i). Pub. L. 102–232, §303(a)(7)(B)(ii), as amended by Pub. L. 103–186, §219(c)(1), in introductory provisions substituted “admitted or provided status as a nonimmigrant described in section 1101(a)(15)(H)(i)(b) of this title” for “and to other individuals employed in the occupational classification and in the area of employment”, in closing provisions substituted “based on the best information available” for “determined”, and amended subcl. (i) generally. Prior to amendment, subcl. (i) generally. Prior to amendment, subcl. (i) provided that in certifying employment level for the occupational classification at the place of employment, or”.

§1182

TITLE 8—ALIENS AND NATIONALITY Page 160
Subsec. (n)(1)(A)(ii). Pub. L. 102–232, §303(a)(6), substituted “for such a nonimmigrant” for “for such aliens”.


Subsec. (2)(v)(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 misrepresentation” for “of a substantial failure in the case of a condition described in subparagraph (C) or (D) of paragraph (1) or misrepresentation”.

Subsec. (5)(D). Pub. L. 102–232, §303(a)(7)(B)(v), substituted “if” and inserted before period at end “whether or not a penalty under subparagraph (C) has been imposed”.

1990—Subsec. (a). Pub. L. 101–649, §601(a), amended subsec. (a) generally, decreasing number of classes of excludable aliens from 34 to 9 by broadening descriptions of such classes.


Pub. L. 101–649, §162(e)(1), provided that par. (5) is amended in subpar. (A), by striking “Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor” and inserting “Any alien who seeks admission or status as an immigrant under paragraph (2) or (3) of section 1182(b) of this title, in subpar. (B), by inserting “who seeks admission or status as an immigrant under paragraph (2) or (3) of section 1182(b) of this title” for “who seeks admission or status as an immigrant under paragraph (2) or (3) of section 1182(b) of this title”, and by striking subpar. (C), was repealed by Pub. L. 102–232, §302(e)(6). See Construction of 1990 Amendment note below.

Pub. L. 101–246, §131(a), added par. (34) which read as follows: “Any alien who has committed in the United States any serious criminal offense, as defined in section 1182 of this title, or who has not subsequently submitted fully to the jurisdiction of the court in the United States with jurisdiction over the offense.”


Subsec. (c). Pub. L. 101–649, §601(d)(1), substituted “subsection (a) of this section (other than subparagraph (A) or (B) of paragraph (3)) for paragraphs (1) through (25) and paragraphs (30) and (31) of subsection (a) of this section”.

Pub. L. 101–649, §511(a), inserted at end “The first sentence of this subsection shall not apply to an alien who has been convicted of an aggravated felony and has served a term of imprisonment of at least 5 years.”

Subsec. (d)(1), (2). Pub. L. 101–649, §601(d)(2)(A), struck out paras. (1) and (2) which related to applicability of subsec. (a)(11), (25), and (28).

Subsec. (d)(3). Pub. L. 101–649, §601(d)(2)(B), substituted “under subsection (a) (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) (other than paragraphs (25), (29), and (33)) wherever appearing; and inserted at end “The Attorney General shall prescribe conditions, including exemption of such bonds as may be necessary, to control and regulate the admission and residence of aliens applying for temporary admission under this paragraph.”


Subsec. (d)(5)(A). Pub. L. 101–649, §202(b), inserted “or in section 1182(f) of this title” after “except as provided in subparagraph (B)”.


Subsec. (d)(7). Pub. L. 101–649, §601(d)(2)(D), substituted “(other than paragraph (7)” for “of this section, except paragraphs (20), (21), and (26)”.

Subsec. (d)(8). Pub. L. 101–649, §601(d)(2)(E), substituted “(3)(A), (3)(B), (3)(C), and (7)(B)” for “(26), (27), and (29)”.

Subsec. (d)(9). (10). Pub. L. 101–649, §601(d)(2)(A), struck out paras. (9) and (10) which related to applicability of pars. (7) and (15), respectively, of subsec. (a).


Subsec. (g). Pub. L. 101–649, §601(d)(3), amended subsec. (g) generally, substituting provisions relating to waiver of certain subsec. (a)(2) provisions for provisions relating to nonapplicability of subsec. (a)(9), (10), (12), (23), and (34).

Pub. L. 101–246, §131(c), substituted “(12), or (34)” for “or (12)”.


Subsec. (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, §602(e)(2)(B), in opening provision, struck out “, with respect to a facility for which an alien will perform services,” before “is an alien”, in (ii) 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.”


1988—Subsec. (a)(17). Pub. L. 100–690 inserted “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(i)(1), substituted “Secretary of Education” for “Commissioner of Education” and “Secretary of Health and Human Services” for “Secretary of Health, Education, and Welfare”.


Subsec. (e). Pub. L. 100–525, §4(k)(2), substituted “Director of the United States Information Agency” for “Secretary of State” the first place appearing, and “Director” for “Secretary of State” each subsequent place appearing.


1987—Subsec. (a)(23). Pub. L. 100–204 amended par. (23) generally. Prior to amendment, par. (23) read as fol-
laws: “Any alien who has been convicted of a violation of, or a conspiracy to violate, any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21); or any alien who the consular officer or immigration officer know or have reason to believe is or has been an illicit trafficker in any such controlled substance.”

1986—Subsec. (a)(19). Pub. L. 99–639, § 6(a), as amended by Pub. L. 100–525, §7(c)(1), amended par. (19) generally. Prior to amendment, par. (19) read as follows: “Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact.”

Subsec. (a)(23). Pub. L. 99–570 substituted “any law or regulation of the United States, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21)” for “any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, or any salt derivative, or preparation of opium or coca leaves, or isompecaine or any addiction-forming or addiction-sustaining opiate.”

Subsec. (a)(24). Pub. L. 99–633 struck out par. (24) which related to aliens seeking admission from foreign contiguous territory or adjacent islands who arrived there on vessel or aircraft of nonsignatory line or non-consular transportation line and have not resided there at least two years subsequent to such arrival, except for aliens described in section 1101(a)(27)(A) of this title and aliens born in Western Hemisphere, and further provided that no paragraph following par. (24) shall be redesignated as result of this amendment.

Subsec. (d)(4). Pub. L. 99–633, §7(d)(2), as added by Pub. L. 100–525, §8(c)(1), substituted “section 1228(c) of this title” for “section 1228(d) of this title”.

Subsec. (i). Pub. L. 99–639, §6(b), as added by Pub. L. 100–525, §7(c)(3), inserted “or other benefit under this chapter after “United States.”

Subsec. (l). Pub. L. 99–396, §14(a), as amended by Pub. L. 100–525, §3(1)(A), amended subsec. (l) generally, designating provisions as par. (1) and redesignating former pars. (1) and (2) as subpars. (A) and (B), respectively, inserting in par. (1) as so designated reference to consultation with the Governor of Guam, inserting in subpar. (B) as so redesignated reference to the welfare, safety, and security of the territories and commonwealths of the United States, and adding pars. (2) and (3).

1984—Subsec. (a)(9). Pub. L. 98–473 amended last sentence generally. Prior to amendment, last sentence read as follows: “Any alien who would be excludable because of a conviction of a misdemeanor classifiable as a petty offense under the provisions of section 1(2) of title 18, by reason of the punishment actually imposed, or who would be excludable as one who admits the commission of an offense that is classifiable as a misdemeanor under the provisions of section 1(2) of title 18, by reason of the punishment which might have been imposed upon him, may be granted a visa and admitted to the United States if otherwise admissible: Provided, That the alien has committed only one such offense, or admits the commission of acts which constitute the essential elements of only one such offense.”


Subsec. (a)(32). Pub. L. 97–116, §§5(a)(1), 18(e)(1), substituted “in the United States” for “in the United States” and inserted proviso that for purposes of this paragraph an alien who is a graduate of a medical school to 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 of simple possession of 30 grams or less of marihuana” for “paragraphs (9), (10), or (12) of subsection (a) of this section.”


Subsec. (j)(1)(B). Pub. L. 97–116, §5(a)(2), (b)(3), (c)(A), (B), substituted “Secretary of Education” for “Commissioner of Education”, “(ii)(I)” for “(ii)”, and “Secretary of Health and Human Services” for “Secretary of Health, Education, and Welfare”; inserted “(II)” before “be able to adapt”, and “(IV)” before “has adequate prior education”; and inserted proviso that for purposes of this subparagraph an alien who is a graduate of a medical school be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on Jan. 9, 1978, and was practicing medicine in a State on that date.

Subsec. (j)(1)(C). Pub. L. 97–116, §5(b)(2)–(4), struck out “(including any extension of the duration thereof 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 International Communication Agency at the time of the alien’s entry, based on criteria established in coordination with the Secretary of Health and Human Services, except that such duration be limited to seven years unless the alien demonstrates to the satisfaction of the Director that the country to which the alien will return after such specialty education has exceptional need for an individual trained in such specialty, and that the alien may change enrollment in programs once within two years after coming to the United States if approval of the Director is obtained and further commitments are obtained from the alien to assure that, upon completion of the program, the alien would return to his country for provision limiting the duration of the alien’s participation in the program for which he is coming to the United States to not more than two years, with a possible one year extension.


Subsec. (j)(2)(B). Pub. L. 97–116, §5(b)(7)(G), inserted provision directing Secretary of Health and Human Services, in coordination with Attorney General and the 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) be being carried out and that the participants in such program are being provided appropriate supervision in their medical education and training.


Subsec. (a)(14). Pub. L. 96–212, § 203(d), substituted ‘‘1153(a)(7)’’ for ‘‘1153(a)(8)’’.

Subsec. (d)(5). Pub. L. 96–212, § 203(f), redesignated existing provisions as subpar. (A), inserted provision excepting subpars. (B) and (C), and added subpar. (B).


1979—Subsec. (d)(9), (10). Pub. L. 96–70 added pars. (9) and (10).


1977—Subsec. (a)(32). Pub. L. 95–83, § 307(a)(1), inserted ‘‘not accredited by a body or bodies approved for the purpose by the Commissioner of Education (regardless of whether such school of medicine is in the United States’’ after ‘‘graduates of a medical school’’ in first sentence and struck out second sentence exclusion of aliens provision with respect to application to special immigrants defined in section 1101(a)(27)(A) of this title (other than the parents, spouses, or children of the United States citizens or of aliens lawfully admitted for permanent residence).


Subsec. (j)(1)(C). Pub. L. 95–83, § 307(c)(2)(B), substituted ‘‘that there is a need in that country for persons with the skills the alien will acquire in such education or training’’ for ‘‘that upon such completion and return, he will be appointed to a position in which he will utilize the skills acquired in such education or training in the government of that country or in an educational or other appropriate institution or agency in that country’’.

Subsec. (j)(1)(D). Pub. L. 95–83, § 307(c)(2)(C), substituted ‘‘at the written request’’ for ‘‘at the request’’, struck out cl. ‘‘(i) such government provides a written assurance, satisfactory to the Secretary of Health, Education, and Welfare, that the alien will, at the end of such extension, be appointed to a position in which he will fully utilize the skills acquired in such education or training in the government of that country or in an educational or other appropriate institution or agency in that country’’,

Subsecs. (j)(2)(A), (C). Pub. L. 95–83, § 307(c)(2)(D), substituted (A) and (B) for ‘‘(A) through (D)’’.

1976—Subsec. (a)(14). Pub. L. 94–571, § 5, in revising par. (14), inserted in cl. (A) ‘‘(or equally qualified in the sciences or the arts)’’ and struck out ‘‘in the United States’’ after ‘‘sufficient workers’’ and ‘‘destined’’ before ‘‘to perform’’.

Subsec. (a)(20). Pub. L. 94–571, § 11, struck out reference to 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, §§ 1, 11(a), substituted ‘‘mentally retarded’’ for ‘‘feebleminded’’.

Subsec. (a)(4). Pub. L. 89–236, § 11(b), substituted ‘‘or sexual deviation’’ for ‘‘or practice’’.

Subsec. (a)(14). Pub. L. 89–236, § 11(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 115(a)(3) and 115(a)(6) of this title, and nonpreference immigrants.

Subsec. (a)(20). Pub. L. 89–236, § 11(b), substituted ‘‘118(a)’’ for ‘‘118(b)’’.

Subsec. (a)(21). Pub. L. 89–236, § 11(c), struck out ‘‘quota’’ before ‘‘immigrant’’.

Subsec. (a)(24). Pub. L. 89–236, § 11(d), substituted ‘‘other than those 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, § 115(c), redesignated subsec. (f) of sec. 212 of the Immigration and Nationality Act as subsec. (h) 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 affiliated with tuberculosis.

1961—Subsec. (b), (h). Pub. L. 89–299, § 15(c), redesignated subsecs. (g) and (h) of sec. 212 of the Immigration and Nationality Act as subsecs. (b) and (i) respectively thereof, which for purposes of codification had already been designated as subsecs. (g) and (h) 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(3) of title 18, by reason of punishment actually imposed, or who admit commission of an offense classifiable as a misdemeanor under section 1(3) of title 18, by reason of punishment which might have been imposed, if otherwise admissible and provided the alien...
has committed, or admits to commission of, only one such offense.
Subsecs. (e), (f), Pub. L. 87–256 added subsec. (e) and redesignated former subsec. (e) as (f).
Subsecs. (g) to (i), Pub. L. 87–301, §§12, 14, 15, added subsecs. (f) to (h), which for purposes of codification have been designated as subsecs. (g) to (i).
1959—Subsec. (d). Pub. L. 86–3 struck out provisions from cl. (7) which related to aliens who left Hawaii and to persons who were admitted to Hawaii under section 8(a)(1) of the act of March 24, 1934, or as nationals of the United States.
1956—Subsec. (a)(23). Act July 18, 1956, included conspiracy to violate a narcotic law, and the illicit possession of narcotics, as additional grounds for exclusion.

CHANGE OF NAME

Committee on 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 subsections (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 enactment of this section; and sections 212(a)(3)(B) and 1184a of this title, and sections 212(a)(4)(C)(ii) 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 section 1101 and 1184 of this title and the amendments made by this subtitle shall take effect 90 days after the date of enactment of this Act [Dec. 9, 2004]." (b) EXCEPTIONS.—The amendments made by sections 422(b), 426(a), and 427 [amending sections 1183 and 1356 of this title] shall take effect upon the date of enactment 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 entered 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 3806 of Title 19, Customs Duties.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. C, title I, §1010(b)(3), Nov. 2, 2002, 116 Stat. 1255, provided that: "The amendments made by this section [amending sections 1184a 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." Pub. L. 107–150, §2(b), Mar. 13, 2002, 116 Stat. 75, provided 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 enactment of this Act [Mar. 13, 2002], except that, in the case of a death occurring before such date, such amendments shall apply only if—

1. the sponsored alien—

(1) requests the Attorney General to reinstate the classification petition that was filed with respect to the alien by the deceased and approved by the classification petition that was filed with respect to the alien by the deceased and approved by reason of such petition; and

(2) acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after the date of such death; or

2. the Attorney General reinstates such petition after making the determination described in section 213A(f)(5)(B)(ii) of such Act (8 U.S.C. 1182A(f)(5)(B)(ii)) 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 sections 1158, 1189, and 1227 of this title] shall take effect on the date of the enactment 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 deportation 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) as if such proceedings were removal proceedings.

(3) SPECIAL RULE FOR SECTION 219 ORGANIZATIONS AND ORGANIZATIONS DESIGNATED UNDER SECTION 212(a)(3)(B)(v)(III) OF SUCH ACT AS SO AMENDED.

(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) of such Act [§ 8 U.S.C. 1227(a)(4)(B)], by reason of the amendments 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)(iv) of such Act (as so amended) with respect to a terrorist organization designated by the Secretary of State under section 129 of such Act [§ 8 U.S.C. 2029] 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 engaged in a terrorist activity—

(i) described in subclause (IV)(bb), (V)(bb), or (VI)(cc) of section 212(a)(3)(B)(iv) 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)(iv) 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 consular officer who has concluded that there is not a reasonable ground to believe that the alien knew or reasonably should have known that the actions would further a terrorist activity.

[Another section 411(c) of Pub. L. 107–56 amended section 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 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 representation 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.] on or after September 30, 1996.”

EFFECTIVE DATE OF 1999 AMENDMENT


(1) beginning on the date that interim or final regulations 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 Disadvantaged Areas Reauthorization Act of 2005 [Dec. 20, 2006].”

Pub. L. 106–95, § 4(b), Nov. 12, 1999, 113 Stat. 1318, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 21, 1998], without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.”

EFFECTIVE AND TERMINATION DATES OF 1998 AMENDMENT

Pub. L. 105–229, title VI, § 604(a), Oct. 27, 1998, 112 Stat. 2814, provided that: “The amendment made by subsection (a) [amending this section] shall apply to aliens seeking to enter the United States on or after the date of the enactment of this Act [Oct. 27, 1998].”

Pub. L. 105–277, div. C, title IV, § 412(d), Oct. 21, 1998, 112 Stat. 2681–645, provided that: “The amendments made by subsection (a) [amending this section] apply to applications filed under section 219 of the Immigration and Nationality Act [subsec. (n)(1) of this section] on or after the date final regulations are issued to carry out such amendments, and the amendments made by subsections (b) and (c) [amending this section] take effect on the date of the enactment of this Act [Oct. 21, 1998].” [Interim final regulations implementing these amendments were promulgated on Dec. 19, 2000, published Dec. 29, 2000, 65 F.R. 80110, and effective, except as otherwise provided, Jan. 19, 2001.]


(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.”


EFFECTIVE DATE OF 1996 AMENDMENT

tion 212(a)(9)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)), as inserted by paragraph (1), no period before the title III-A effective date [see section 1251 of Pub. L. 104–208] set out as a note under section 1101 of this title] shall be included in a period of unlawful presence in the United States.

Pub. L. 104–208, div. C, title III, § 301(c)(2), Sept. 30, 1996, 110 Stat. 3009–579, provided that: "The requirements of subclauses (II) and (III) of section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(A)(ii)(II), (III)), as inserted by paragraph (1), shall not apply to an alien who demonstrates that the alien first arrived in the United States before the title III-A effective date (described in section 309(a) of this division [set out as a note under section 1101 of this title])."

Pub. L. 104–208, div. C, title III, § 306(d), Sept. 30, 1996, 110 Stat. 3009–612, provided that the amendment made by section 306(d) is effective as if included in the enactment of Pub. L. 104–182.

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), (f)(1)(C)(vii), (viii), (B), (10)(A), (11) 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 applications not subsec. (a)(9) of this section in case of an alien provided benefits under section 301 of Pub. L. 101–649, set out as a note under section 1255a of this title, and provision that no period of time before Sept. 30, 1996, be included in the period of 1 year described in subsec. (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.


Pub. L. 104–208, div. C, title III, § 342(b), Sept. 30, 1996, 110 Stat. 3009–636, 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] and shall apply to incitement regardless of when it occurs."

Pub. L. 104–208, div. C, title III, § 344(c), Sept. 30, 1996, 110 Stat. 3009–637, provided that: "The amendments made by this section [amending this section and section 1251 of this title] shall include in a period of unlawful presence in the United States, before, on, or after the date of the enactment of this Act [Sept. 30, 1996] and shall apply to incitement regardless of when it occurs."

Pub. L. 104–208, div. C, title III, § 347(c), Sept. 30, 1996, 110 Stat. 3009–639, provided that: "The amendments made by this section [amending this section and section 1251 of this title] shall apply to voting occurring before, on, or after the date of the enactment of this Act [Sept. 30, 1996]."

Pub. L. 104–208, div. C, title III, § 349(b), Sept. 30, 1996, 110 Stat. 3009–639 provided that: "The amendment made by subsection (a) [amending this section] shall be effective on the date of the enactment of this Act [Sept. 30, 1996] and shall apply in the case of any alien who is in exclusion or deportation proceedings as of such date, unless a final administrative order in such proceedings has been entered as of such date."

Pub. L. 104–208, div. C, title III, § 351(c), Sept. 30, 1996, 110 Stat. 3009–640, provided that: "The amendments made by this section [amending this section and section 1251 of this title] shall apply to aliens admitted to the United States, before, on, or after the date of the enactment of this Act [Sept. 30, 1996], but shall not apply to such an application for which a final determination has been made as of the date of the enactment of this Act."

Pub. L. 104–208, div. C, title III, § 352(b), Sept. 30, 1996, 110 Stat. 3009–641, provided that: "The amendment made by subsection (a) [amending this section] shall apply to individuals who renounce United States citizenship on and after the date of the enactment of this Act [Sept. 30, 1996]."


Pub. L. 104–208, div. C, title V, § 353(b), Sept. 30, 1996, 110 Stat. 3009–675, provided that: "The amendment made by section 219(e) of Pub. L. 104–208 [amending this section] shall apply to applications submitted on or after such date, but subparagraphs (C) and (D) of section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(4)(C), (D)), as so amended, shall not apply to applications filed with respect to which an official interview with an immigration officer was conducted before such effective date."

Effective and Termination Dates of 1994 Amendment

Pub. L. 103–416, title II, § 203(c), Oct. 25, 1994, 108 Stat. 4311, 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]."


"Pub. L. 105–46, §123, Sept. 30, 1997, 111 Stat. 1158, 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 terminal date, see list of continuing appropriations acts contained in a Continuing Appropriations for Fiscal Year 1998 note set out under section 635f of Title 12, Banks and Banking.

**Effective Date of 1993 Amendment**

Pub. L. 103–43, title XX, §207(b), June 10, 1993, 107 Stat. 210, 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**


**Effective Date of 1990 Amendment**


Pub. L. 101–649, title II, §202(c), Nov. 29, 1990, 104 Stat. 5014, provided that: "The amendments made by this section [amending this section and section 1144 of this title] shall take effect 60 days after the date of the enactment of this Act [Nov. 29, 1990]."


Pub. L. 101–649, title V, §511(b), Nov. 29, 1990, 104 Stat. 5052, 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]."

Pub. L. 101–649, title V, §514(b), Nov. 29, 1990, 104 Stat. 5053, 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**

Pub. L. 101–238, §3(d), Dec. 18, 1989, 103 Stat. 2103, provided that: "The amendments made by the previous provisions of this section [amending this section and section 1101 of this title] shall apply to 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**

Pub. L. 100–690, title VII, §743(b), Nov. 18, 1988, 102 Stat. 4473, 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]."

Pub. L. 100–525, §3, Oct. 24, 1988, 102 Stat. 2614, provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–396.

Pub. L. 100–525, §7(d), Oct. 24, 1988, 102 Stat. 2617, 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 and Nationality Act 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.

Pub. L. 99–639, §6(c), formerly §6(b), Nov. 10, 1986, 100 Stat. 3544, as redesignated and amended by Pub. L. 100–525, §7(c)(2), Oct. 24, 1988, 102 Stat. 2616, provided that: "The amendments 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."

Pub. L. 99–570, title I, §1751(c), Oct. 27, 1986, 100 Stat. 3207–47, 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 351 of Title 18, Crimes and Criminal Procedure.

**Effective Date of 1981 Amendment**

Pub. L. 97–116, §5(c), Dec. 29, 1981, 95 Stat. 1614, 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 subsection (j)1(c) of this section, amending subsection (j)1(d) of this section, and enacting subsection (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."
section 21(a) of Pub. L. 97-116, set out as a note under section 1101 of this title.

**Effective Date of 1980 Amendment**
Amendment by section 203(d) of Pub. L. 96-212 effective, except as otherwise provided, Apr. 1, 1980, and amendment by section 203(f) of Pub. L. 96-212 applicable, except as otherwise provided, to aliens paroled into the United States on or after the sixtieth day after Mar. 17, 1980, see section 204 of Pub. L. 96-212, set out as a note under section 1101 of this title.

**Effective Date of 1979 Amendment**
Amendment by Pub. L. 96-70 effective Sept. 27, 1979, see section 3201(d)(1) of Pub. L. 96-70, set out as a note under section 1101 of this title.

Pub. L. 94-70, title III, § 3201(d)(2), Sept. 27, 1979, 93 Stat. 497, 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, set out as section 3201(d)(2) of Pub. L. 96-70], 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 section 6302 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.

**Treatment of Kurdistan Democratic Party and Patriotic Union of Kurdistan Under the Immigration and Nationality Act**

"(a) REMOVAL OF THE KURDISTAN DEMOCRATIC PARTY AND THE PATRIOTIC UNION OF KURDISTAN FROM TREATMENT AS TERRORIST ORGANIZATIONS.—"


"(2) EXCEPTION.—The Secretary of State, after consultation with the Secretary of Homeland Security and the Attorney General, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may suspend the application of paragraph (1) to both of the groups referred to in paragraph (1) in such Secretary's sole and unrecontrollable discretion. Prior to or contemporaneous with such suspension, the Secretary of State or the Secretary of Homeland Security shall report their reasons for suspension to the Committees on Judiciary of the House of Representatives and of the Senate, the Committees on Appropriations in the House of Representatives and of the Senate, the Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.

(b) RELIEF REGARDING ADMISSIBILITY OF NONIMMIGRANT ALIENS ASSOCIATED WITH THE KURDISTAN DEMOCRATIC PARTY AND THE PATRIOTIC UNION OF KURDISTAN.—"

"(1) FOR ACTIVITIES OPPOSING THE BA'ATH REGIME.—Paragraph (3)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) shall not apply to an alien with respect to activities undertaken in association with the Kurdistan Democratic Party or the Patriotic Union of Kurdistan in opposition to the regime of the Arab Socialist Ba'ath Party and the autocratic dictatorship of Saddam Hussein in Iraq.

"(2) FOR MEMBERSHIP IN THE KURDISTAN DEMOCRATIC PARTY AND PATRIOTIC UNION OF KURDISTAN.—Paragraph (3)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) shall not apply to an alien applying for a nonimmigrant visa, who presents themselves for inspection to an immigration
officer at a port of entry as a nonimmigrant, or who is applying in the United States for nonimmigrant status, and who is a member of the Kurdistan Democratic Party or the Patriotic Union of Kurdistan and currently serves or has previously served as a senior official (such as Prime Minister, Deputy Prime Minister, Minister, Deputy Minister, President, Vice-President, Member of Parliament, provincial Governor or member of the National Security Council) of the Kurdistan Regional Government or the federal government of the Republic of Iraq.

(3) Exception.—Neither paragraph (1) nor paragraph (2) shall apply if the Secretary of State or the Secretary of Homeland Security (or a designee of one of such Secretaries) determine in their sole unreviewable discretion that such alien poses a threat to the safety and security of the United States, or does not warrant a visa, admission to the United States, or a grant of an immigration benefit or protection, in the totality of the circumstances. This provision shall be implemented by the Secretary of State and the Secretary of Homeland Security in consultation with the Attorney General.

(4) Prohibition on Judicial Review.—Notwithstanding any other provision of law (whether statutory or nonstatutory), section 242 of the Immigration and Nationality Act (8 U.S.C. 1252), sections 1381 and 1511 of title 28, United States Code, shall have no application to any determination made pursuant to this section.

AFRICAN NATIONAL CONGRESS; WAIVER OF CERTAIN INADMISSIBILITY GROUNDS

Pub. L. 110–115, § 702(k), May 8, 2008, 122 Stat. 2426, provided that:

"SEC. 2. RELIEF FOR CERTAIN MEMBERS OF THE AFRICAN NATIONAL CONGRESS REGARDING ADMISSIBILITY.

"(a) Exemption Authority.—The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, may determine in his or her 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 Immigration and Nationality Act (8 U.S.C. 1182(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. 110–115, § 702(k), May 8, 2008, 122 Stat. 2426, 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 an alien in Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands."
§ 1182

MONEY LAUNDERING WATCHLIST

Pub. L. 107-56, § 1182

Money laundering watchlist. (a) The Attorney General of the United States may establish a watchlist of individuals or organizations that are determined to be a threat to the national interest or national security.

(b) The Attorney General shall maintain the watchlist and ensure that it is updated on a regular basis.

(c) The Attorney General shall provide notification to the Secretary of the Treasury when a new individual or organization is added to the watchlist.

(d) The Attorney General shall provide notification to the Director of the Central Intelligence Agency when a new individual or organization is added to the watchlist.

Page 170 TITLE 8—ALIENS AND NATIONALITY
date relatives of any individual described in section 487(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2250(a)), and the business partners of any such individual or of any entity described in such section, are not permitted entry into the United States, consistent with the provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

**Processing of Visas for Admission to United States**


"(1) (A) Beginning 24 months after the date of the enactment of this Act [Apr. 30, 1994], whenever a United States consular officer issues a visa for admission to the United States, that official shall certify, in writing, that a check of the Automated Visa Lookout System, or any other system or list which maintains information about the inadmissibility of aliens under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], has been made and that there is no basis under such system for the exclusion of such alien.

"(B) If, at the time an alien applies for an immigrant or nonimmigrant visa, the alien's name is included in the Department of State's visa look out system and the consular officer to whom the application is made fails to follow the procedures in processing the application required by the inclusion of the alien's name in such system, the consular officer's failure shall be made a matter of record and shall be considered as a serious negative factor in the officer's annual performance evaluation.

"(2) If an alien to whom a visa was issued as a result of a failure described in paragraph (1)(B) is admitted to the United States and there is thereafter probable cause to believe that the alien was a participant in a terrorist act causing serious injury, loss of life, or significant destruction of property in the United States, the Department of State shall convene an Accountability Review Board under the authority of title III of the Omnibus Diplomatic Security andAntiterrorism Act of 1986 (22 U.S.C. 4831 et seq.)."

**Access to Interstate Identification Index of National Crime Information Center; Fingerprint Checks**


"(1) Not later than 90 days after the date of enactment of this Act [Apr. 30, 1994], the Secretary of State shall correct the Automated Visa Lookout System, or any other system or list which maintains information about the excludability of aliens under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], has been made and that there is no basis under such system for the exclusion of such alien.

"(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.

"(3) Not later than December 31, 1996, the Secretary of State and the Director of the Federal Bureau of Investigation shall jointly submit to the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives, and the Committee on Foreign Relations and the Committee on the Judiciary of the Senate, a report on the effectiveness of the procedures authorized in subsections (d) and (e).

"(g) Subsections (d) and (e) shall cease to have effect after May 1, 1998."

**Visa Lookout Systems**

Pub. L. 103–236, title I, §140(b), Apr. 30, 1994, 108 Stat. 399, provided that: "Not later than 18 months after the date of the enactment of this Act [Apr. 30, 1994], the Secretary of State shall implement an upgrade of all overseas visa lookout operations to computerized systems with automated multiple-name search capabilities."


"(a) Visas.—The Secretary of State may not include an alien in the Automated Visa Lookout System, or in 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.

"(b) Correction of Lists.—Not later than 3 years after the date of enactment of this Act [Oct. 28, 1991], the Secretary of State shall:

"(1) correct the Automated Visa Lookout System, or any other system or list which maintains information about the inadmissibility of aliens under the Immigration and Nationality Act; and

"(2) report to the Congress concerning the completion of such correction process.

"(c) Report on Correction Process.—

"(1) Not later than 90 days after the date of enactment of this Act [Oct. 28, 1991], the Secretary of State, in coordination with the heads of other appropriate Government agencies, shall prepare and submit to the appropriate congressional committees, a plan which sets forth the manner in which the Department of State will correct the Automated Visa Lookout System, and any other system or list as set forth in subsection (b).

"(2) Not later than 1 year after the date of enactment of this Act [Oct. 28, 1991], the Secretary of State shall report to the appropriate congressional committees on the progress made toward completing the correction of lists as set forth in subsection (b).

"(d) Application.—This section applies to the Immigration and Nationality Act as in effect on and after June 1, 1991."
“(e) Limitation.—
“(1) The Secretary may add or retain in such system or list the names of aliens who are not inadmissible only if they are included for otherwise authorized law enforcement purposes or other lawful purposes of the Department of State. A name included for other lawful purposes under this paragraph shall include a notation which clearly and distinctly indicates that such person is not presently inadmissible. The Director of State shall adopt procedures to ensure that visas are not denied to such individuals for any reason not set forth in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).
“(2) The Secretary shall publish in the Federal Register regulations and standards concerning maintenance and use by the Department of State of systems and lists for purposes described in paragraph (1).
“(3) Nothing in this section may be construed as creating new authority or expanding any existing authority for any activity not otherwise authorized by law.

“(f) Definition.—As used in this section the term ‘appropriate congressional committees’ means the Committee on the Judiciary and the Committee on Foreign Affairs of the House of Representatives and the Committee on the Judiciary and the Committee on Foreign Relations of the Senate.”

Changes in Labor Certification Process


“(b) Notice in Labor Certifications.—The Secretary of Labor shall provide, in the labor certification process under section 212(a)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(A)), that—

“(1) no certification may be made unless the applicant for certification has, at the time of filing the application, provided notice of the filing (A) to the bargaining representative of the employer’s employees in the occupational classification and area for which aliens are sought, or (B) if there is no such bargaining representative, to employees employed at the facility through posting in conspicuous locations; and

“(2) any person may submit documentary evidence bearing on the application for certification (such as information on available workers, information on wages and working conditions, and information on the employer’s failure to meet terms and conditions with respect to the employment of alien workers and co-workers).”

Review of Exclusion Lists

“(1) whose name is in such system, and

“(2) who either (A) applies for admission after the effective date of the amendments made by this section [see Effective Date of 1990 Amendment note above], or (B) requests (in writing to a local consular office after such date) a review, without seeking admission, of the alien’s continued inadmissibility under the Immigration and Nationality Act (8 U.S.C. 1182 et seq.),

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 Nonimmigrant Nurses During 5-Year Period
Pub. L. 101–238, §3(c), Dec. 18, 1989, 103 Stat. 2103, provided that: “The Secretary of Labor (in consultation with the Secretary of Health and Human Services) shall—

“(1) first publish final regulations to carry out section 212(m) of the Immigration and Nationality Act (8 U.S.C. 1182(m)) (as added by this section) not later than the first day of the 8th month beginning after the date of the enactment of this Act [Dec. 18, 1989]; and

“(2) provide for the appointment (by January 1, 1991) of an advisory group, including representatives of the Secretary, the Secretary of Health and Human Services, the Attorney General, hospitals, and labor organizations representing registered nurses, to advise the Secretary—

“(A) concerning the impact of this section on the nursing shortage,

“(B) on programs that medical institutions may implement to recruit and retain registered nurses who are United States citizens or immigrants who are authorized to perform nursing services,

“(C) on the formulation of State recruitment and retention plans under section 212(m)(3) of the Immigration and Nationality Act, and

“(D) on the advisability of extending the amendments made by this section (amending sections 1101 and 1182 of this title) beyond the 5-year period described in subsection (d) [set out above].”

Prohibition on Exclusion or Deportation of Aliens on Certain Grounds
Pub. L. 100–204, title IX, §901, Dec. 22, 1987, 101 Stat. 1399, as amended by Pub. L. 100–461, title V, §555, Oct. 1, 1988, 102 Stat. 2614, directed Attorney General to issue, within 90 days after Aug. 27, 1986, regulations governing the admission, detention, and travel of nonimmigrant aliens who are United States citizens or immigrants who are authorized to perform nursing services, and included a provision that required the Attorney General to report each year on implementation of 8 U.S.C. 1182(l) (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. 22, 1987].

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. 1152(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 the Treasury, see sections 203(1), 551(d), 552(d), and 1612.]

REBUFFERS FROM DEMOCRATIC KAMPUCHEA (CAMBODIA); TEMPORARY PAROLE INTO UNITED STATES FOR FISCAL YEARS 1979 AND 1980

Pub. L. 95–431, title VI, §605, Oct. 10, 1978, 92 Stat. 1045, provided that it 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.

RETORETIVE 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. 627, directed Attorney General, by October 30, 1979, to report to specific congressional committees on certain cases of the admission of 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

Pub. L. 94–484, title VI, §602(a), (b), as added by Pub. L. 98–83, 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-
for at least two years, and who has not acquired perma-
nent residence, shall forthwith return or be returned to
the custody of the Immigration and Naturalization
Service, and shall thereupon be inspected and examined
for admission into the United States, and his case deal-
ted with, in accordance with the provisions of sections 235,
236 and 237 of that Act [sections 1225, 1226 and [former]
1227 of this title].

"SEC. 2. Any such alien who, pursuant to section 1 of
this Act, is found, upon inspection by an immigration
officer or after hearing before a special inquiry
officer, to have been and to be admissible as an immigrant
at the time of his arrival in the United States and at the
time of his inspection and examination, except for the
fact that he was not and is not in possession of the doc-
uments 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 nat-
uralization."

PROC. NO. 4865. HIGH SEA'S INTERDICTION OF ILLEGAL
ALIENS

PROC. No. 4865, Sept. 29, 1981, 46 F.R. 46107, provided:
The staking of persons to the United
States in violation of our laws is a serious national
problem detrimental to the interests of the United
States. A particularly difficult aspect of the problem is
the continuing illegal migration by sea of large num-
bers 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 deter-
med 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 rest-
ed in me by the Constitution and the laws of the United
States, including Sections 212(f) and 215(a)(1) of the
Immigration and Nationality Act, as amended (8
U.S.C. 1182(f) and 1153(a)(1)), in order to protect the sov-
ereignty of the United States, and in accordance with
cooperative arrangements with certain foreign govern-
ments, and having found that the entry of undocu-
mented aliens, arriving at the borders of the United
States from the high seas, is detrimental to the inter-
ests 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 the two
hundred and sixth.

RONALD REAGAN.

PROC. NO. 7750. TO SUSPEND ENTRY AS IMMIGRANTS OR
NONIMMIGRANTS OF PERSONS ENGAGED IN OR BENEFIT-
TING FROM CORRUPTION

PROC. No. 7750, Jan. 12, 2004, 69 F.R. 2287, provided:
In light of the importance of legitimate and trans-
parent 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 demo-
cratic 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 Corrup-
tion and Safeguarding Integrity and other intergovern-
mental 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
the following persons who have committed, participated in,
or are beneficiaries of corruption in the performance of
public functions where that corruption has serious ad-
verse effects on international activity of U.S. busi-
nesses, U.S. foreign assistance goals, the security of the
United States against transnational crime and terror-
ism, or the stability of democratic institutions and na-
tions.

NOW, THEREFORE, I, GEORGE W. BUSH, President
of the United States of America, by the authority rest-
ed in me by the Constitution and the laws of the United
States, including sections 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 un-
restricted 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 inter-
ests of the United States.

I therefore hereby proclaim that:

SECTION 1. The entry into the United States, as immi-
grants 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 omis-
sion 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 per-
formance 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 per-
sons.

SECTION 2. Section 1 of this proclamation shall not apply
with respect to any person otherwise covered by sec-
tion 1 where entry of the person into the United States
would not be contrary to the interests of the United
States.

SECTION 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 dis-
cretion, pursuant to such standards and procedures as
the Secretary may establish.

SECTION 4. For purposes of this proclamation, "serious
adverse effects on the national interests of the United
States" means serious adverse effects on the inter-
national economic activity of U.S. businesses, U.S. for-
eign assistance goals, the security of the United States
against transnational crime and terrorism, or the sta-
BILITY OF DEMOCRATIC INSTITUTIONS AND NATIONS.

SECTION 5. Nothing in this proclamation shall be con-
strued to derogate from United States Government ob-
ligations under applicable international agreements.

SECTION 6. The Secretary of State shall have responsibil-
ity for implementing this proclamation, pursuant to
such procedures as the Secretary may, in the Sec-
rency's discretion, establish.
This proclamation is effective immediately.

Sect. 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. 4693, 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’ failures 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.

Sect. 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.

Sect. 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.

Sect. 4. Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

Sect. 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.

Sect. 6. This proclamation is effective immediately. It shall remain in effect until such time as the Secretary 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.

NOW, THEREFORE, I, BARACK OBAMA, by the authority vested in me as President by the Constitution and the laws of the United States, having determined that the interests of the United States are served by suspending 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 hereby determine that the interests of the United States are served by suspending 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. 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 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.

Sect. 2. 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.

Sect. 3. The Secretary of State 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 alien 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 [sic] obligations under applicable international agreements.

Sec. 6. 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, as immigrants or nonimmigrants, of the following persons is hereby suspended:

(a) 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.

(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.

Sec. 2. Section 1 of this proclamation shall not apply with respect to any person otherwise covered by section 1 where the entry of such person would not harm the foreign relations interests of the United States.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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, opinions, or beliefs, or based solely on expression by 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, its departments, agencies, or entities, its officers, employees, or agents, 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.

Sec. 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.

Sec. 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.

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. 1182(f)), and section 301 of title 5, 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 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; 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.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of July, 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. 12334

Ex. Ord. No. 12334, 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 fleeing persecution in their homeland, was revoked and replaced by Ex. Ord. No. 12807, § 4, May 24, 1992, 57 F.R. 23134, set out below.

BARACK OBAMA.
By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), and whereas:

1. The Secretary of State shall undertake to enter into, on behalf of the United States, cooperative arrangements with appropriate foreign governments for the purpose of preventing illegal migration to the United States by sea.

2. The Secretary of the Department in which the Treasury is performed (or the Secretary of the Treasury in case of the Treasury being out of session) shall issue appropriate instructions to the Coast Guard in order to enforce the suspension of the entry of undocumented aliens by sea and the interdiction of any defined vessel carrying such aliens.

(a) Those instructions shall apply to any of the following defined vessels:

(1) Vessels of the United States, meaning any vessel documented or numbered pursuant to the laws of the United States, or owned in whole or in part by the United States, a citizen of the United States, or a corporation incorporated under the laws of the United States, or owned in whole or in part by the United States, or any State, Territory, District, commonwealth, or possession thereof, unless the vessel has been granted nationality by a foreign nation in accordance with Article 5 of the Convention on the High Seas of 1930 (U.S. T.I.A.S. 5200; 13 U.S.T. 2312), and whereas:

(b) The President has authority to suspend the entry of aliens coming by sea to the United States without necessary documentation, to establish reasonable rules and regulations regarding, and other limitations on, the entry or attempted entry of aliens into the United States, and to repatriate aliens interdicted beyond the territorial sea of the United States;


(d) Proclamation No. 4865 (set out above) suspends the entry of all undocumented aliens into the United States by the high seas; and

(e) There continues to be a serious problem of persons attempting to come to the United States by sea without proper documentation and otherwise illegally;

I, GEORGE BUSH, President of the United States of America, hereby order as follows:

SECTION 1. The Secretary of State shall undertake to enter into, on behalf of the United States, cooperative arrangements with appropriate foreign governments for the purpose of preventing illegal migration to the United States by sea.

(a) The Secretary of the Department in which the Treasury is performed (or the Secretary of the Treasury in case of the Treasury being out of session) shall issue appropriate instructions to the Coast Guard in order to enforce the suspension of the entry of undocumented aliens by sea and the interdiction of any defined vessel carrying such aliens.

(b) Those instructions shall apply to any of the following defined vessels:

(1) Vessels of the United States, meaning any vessel documented or numbered pursuant to the laws of the United States, or owned in whole or in part by the United States, a citizen of the United States, or a corporation incorporated under the laws of the United States, or owned in whole or in part by the United States, or any State, Territory, District, commonwealth, or possession thereof, unless the vessel has been granted nationality by a foreign nation in accord with Article 5 of the Convention on the High Seas of 1930 (U.S. T.I.A.S. 5200; 13 U.S.T. 2312).

(2) Vessels without nationality or vessels assimilated to vessels without nationality in accordance with paragraph (2) of Article 6 of the Convention on the High Seas of 1930 (U.S. T.I.A.S. 5200; 13 U.S.T. 2312).

(3) Vessels of foreign nations with whom we have arrangements authorizing the United States to stop and board such vessels.

(c) Those instructions to the Coast Guard shall include appropriate directives providing for the Coast Guard:

(1) To stop and board defined vessels, when there is reason to believe that such vessels are engaged in the irregular transportation of persons or violations of United States law or the law of a country with which the United States has an arrangement authorizing such action;

(2) To make inquiries of those on board, examine documents and take such actions as are necessary to carry out this order.

(3) To return the vessel and its passengers to the country from which it came, or to another country, when there is reason to believe that an offense is being committed against the United States immigration laws, or appropriate laws of a foreign country with which we have an arrangement to assist; provided, however, that the Secretary of Homeland Security, in his unreviewable discretion, may decide that a person who is a refugee will not be returned without his consent.

(d) These actions, pursuant to this section, are authorized to be undertaken only beyond the territorial sea of the United States.

SEC. 2. (a) The Secretary of the Department in which the Treasury is performed (or the Secretary of the Treasury in case of the Treasury being out of session) shall issue appropriate instructions to the Coast Guard in order to enforce the suspension of the entry of undocumented aliens by sea and the interdiction of any defined vessel carrying such aliens.

(b) Those instructions shall apply to any of the following defined vessels:

(1) Vessels of the United States, meaning any vessel documented or numbered pursuant to the laws of the United States, or owned in whole or in part by the United States, a citizen of the United States, or a corporation incorporated under the laws of the United States, or owned in whole or in part by the United States, or any State, Territory, District, commonwealth, or possession thereof, unless the vessel has been granted nationality by a foreign nation in accord with Article 5 of the Convention on the High Seas of 1930 (U.S. T.I.A.S. 5200; 13 U.S.T. 2312).

(2) Vessels without nationality or vessels assimilated to vessels without nationality in accordance with paragraph (2) of Article 6 of the Convention on the High Seas of 1930 (U.S. T.I.A.S. 5200; 13 U.S.T. 2312).

(3) Vessels of foreign nations with whom we have arrangements authorizing the United States to stop and board such vessels.

(c) Those instructions to the Coast Guard shall include appropriate directives providing for the Coast Guard:

(1) To stop and board defined vessels, when there is reason to believe that such vessels are engaged in the irregular transportation of persons or violations of United States law or the law of a country with which the United States has an arrangement authorizing such action;

(2) To make inquiries of those on board, examine documents and take such actions as are necessary to carry out this order.

(3) To return the vessel and its passengers to the country from which it came, or to another country, when there is reason to believe that an offense is being committed against the United States immigration laws, or appropriate laws of a foreign country with which we have an arrangement to assist; provided, however, that the Secretary of Homeland Security, in his unreviewable discretion, may decide that a person who is a refugee will not be returned without his consent.

(d) These actions, pursuant to this section, are authorized to be undertaken only beyond the territorial sea of the United States.

SEC. 3. This order is intended only to improve the internal management of the Executive Branch. Neither this order nor any agency guidelines, procedures, instructions, directives, rules or regulations implementing this order shall create, or shall be construed to create, any right or benefit, substantive or procedural (including without limitation any right or benefit under the Administrative Procedure Act (5 U.S.C. 551 et seq.),) legally enforceable by any party against the United States, its agencies or instrumentalities, officers, employees, or any other person. Nor shall this order be construed to procedures to determine whether a person is a refugee.

SEC. 4. Executive Order No. 12324 is hereby revoked and replaced by this order.

SEC. 5. This order shall be effective immediately.

GEORGE BUSH.

EX. ORD. NO. 13276, DELEGATION OF RESPONSIBILITIES CONCERNING UNDOCUMENTED ALIENS INTERCEPTED OR INTERCEPTED IN THE CARIBBEAN REGION

EX. ORD. NO. 13276, Nov. 15, 2002, 67 F.R. 69985, as amended by Ex. Ord. No. 13286, § 1, Feb. 28, 2003, 68 F.R. 10619, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), and 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.

(a) The Secretary of Homeland Security may maintain custody, at any location he 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 should be located at Guantanamo Bay Naval Base or any other appropriate location, unless the vessel has been granted nationality by a foreign nation in accord with Article 5 of the Convention on the High Seas of 1930 (U.S. T.I.A.S. 5200; 13 U.S.T. 2312).

(b) The Secretary of State shall provide for the custody, care, safety, transportation, and other needs of the aliens. 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 provide for the custody, care, safety, transportation, and other needs of the aliens.

(c) The Secretary of Homeland Security may conduct any screening of such aliens that he deems appropriate, including screening to determine whether such aliens should not be returned without their consent. These actions, pursuant to this section, are authorized to be undertaken only beyond the territorial sea of the United States.

(d) These actions, pursuant to this section, are authorized to be undertaken only additional needs of the aliens. The Secretary of Homeland Security shall provide for the custody, care, safety, transportation, and other needs of the aliens.

(e) These actions, pursuant to this section, are authorized to be undertaken only additional needs of the aliens. The Secretary of Homeland Security shall provide for the custody, care, safety, transportation, and other needs of the aliens.
§§ 1182a to 1182c

TITLE 8—ALIENS AND NATIONALITY

Page 178

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 or person.

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 609A of title 22, and subject to subsection (b), 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) 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) but were issued a visa and an explanation as to why each such visa was issued.

§ 1182e. 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) 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) 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.

§ 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), 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 section 1182(a) 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) 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.

Codification

Section was enacted as part of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, 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.

§ 1183. Admission of aliens on giving bond or undertaking; return upon permanent departure

An alien inadmissible under paragraph (4) of section 1182(a) of this title may, if otherwise admissible, be admitted in the discretion of the Attorney General (subject to the affidavit of support requirement and attribution of sponsor’s income and resources under section 1183a of this title) upon the giving of a suitable and proper bond or undertaking approved by the Attorney General, in such amount and containing such conditions as he may prescribe, to the United States, and to all States, territories, counties, towns, municipalities, and districts thereof holding the United States and all States, territories, counties, towns, municipalities, and districts thereof harmless against such alien becoming a public charge. Such bond or undertaking shall terminate upon the permanent departure from the United States, the naturalization, or the death of such alien, and any sums or other security held to secure performance thereof, except to the extent forfeited for violation of the terms thereof, shall be returned to the person by whom furnished, or to his legal representatives. Suit may be brought thereon in the name and by the proper law officers of the United States for the use of the United States, or of any State, territory, district, county, town, or municipality in which such alien becomes a public charge, irrespective of whether a demand for payment of public expenses has been made.

Codification

Section was enacted as part of the Department of State Authorization Act, Fiscal Year 2001, and also as part of the Foreign Relations Authorization Act, Fiscal Year 2003, and not as part of the Immigration and Nationality Act which comprises this chapter.

Definitions

For definitions of “Secretary” and “appropriate congressional committees” as used in this section, see section 3 of Pub. L. 107–228, set out as a note under section 2651 of Title 22, Foreign Relations and Intercourse.
§ 1183a  TITLE 8—ALIENS AND NATIONALITY  Page 180


AMENDMENTS
1996—Pub. L. 104–208, § 564(f), inserted “(subject to the affidavit of support requirement and attribution of sponsor’s income and resources under section 1183a of this title)” after “in the discretion of the Attorney General”.

1990—Pub. L. 101–649 substituted “(4)” for “(7) or (15)” and inserted before period at end “, irrespective of whether a demand for payment of public expenses has been made” after “becomes a public charge”.

1970—Pub. L. 91–313 substituted provisions admitting, under the specified conditions, an alien excludable under pars. (7) or (15) of section 1182(a) of this title, for provisions admitting, under the specified conditions, any alien excludable because of the likelihood of becoming a public charge or because of physical disability other than tuberculosis in any form, leprosy, or a dangerous contagious disease, and struck out provisions authorizing a cash deposit with the Attorney General in lieu of a bond, such amount to be deposited in the United States Postal Savings System, and provided 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 603(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.

§ 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) that is legally enforceable against the sponsor by the sponsored alien, the Federal Government, any State (or any political sub-

1 See References in Text note below.
(b) Reimbursement of government expenses

(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 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) 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), 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)(E) 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.
§ 1183a

TITLE 8—ALIENS AND NATIONALITY

Page 182

(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) (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 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 by law, demonstrating the individual's means to maintain income 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.

(ii) 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 sponsored 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.


REFERENCES IN TEXT

Subsection (e), referred to in subsec. (a)(1)(B), does not define "means-tested public benefit".

The Social Security Act, referred to in subsec. (a)(3)(A), (B), 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

So in original. Section enacted without a subsection (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 FEES.—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. The fee 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 sponsors who file essentially duplicative affidavits of support in connection with separate immigrant visa applications from the spouse and children of any petitioner required by the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) to petition separately for such persons.

“(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


“(a) IN GENERAL.—

“(1) The Attorney General of the United States shall establish a pilot program in 5 district offices of the Immigration and Naturalization Service to require aliens to post a bond in addition to the affidavit requirements under section 213A of the Immigration and Nationality Act (8 U.S.C. 1183a) and the deeming requirements under section 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1631). Any pilot program established pursuant to this subsection shall require an alien to post a bond in an amount sufficient to cover the cost of benefits described in section 213A(d)(2)(B) of the Immigration and Nationality Act (as amended by section 551(a) of this division) for the alien and the alien’s dependents and shall remain in effect until the departure, naturalization, or death of the alien.

“(2) Suit on any such bonds may be brought under the terms and conditions set forth in section 213A of the Immigration and Nationality Act (8 U.S.C. 1183a).

“(b) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [Sept. 30, 1996], the Attorney General shall issue regulations for establishing the pilot programs, including—

“(1) criteria and procedures for—

“(A) certifying bonding companies for participation in the program, and

“(B) debarment of any such company that fails to pay a bond, and

“(2) criteria for setting the amount of the bond to assure that the bond is in an amount that is not less than the cost of providing benefits under the programs described in subsection (a)(1) for the alien and the alien’s dependents for 6 months.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.
§ 1184. Admission of nonimmigrants

(a) Regulations

(1) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States.

(2) The period of authorized status as a nonimmigrant described in section 1101(a)(15)(A) 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) 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 (b) 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)(B)(i) of this title) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. For purposes of this subsection with respect to nonimmigrants described in section 1101(a)(15)(H)(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)(A) The Attorney General shall provide for a procedure under which an importing employer which meets requirements established by the Attorney General may file a blanket petition to import aliens as nonimmigrants described in section 1101(a)(15)(L) of this title instead of filing individual petitions under paragraph (1) to import such aliens. Such procedure shall permit the expedited processing of visas for 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 procedure 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 5 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, or

(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 authorization 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—

(i) 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 appear to the decision any such opinion. The Attorney General shall provide by regulation for the waiver of the consultation requirement under subparagraph (A) in the case of aliens who have been admitted as nonimmigrants under section 1101(a)(15)(O)(i) of this title because of extraordinary ability in the arts and who seek readmission to perform similar services within 2 years after the date of a consultation under such subparagraph. Not later than 5 days after the date such a waiver is provided, the Attorney General shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization.

(4)(A) For purposes of section 1101(a)(15)(P)(i)(a) of this title, an alien is described in this subparagraph if the alien—

(i) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance;

(ii) is a professional athlete, as defined in section 1154(i)(2) of this title;

(iii) performs as an athlete, or as a coach, as a 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—
§ 1184

1101(a)(15)(P)(i)(b) of this title, an alien is described in this subparagraph if the alien—

(a) 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 College 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 or tour.

(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) seeks to enter the United States temporarily and solely for the purpose of performing as such a performer or entertainer or as an integral and essential part of a performance.

(ii) In the case of an entertainment group that is recognized nationally as being outstanding in its discipline for a sustained and substantial period of time, the Attorney General may, in consideration of special circumstances, waive the international recognition requirement of clause (i)(I).

(iii)(I) The one-year relationship requirement of clause (i)(II) shall not apply to 25 percent of the performers and entertainers in a group.

(II) The Attorney General may waive such one-year relationship requirement for an alien who because of illness or unanticipated and exigent circumstances replaces an essential member of the group and for an alien who augments the group by performing a critical role.

(iv) The requirements of subclauses (I) and (II) of clause (i) shall not apply to alien circus personnel who perform as part of a circus or circus group or who constitute an integral and essential part of the performance of such circus or circus group, but only if such personnel are entering the United States to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time or as part of such a circus.

(C) A person may petition the Attorney General for classification of an alien as a nonimmigrant under section 1101(a)(15)(P) of this title.

(D) The Attorney General shall approve petitions under this subsection with respect to nonimmigrants described in clause (i) or (iii) of section 1101(a)(15)(P) of this title only after consultation in accordance with paragraph (6).

(E) The Attorney General shall approve petitions under this subsection for nonimmigrants described in section 1101(a)(15)(P)(i) 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 4605(j)(1)(A) of title 50 (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) of this title if the alien 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)(1)(b) or 1101(a)(15)(H)(2)(b) of this title 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.

(6)(A)(i) To meet the consultation requirement of paragraph (3)(A) in the case of a petition for a nonimmigrant described in section 1101(a)(15)(O)(i) of this title (other than with respect to aliens seeking entry for a motion picture or television production), the petitioner shall submit with the petition an advisory opinion from a peer group (or other person or persons of its choosing, which may include a labor organization) with expertise in the specific field involved.

(ii) To meet the consultation requirement of paragraph (3)(B) in the case of a petition for a nonimmigrant described in section 1101(a)(15)(O)(ii) of this title (other than with respect to aliens seeking entry for a motion picture or television production), the petitioner shall submit with the petition an advisory opinion from a labor organization with expertise in the specific field involved.

(iii) To meet the consultation requirement of paragraph (4)(D) in the case of a petition for a nonimmigrant described in section 1101(a)(15)(P)(i) or 1101(a)(15)(P)(iii) of this title, the petitioner shall submit with the petition an advisory opinion from a labor organization with expertise in the specific field of athletics or entertainment involved.

(B) To meet the consultation requirements of subparagraph (A), unless the petitioner submits with the petition an advisory opinion from an appropriate labor organization, the Attorney General shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization within 5 days of the date of receipt of the petition. If there is a collective bargaining representative of an employer’s employees in the occupational classification for which the alien is being sought, that representative shall be the appropriate labor organization.

(C) In those cases in which a petitioner described in subparagraph (A) establishes that an appropriate peer group (including a labor organization) does not exist, the Attorney General shall adjudicate the petition without requiring an advisory opinion.

(D) Any person or organization receiving a copy of a petition described in subparagraph (A) and supporting documents shall have no more than 15 days following the date of receipt of such documents within which to submit a written advisory opinion or comment or to provide a letter of no objection. Once the 15-day period has expired and the petitioner has had an opportunity, where appropriate, to supply rebuttal evidence, the Attorney General shall adjudicate such petition in no more than 14 days. The Attorney General may shorten any specified time period for emergency reasons if no unreasonable burden would be thus imposed on any participant in the process.

(E)(i) The Attorney General shall establish by regulation expedited consultation procedures in the case of nonimmigrant artists or entertainers described in section 1101(a)(15)(O) or 1101(a)(15)(P) of this title to accommodate the exigencies and scheduling of a given production or event.

(ii) The Attorney General shall establish by regulation expedited consultation procedures in the case of nonimmigrant athletes described in section 1101(a)(15)(O)(i) or 1101(a)(15)(P)(i) of this title in the case of emergency circumstances (including trades during a season).

(F) No consultation required under this subsection by the Attorney General with a 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 section as the Attorney General determines, in his sole discretion, to be appropriate.

(7) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the determination and the reasons for the denial and of the process by which the petitioner may appeal the determination.

(8) The Attorney General shall submit annually to the Committees on the Judiciary of the House of Representatives and of the Senate a report describing, with respect to petitions under each subcategory of subparagraphs (H), (O), (P), and (Q) of section 1101(a)(15) of this title the following:

(A) The number of such petitions which have been filed.

(B) The number of such petitions which have been approved and the number of workers (by occupation) included in such approved petitions.

(C) The number of such petitions which have been denied and the number of workers (by occupation) requested in such denied petitions.

(D) The number of such petitions which have been withdrawn.

(E) The number of such petitions which are awaiting final action.

(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 related to or affiliated with any such institution, a nonprofit entity which engages in established curriculum-related clinical training of students registered at any such institution, a nonprofit research organization, or a governmental research organization) filing before the Attorney General to delegate any authority under this subsection to such an entity. The Attorney General shall give such weight to advisory opinions provided under this section as the Attorney General determines, in his sole discretion, to be appropriate.

(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 equival-

1 So in original. The word “before” probably should not appear.
alent 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(e) 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)(1)(b) of this title; or

(ii) in order to satisfy the requirement of the second sentence of subsection (g)(8)(C) 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(e) 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)(1)(i)(b) of this title.

(B) The amount of the fee imposed under subparagraph (A) shall be $150.

(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)(H)(1)(i)(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 or paragraph (1) of this subsection 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).

(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)(K)(i) of this title until the consular officer has received a petition filed in the United States by the fiancé or fiancée 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 described in paragraph (3)(B) and information on any permanent protection or restraining order issued against the petitioner related to any specified crime described in paragraph (3)(B)(i). 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), the Secretary of Homeland Security may not approve a petition under paragraph (1) unless the Secretary has verified that—
(i) the petitioner has not, previous to the 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, was convicted of, 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.  
(B) The term "specified crime" means the following:
(i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, stalking, or an attempt to commit any such crime.
(ii) Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking,peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes described in this clause.

(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), 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 would take such action, and
(D) the President has notified the Secretaries of State and Labor of his intention to take such action.

See References in Text note below.
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 attestations referred to in subparagraph (C), subject to the attestations referred to in subparagraph (C).

(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 spouses 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 who—

(A) has been an employee of such vessel from a United States 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 an institution of higher education (as defined in section 1001(a) of title 20), or a related or affiliated nonprofit entity;

(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

(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)(ii)(b) of this title may not exceed 66,000.

(2) The numerical limitations of paragraph (1) shall only apply to principal aliens and not to the spouses or children of such aliens.

(3) Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas or otherwise provided 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) 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) 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) 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) 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) 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) 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) 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) 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) 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) 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) 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) 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) 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 otherwise provided such status by fraud.
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), 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)(1)(b) 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)(1)(b) 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 established under clause (i) has not been exhausted at the end of a given fiscal year, the Secretary of Homeland Security shall adjust upwards the numerical limitation in paragraph (1)(A) for that fiscal year by the amount remaining in the numerical limitation under clause (i). Visas under section 1101(a)(15)(H)(1)(b) of this title may be issued pursuant to such adjustment within the first 45 days of the next fiscal year to aliens who had applied for such visas during the fiscal year for which the adjustment was made.

(C) The period of authorized admission as a nonimmigrant under section 1101(a)(15)(H)(1)(b) of this title shall be 1 year, and may be extended, 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 attestation under section 1182(c)(1) of this title for the purpose of permitting the nonimmigrant to obtain such extension.

(D) The numerical limitation described in paragraph (1)(A) for a fiscal year shall be reduced by one for each alien granted an extension under subparagraph (C) during such year who has obtained 5 or more consecutive prior extensions.

(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 2013, 2014, or 2015 shall not again be counted toward such limitation during fiscal year 2016. Such an alien shall be considered a returning worker.

(B) A petition to admit or otherwise provide status under section 1101(a)(15)(H)(1)(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)(1)(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.

(C) 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)(1)(b) of this title, the Department of Homeland Security.

(D) The applicable numerical limitation referred to in subparagraph (A) is 10,500 for each fiscal year.

(E) The applicable numerical limitation referred to in subparagraph (A) shall only apply to principal aliens and not to the spouses or children of such aliens.

(h) Intention to abandon foreign residence

The fact that an alien is the beneficiary of an application for a preference status filed under section 1154 of this title or has otherwise sought permanent residence in the United States shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining a visa as a nonimmigrant described in subparagraph (H)(1)(b) or (c), (L), or (V) of section 1101(a)(15) of this title or otherwise obtaining or maintaining the status of a nonimmigrant described in such subparagraph. If the alien had obtained a change of status under section 1258 of this title to a classification as such a nonimmigrant before the alien’s most recent departure from the United States.

(i) “Specialty occupation” defined

(1) Except as provided in paragraph (3), for purposes of section 1101(a)(15)(H)(1)(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)(i)(b) of this title, the requirements of this paragraph, with respect to a specialty occupation, are—
(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
(B) completion of the degree described in paragraph (1)(B) for the occupation, or
(C) (i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

(3) For purposes of section 1101(a)(15)(H)(i)(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 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, or by an interested Federal agency, for a waiver of the 2-year foreign residence
requirement under section 1182(e) of this title on behalf of an alien described in clause (iii) of such section, the Attorney General shall not grant such waiver unless—

(A) in the case of an alien who is otherwise contractually obligated to return to a foreign country, the government of such country furnishes the Director of the United States Information Agency with a statement in writing that it has no objection to such waiver;

(B) 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 30;

(C) 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); and

(D) in the case of a request by an interested Federal agency (other than a request by an interested State agency) to employ the alien for a waiver for an alien who otherwise been accorded status under section 1101(a)(15)(F) of this title. The numerical limitations contained in subsection (g)(1)(A) 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 non-immigrant 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 (iii) 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 non-immigrant under clause (i) or (iii) 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)(T) 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 program, 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 filling by the prospective employer of a new petition on behalf of such nonimmigrant as provided under subsection (a). 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 1101(a)(15)(T) of this title shall continue to be treated as an alien described in clause (ii) 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 1101(a)(15)(T)(i)(III)(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 provided 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)(i) of this title shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting 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)(i) 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 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 officer, prosecution judge, or other Federal, State, or local authority investigating or prosecuting criminal activity described in section 1101(a)(15)(U)(iii) of this title that the alien’s presence in the United States is required to assist in the investigation or prosecution of such criminal activity. 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 alien—

(A) is eligible for relief under section 1255 of this title; and

(B) the period of authorized admission as such an alien is pending.

(7) Age determinations

(A) Children

An unmarried alien who seeks to accompany, or follow to join, a parent granted status under section 1101(a)(15)(U)(i) of this title, and who was under 21 years of age on the date on which such parent petitioned for such status, shall continue to be classified as a child for purposes of section 1101(a)(15)(U)(i) of this title if the alien attains 21 years of age after such parent’s petition was filed but while it was pending.

(B) Principal aliens

An alien described in clause (i) of section 1101(a)(15)(U) of this title shall continue to be treated as an alien described in clause (ii) 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.

(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)(iii)

(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 described in paragraph (B) and information on any permanent protection or restraining order issued against the petitioner related to any specified crime described in subsection 2(5)(B)(i).

(2) In the case of an alien seeking admission under section 1101(a)(15)(K)(i) 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 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.

(4)(A) The Secretary of Homeland Security shall create a database for the purpose of tracking multiple visa petitions filed for fiancé(e)s and spouses under clauses (i) and (ii) of section 1101(a)(15)(K) of this title. Upon approval of a second visa petition under section 1101(a)(15)(K) of this title for a fiancé(e) or spouse filed by the same United States citizen petitioner, the petition shall be notified by the Secretary that information concerning the petitioner has been entered into the multiple visa petition tracking database. All subsequent fiancé(e) or spouse nonimmigrant visa petitions filed by that petitioner under such section shall be entered in the database.

(B)(i) Once a petitioner has had two fiancé(e) or spousal petitions approved under clause (i) or (ii) of section 1101(a)(15)(K) of this title, if a subsequent petition is filed under such section less than 10 years after the date the first visa petition was filed under such section, the Secretary of Homeland Security shall notify both the petitioner and beneficiary of any such subsequent petition about the number of previously approved fiancé(e) or spousal petitions listed in the database.

(ii) To notify the beneficiary as required by clause (i), the Secretary of Homeland Security shall provide such notice to the Secretary of State for inclusion in the mailing to the beneficiary described in section 1375a(a)(5)(A)(i) of this title.

So in original. Probably should be “paragraph”.

(5) 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.

(B) The term “specified crime” means the following:

(i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, stalking, or an attempt to commit any such crime.

(ii) Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave 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.

(6) The determination of whether an alien is barred from admission because he or she is described in subsection (2) shall be made without regard to any other provision of this title.

AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 108–78, see Effective and Termination Dates of 2003 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 108–77, see Effective and Termination Dates of 2003 Amendment note below.

For termination of amendment by section 501(c) of Pub. L. 100–449, see Effective and Termination Dates of 1988 Amendment note below.

REFERENCES IN TEXT

The International Organizations Immunities Act, referred to in subsec. (b), is act Dec. 29, 1945, ch. 952, 59 Stat. 699, as amended, which is classified principally to subchapter XVIII (§§ 288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 1184.

This chapter, referred to in subsecs. (c)(4)(H), (e), and (j), was in the original, “this Act”, meaning act June 27, 1952, ch. 797, 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 Title 22 and Tables.

Section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005, referred to in subsec. (d)(3)(A) and (c)(5)(A), is section 3 of Pub. L. 109–162, which enacted sections 3796gg–2 and 3925 of Title 42, The Public Health and Welfare, amended sections 3796gg–3, 3796hh–4, 10420, 13975, and 14039 of Title 42, and amended former section 3796gg–2 of Title 42, and amended provisions set out as a note under section 3796gg–2 of Title 42.

CODIFICATION


AMENDMENTS


2013—Subsec. (d)(1). Pub. L. 113–4, § 807(a)(1)(A), substituted “crime described in paragraph (3)(B) and information on any permanent protection or restraining order issued against the petitioner related to any specified crime described in paragraph (3)(B)(i)” for “crime.”


Subsec. (r)(1)(L). Pub. L. 113–4, § 807(a)(2)(B), substituted “crime described in paragraph (5)(B) and information on any permanent protection or restraining order issued against the petitioner related to any specified crime described in subsection (5)(B)(i)” for “crime.”

Subsec. (r)(4)(B)(ii). Pub. L. 113–4, § 807(a)(2)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “A copy of the information and resources pamphlet on domestic violence developed under section 1375a(a) of this title shall be mailed to the beneficiary along with the notification required in clause (I).”


2008—Subsec. (a)(1). Pub. L. 110–229 substituted “Guam or the Commonwealth of the Northern Mariana Islands” for “Guam” wherever appearing and substituted “45 days” for “fifteen days”.


Subsec. (o)(7)(B). Pub. L. 110–457, § 301(b)(1), inserted dash after “it”, designated remainder of existing provisions as cl. (l), and added cls. (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 1151(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(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 pendancy 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.”

2006—Subsec. (c)(4)(A)(i), (ii). Pub. L. 109–145, § 2(a), added clss. (l) and (l) and struck out former clss. (l) 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. 109–145, § 2(b)(d), added subpars. (F) to (H).

Subsec. (d). Pub. L. 109–162, § 832(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 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 1641(a)(15)(H)(i)(B) of this title shall not be counted toward such limitation for the fiscal year in which the petition is approved.”


Subsec. (r)(1). Pub. L. 109–162, §832(a)(2)(A), inserted at end “Such information shall include information on any criminal convictions of the petitioner for any specified crime.”


2004—Subsec. (c)(2)(A). Pub. L. 108–447, §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. (g)(5). Pub. L. 108–447, §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. 108–447, §425(a)(2), inserted “‘is employed (or has received an offer of employment) at’” before “an institution” and struck out “or” at end.

Subsec. (j)(3). Pub. L. 108–447, §425(a)(3), struck out “‘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. 108–447, §411(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. 108–447, §411(b), inserted at end “The numerical limitations contained in subsection (g)(1)(A) 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 “‘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 subparagraph (H)(i) of section 1101(a)(15)(L) of this title, except subclause (b)(ii) of such section’” for “‘other than a nonimmigrant described in subparagraph (H)(i), (L), or (V) of section 1101(a)(15) of this title’”. See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (c)(1). Pub. L. 108–77, §§107(c), 404(2), temporarily substituted “subparagraph (H), (L), (O), or (P)(i)” for “section 1101(a)(15)(H), (L), (O), or (P)(i)” of this title”. See Effective and Termination Dates of 2003 Amendments note below.


Subsec. (j). Pub. L. 108–77, §§107(c), 405, temporarily designated existing provisions as par. (1), substituted this paragraph for “for this subsection” in two places, and added par. (2). See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (m). Pub. L. 108–193, §8(a)(3), redesignated subsec. (m) relating to increased portability of H–1B status, as (n).


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
1999—Subsec. (k)(2). Pub. L. 106–104 substituted "7 years" for "5 years".
1998—Subsec. (c)(2), redesignated subsec. (k)(2) as (k).
Subsec. (g)(1)(A). Pub. L. 105–107, §411(a), added subpar. (A). Generally, prior to amendment, subpar. (A) read as follows: "under section 1101(a)(15)(H)(1)(b) of this title may not exceed 65,000, or".
1997—Subsec. (j)(1)(D). Pub. L. 105–65 inserted before period at end "except that, in the case of a alien whose application for a visa or status is filed for such visa or status.".
Paragraph (1) shall be issued visas (or otherwise provided with nonimmigrant visas). Subsec. (p)(B). Pub. L. 104–208, §308(f)(1)(C), substituted "admission" for "entry".
Subsec. (c)(5)(B). Pub. L. 104–208, §308(f)(3)(B), substituted "is admitted to" for "enters".
Subsec. (d). Pub. L. 104–208, §308(f)(5)(A)(1), (7)(A), substituted "two sections 1229a and 1231" for "sections 1225 and 1235".
Pub. L. 104–208, §308(f)(1)(H), substituted "admission" for "entry".
Pub. L. 104–208, §308(e)(2)(B), substituted "removed" for "deported".
Subsec. (j). Pub. L. 104–208, §671(a)(3)(A), redesignated subsec. (j), relating to numerical limitations on the number of aliens provided with nonimmigrant visas, as (k).
Subsec. (k). Pub. L. 104–208, §671(a)(3)(A), redesignated subsec. (j), relating to numerical limitations on the number of aliens provided with nonimmigrant visas, as (k). Former (k) redesignated (l).
Pub. L. 104–208, §622(c), amended subsec. (k) generally, substituting provisions relating to requests by interested State and Federal agencies for waivers of the two-year foreign residence requirement under section 1182(e) of this title for former provisions relating to requests by interested State agencies for such waivers.
1993—Subsec. (e). Pub. L. 103–182, §341(1)(D), designated existing provisions as paras. (1) and added paras. (2) to (5).
Pub. L. 102–232, §206(d), inserted "(or events)" after "event".
Subsec. (a)(2)(B). Pub. L. 102–232, §206(a), designated cl. (I) as subpar. (B) and struck out cl. (I) which read as follows: "An alien who is admitted as a nonimmigrant under clause (ii) or (iii) of section 1101(a)(15)(P) of this title may not be admissible as such a nonimmigrant unless the alien has remained outside the United States for at least 12 months after the date of the most recent admission. The Attorney General may waive the admission of the alien in the case of a alien whose application for a visa or status is filed for such visa or status.".
Subsec. (c)(2)(E), Pub. L. 107–125, §1, added subpar. (E).
Pub. L. 107–95, §1(2), redesignated par. (3) as (2).
Pub. L. 107–95, §1(1), which directed that subsec. (k) be amended by striking (2), was executed by striking par. (2) to reflect the probable intent of Congress. Prior to amendment, par. (2) read as follows: "No alien may be admitted into the United States as such a nonimmigrant more than 7 years after September 13, 1994."
Subsec. (k)(3). Pub. L. 107–95, §1(2), redesignated par. (4) as (3). Former par. (3) redesignated (2).
Subsec. (k)(4)(E). Pub. L. 107–95, §1(3), substituted "paragraph (3)" for "paragraph (4)".
2000—Subsec. (b). Pub. L. 106–553, §1102(d)(1), substituted "(H)(i), (L), or (V)" for "(H)(i) or (V)".
Subsec. (c)(9)(A). Pub. L. 106–311, §1(1), substituted "‘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 non-profit entity related to or affiliated with any such institution, a nonprofit entity which engages in established curriculum-related clinical training of students registered at any such institution, a nonprofit research organization, or a governmental research organization’ filling before October 1, 2003" for ‘‘(excluding an employer described in subparagraph (A) or (B) of section 1182(p)(1) of this title) filing (on or after December 1, 1998, and before October 1, 2001)’’.
Subsec. (c)(9)(B). Pub. L. 106–311, §1(2), substituted "$1,000" for "$500".
Subsec. (e). Pub. L. 106–311, §1(3), substituted "section 116(a)" for "section 116(a)(2)".
Subsec. (c)(2)(D), Pub. L. 102–232, § 303(a)(10)(B), substituted “involved” for “involved”.
Subsec. (c)(3), Pub. L. 102–232, § 205(e), inserted at end “The Attorney General shall provide by regulation for the waiver of the consultation requirement under subparagraph (A) in the case of aliens who have been admitted as nonimmigrants under section 1101(a)(15)(O)(i) of this title because of extraordinary ability in the arts, and who seek readmission to perform similar services within 2 years after the date of a consultation under such subparagraph. Not later than 5 days after the date such a waiver is provided, the Attorney General shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization.”
Subsec. (c)(3), Pub. L. 102–232, § 204(2), 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)(A), Pub. L. 102–232, § 204(1), substituted “after consultation in accordance with paragraph (6)” or “in the case of such an alien seeking entry for a motion picture or television production, after consultation with a labor organization and a management organization in the area of the alien’s ability” for “after consultation with labor organizations with expertise in the skill area involved.”
Subsec. (c)(4)(A), Pub. L. 102–232, § 204(3), struck out “clause (ii)” of “under.”
Pub. L. 102–232, § 203(b), redesignated subpars. (A) and (B) as (C) and (D), respectively.
Subsec. (c)(4)(C), Pub. L. 102–232, § 204(3), substituted “after consultation in accordance with paragraph (6)” for “after consultation with labor organizations with expertise in the specific field of athletics or entertainment involved.”
Pub. L. 102–232, § 203(b), redesignated subpar. (B) as (D).
Subsec. (c)(4)(E), Pub. L. 102–232, § 206(c)(2), struck out before period at end “, in order to assure reciprocity in fact with foreign states”.
Pub. L. 102–232, § 203(b), redesignated subpar. (C) as (B).
Subsec. (c)(5), Pub. L. 102–232, § 207(a), designated existing provisions as subpar. (A) and added subpar. (B).
Subsec. (c)(5)(B), Pub. L. 102–232, § 204(5), (6), added par. (6) and redesignated former par. (6) as (7).
Subsec. (c)(6), Pub. L. 102–232, § 207(c)(1), added par. (8).
Subsec. (g)(1), Pub. L. 102–232, § 202(a), inserted “or” at end of subpar. (A), substituted a period for “, or” at end of subpar. (B), and struck out subpar. (C) which read as follows: “under section 1101(a)(15)(P)(i) or section 1101(a)(15)(P)(ii) of this title may not exceed 25,000.”
1990—Subsec. (a), Pub. L. 101–649, § 201(f), designated existing provisions as par. (1) and added par. (2).
Subsec. (b), Pub. L. 101–649, § 205(b)(1), substituted “other than a nonimmigrant described in subparagraph (H)(i) or (L) of section 1101(a)(15) of this title” for “other than a nonimmigrant described in subparagraph (H)(i) or (L) of section 1101(a)(15) of this title”.
Subsec. (c), Pub. L. 101–649, §§ 206(b), 207(b)(2), redesignated existing provisions as par. (1), substituted reference to section 1101(a)(15)(H), (L), (O), or (P)(i) of this title for reference to section 1101(a)(15)(H) or (L) of this title, and added pars. (2) to (6).
Subsecs. (g) to (i), Pub. L. 101–649, § 205(a)(2), (c)(2), added subsec. (g) to (i).
1986—Subsec. (a), Pub. L. 99–603, § 313(b), inserted provision directing that no alien admitted without a visa pursuant to section 1187 of this title may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.
Subsec. (c), Pub. L. 99–603, § 301(b), as amended by Pub. L. 100–525, § 2(1)(l), inserted provisions relating to nonimmigrants described in section 1101(a)(15)(H)(ii)(a) of this title.
Subsec. (d), Pub. L. 99–639, § 3(a), substituted “have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry,” for “have a bona fide intention to marry”, and inserted “, except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person”.
Pub. L. 99–639, § 3(c), struck out last sentence which read: “In the event the marriage between the said alien and the petitioner shall occur within three months after the entry and they are found otherwise admissible, the Attorney General shall record the lawful admission for permanent residence of the alien and minor children as of the date of the payment of the required visa fees.”
1984—Subsec. (a), Pub. L. 98–454 inserted “No alien admitted to Guam without a visa pursuant to section 1162(f) of this title may be authorized to enter or stay in the United States other than in Guam or to remain in Guam for a period exceeding fifteen days from date of admission to Guam.”
1970—Subsec. (c), Pub. L. 91–225, § 3(a), inserted reference to subpar. (L) of section 1101(a)(15) of this title.
Subsec. (d), Pub. L. 91–225, § 3(b), added subsec. (d).

EFFECTIVE DATE OF 2013 AMENDMENT

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. 109–364, 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. 109–162, title VIII, § 832(a)(5), 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 the 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 101(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 numericals for fiscal year 2005 based on statistical estimates and projections derived from Department of State data."


Pub. L. 109–13, div. B, title IV, §404(b), May 11, 2005, 119 Stat. 320, 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. 3352, 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 May 31, 2002, see section 11018(d) of Pub. L. 107–273, set out as a note under section 1101 of this title]."

Pub. L. 108–447, div. J, title IV, §413(b), Dec. 8, 2004, 118 Stat. 3353, provided that: "The amendment made by subsection (a) [amending this section] shall apply only to petitions for initial classification filed on or after the effective date of this subtitle [subtitle A, effective May 31, 2002, see below], whether for initial, extended, or amended classification."


Amendment by section 427(c) of Pub. L. 108–447 effective Dec. 8, 2004, and amendment by section 425(a) of Pub. L. 108–447 effective 90 days after Dec. 8, 2004, see below; Pub. L. 108–447, div. C, title IV, §417, Dec. 8, 2004, 118 Stat. 3353, provided that: "The amendments made by this section [amending this section and sections 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, 2005), and ceases to be effective on the date the Agreement ceases to be in force, see section 11018(d) of Pub. L. 107–273, set out as a note under section 1182 of this title.

**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 before, on, or after Dec. 21, 2000, 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.

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 to petitions filed before, on, or after the date of enactment of this Act [Oct. 17, 2000]."

Pub. L. 106–313, §2, Oct. 17, 2000, 114 Stat. 1247, provided that: "The amendment made by section 1(2) [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), (7)(A), (H), (3)(B), (g)(5)(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 nonimmigrant 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)(J) 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 228(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 231 of Pub. L. 101–649, set out as a note under section 1101 of this title.

Effective and Termination Dates of 1988 Amendment
Amendment by Pub. L. 100–525 effective as if included in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) as of Oct. 31, 1988, see section 3(e) of Pub. L. 100–525, set out as an Effective Date of 1988 Amendment note under section 1101 of this title.

Amendment by Pub. L. 100–449 effective on the date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on the date the Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of Title 19, Customs Duties.

Effective Date of 1986 Amendments
Pub. L. 99–639, § 3(d)(1), (3), Nov. 10, 1986, 100 Stat. 3542, 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. 1, 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. 99–639 applicable to petitions and applications filed under sections 1184(b) and 1182 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. 99–639, as amended, set out as an Effective Date note under section 1182 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 833 [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 1536 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.

“(a) Establishment.—Not later than 6 months after the date of enactment of this Act [Dec. 8, 2004], the Inspector General of the Department of Homeland Security shall, consistent with the authority granted the Department under section 428 of the Homeland Security Act of 2002 (6 U.S.C. 235), examine and report to the Committee on the Judiciary of the House of Representatives and the Senate on the vulnerabilities and potential abuses in the visa program carried out under section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c) with respect to nonimmigrants described in section 101(a)(15)(L) of such Act (8 U.S.C. 1101(a)(15)(L)).

“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 Secretary of the 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 consult with the Department of Homeland Security, the Department of Justice, and the Department of State, and each relevant bureau of the Department of Homeland Security shall provide to 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 of, 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 (Public Law 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:
“(1) 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 may apply for, and the Attorney General may grant, an extension of such nonimmigrant status until the alien’s status under such clause (i)(b) or (ii)(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)(ii) 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 of the petition. 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 1999 (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 and for whom the per country limitations applicable to aliens 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 provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act (8 U.S.C. 1101(a)(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. 1154(a)(5)(A)), in a case in which certification is required or used by the alien to obtain status under section 203(b) of such Act (8 U.S.C. 1153(b)).

‘‘(2) A petition described in section 204(b) of such Act (8 U.S.C. 1153(b)) [8 U.S.C. 1153(b)] to accredit 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 a petition described in subsection (a)(2) filed on behalf of the alien pursuant to that 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 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(h) of the Immigration and Nationality Act (8 U.S.C. 1184(h)) (relating to restrictions on waivers).’’

Improving Count of H-1B and H-2B Nonimmigrants


‘‘(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 (i)(b) or (ii)(b) of section 101(a)(15)(H) 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 2000, 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 of, 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 of, 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 102(a) [amending section 1122 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 organiza-
tions 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).

(2) 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 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)); 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 employers paying wages 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;

"(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 nonimmigrant 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. 105-277, div. C, title IV, § 418(b), Oct. 21, 1998, 112 Stat. 2861-657, provided that: ‘‘The Chairman of the Board of Governors of the Federal Reserve System, the Director of the Office of Management and Budget, the Chairman 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 effected by section 214(c)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) during the previous fiscal year, had an impact on any national economic indicator, such as the level of inflation or unemployment, that warrants action by the Congress.’’

Deadline for First Report With Respect to Petitions


Delay Until April 1, 1992, in Application of Subsection (g)(3)(C) of This Section


Work Authorization During Pending Labor Disputes


‘‘(1) In the case of an alien admitted as a nonimmigrant (other than under section 101(a)(15)(H)(i)(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(i)(a)]) and who is authorized to be employed in an occupation, if nonimmigrants constitute a majority of the members of the bargaining unit in the occupation, during the period of any strike or lockout in the occupation with the employer which strike or lockout is pending on the date of the enactment of this Act [Nov. 29, 1990] the alien—

"(A) continues to be authorized to be employed in the occupation for that employer during such strike or lockout;

"(B) is authorized to be employed in any occupation for any other employer so long as such strike or lockout continues with respect to that occupation and employer.

‘‘(2) In the case of an alien admitted as a nonimmigrant (other than under section 101(a)(15)(H)(i)(a) of the Immigration and Nationality Act) and who is authorized to be employed in an occupation, if nonimmigrants do not constitute a majority of the members of the bargaining unit in the occupation, during the period of any strike or lockout in the occupation with the employer which strike or lockout is pending on the date of the enactment of this Act the alien—

"(A) is not authorized to be employed in the occupation for that employer during such strike or lockout;

"(B) is authorized to be employed in any occupation for any other employer so long as there is no strike or lockout with respect to that occupation and employer.

‘‘(3) With respect to a nonimmigrant described in paragraph (1) or (2) who does not perform unauthorized employment, any limit on the period of authorized stay shall be extended by the period of the strike or lockout, except that any such extension may not continue beyond the maximum authorized period of stay.

‘‘(4) The provisions of this subsection shall take effect on the date of the enactment of this Act.’’

Off-Campus Work Authorization for Students (F Nonimmigrants)


‘‘(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 under this subsection if—

‘‘(1) the alien has completed 1 academic year as such a nonimmigrant and is maintaining good academic standing at the educational institution,

‘‘(2) the employer provides the educational institution and the Secretary of Labor with an attestation that the employer (A) has recruited for at least 60 days for the position and (B) will provide for payment to the alien and to other similarly situated workers at a rate equal to not less than the actual wage level for the occupation at the place of employment or, if greater, the prevailing wage level for the occupation in the area of employment, and

‘‘(3) the alien will not be employed more than 20 hours each week during the academic term (but may be employed on a full-time basis during vacation periods and between academic terms).

If the Secretary of Labor determines that an employer has provided an attestation under paragraph (2) that is materially false or has failed to pay wages in accordance with the attestation, after notice and opportunity for a hearing, the employer shall be disqualified from employing an alien student under this subsection.”
§ 1185. Travel control of citizens and aliens

(a) Restrictions and prohibitions

Unless otherwise ordered by the President, it shall be unlawful—

(1) for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe;

(2) for any person to transport or attempt to transport from or into the United States another person with knowledge or reasonable cause to believe that the departure or entry of such other person is forbidden by this section;

(3) for any person knowingly to make any false statement in an application for permission to depart from or enter the United States with intent to induce or secure the granting of such permission either for himself or for another;

(4) for any person knowingly to furnish or attempt to furnish or assist in furnishing to another a permit or evidence of permission to depart or enter not issued and designed for such other person’s use;

(5) for any person knowingly to use or attempt to use any permit or evidence of permission to depart or enter not issued and designed for his use;

(6) for any person to forge, counterfeit, mutilate, or alter, or cause or procure to be forged, counterfeited, mutilated, or altered, any permit or evidence of permission to depart from or enter the United States;

(7) for any person knowingly to use or attempt to use or furnish to another for use any false, forged, counterfeited, mutilated, or altered permit, or evidence of permission, or any permit or evidence of permission which, though originally valid, has become or been made void or invalid.

(b) Citizens

Except as otherwise provided by the President and subject to such limitations and exceptions as the President may authorize and prescribe, it shall be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid United States passport.

(c) Definitions

The term “United States” as used in this section includes the Canal Zone, and all territory and waters, continental or insular, subject to the jurisdiction of the United States. The term “person” as used in this section shall be deemed to mean any individual, partnership, association, company, or other incorporated body of individuals, or corporation, or body politic.

(d) Nonadmission of certain aliens

Nothing in this section shall be construed to entitle an alien to whom a permit to enter the United States has been issued to enter the United States. If, upon arrival in the United States, he is found to be inadmissible under any of the provisions of this chapter, or any other law, relative to the entry of aliens into the United States.

(e) Revocation of proclamation as affecting penalties

The revocation of any rule, regulation, or order issued in pursuance of this section shall
not prevent prosecution for any offense committed, or the imposition of any penalties or forfeitures, liability for which was incurred under this section prior to the revocation of such rule, regulation, or order.

(f) Permits to enter

Passports, visas, reentry permits, and other documents required for entry under this chapter may be considered as permits to enter for the purposes of this section.


REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (c), see section 3602(b) of Title 22, Foreign Relations and Intracourse.

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), redesignated subsec. (c), which provided for penalties for violation of this section, was struck out.

Subsec. (d). Pub. L. 95–426, § 707(d), redesignated subsec. (c) as (e), redesignated subsec. (d) as (f), and inserted new subsec. (d) relating to rulemaking.

Subsecs. (f), (g). Pub. L. 95–426, § 707(d), redesignated subsec. (f) as (g), redesignated subsec. (g) as (f), and redesignated subsec. (e) as (d).

Effective Date of 1994 Amendment

Pub. L. 103–416, title II, § 204(b), Oct. 25, 1994, 108 Stat. 4311, 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. 24, 1999, 64 F.R. 55809, 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. 556, 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) FEE.—

“(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.

“(3) 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.

“(4) USE OF FUNDS.—Amounts deposited into the APEC Business Travel Card Account—

“(A) shall be credited to the appropriate account of the Department of Homeland Security for expenses incurred in carrying out this section; and

“(B) shall remain available until expended.

“(f) 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

Security publishes a final rule in the Federal Register implementing section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 8 U.S.C. 1185 note) [set out below]—

“(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. 60928–32 (October 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) FINDINGS.—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 7209(k) (8 U.S.C. 1383b(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(b)(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 State identification 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 has been 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 machine-readable and tamper 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 and sea 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 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

EX. ORD. NO. 12172, Nov. 26, 1979, 44 F.R. 67947, as amended by Ex. Ord. No. 12206, Apr. 7, 1980, 45 F.R. 24101, provided:

By virtue of the authority vested in me as President by the Constitution and laws of the United States, including the Immigration and Nationality Act, as amended [this chapter], 8 USC 1185 and 3 USC 301, it is hereby ordered as follows:

Section 1–101. Delegation of Authority. The Secretary of State and the Attorney General are hereby designated and empowered to exercise in respect of Iranians the authority conferred upon the President by section 215(a) of the INA with respect to citizens 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 1–102. Effective Date. This order is effective immediately.

JIMMY CARTER.
(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;

(B) a fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) 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 Department 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 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,

(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 Secretary’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); or

(D) the alien meets the requirements under section 1154(a)(1)(A)(ii)(II)(aa)(BB) of this title and following the marriage ceremony was battered by or subject to extreme cruelty perpetrated by the alien’s intended spouse and 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)2 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 a lawful permanent resident.

(f) Treatment of certain waivers
In the case of an alien who has permanent resident 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 resident 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).

(h) Definitions

In this section:

(1) The term ‘‘alien spouse’’ means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)—

(A) as an immediate relative (described in section 1153(b) of this title) as the spouse of a citizen of the United States,

(B) under section 1184(d) of this title as the fiancee or fiance of a citizen of the United States, or

(C) under section 1153(a)(2) of this title as the spouse of an alien lawfully admitted for permanent residence by virtue of a marriage which was entered into less than 24 months before the date the alien obtains such status by virtue of such marriage, but does not include such an alien who only obtains such status as a result of section 1153(d) of this title.

(2) The term ‘‘alien son or daughter’’ means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the son or daughter of an individual through a qualifying marriage.

(3) The term ‘‘qualifying marriage’’ means the marriage described in paragraph (1).

(4) The term ‘‘petitioning spouse’’ means the spouse of a qualifying 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 Short Title note set out under section 1101 of this title and Tables.


CODIFICATION

Another section 216 of act June 27, 1952, was renumbered section 218 and is classified to section 1188 of this title.

AMENDMENTS


Pub. L. 113–4, §806(b)(1), which directed the substitution of ‘‘The Secretary of Homeland Security, in the Secretary’s’’ for ‘‘The Attorney General, in the Attorney General’s’’ in introductory provisions, was executed by making the substitution for ‘‘The Secretary of Homeland Security, in the Attorney General’s’’, to reflect the probable intent of Congress and the prior amendment by Pub. L. 112–58, §1(b)(2)(B). See 2011 Amendment note below.


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)(I). Pub. L. 106–553 substituted ‘‘section 1154(a) of this title or subsection (d) or (p) of section 1184 of this title’’ for ‘‘section 1154(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 ‘‘removed’’ for ‘‘deported’’.


Subsec. (5). Pub. L. 104–208, §308(d)(4)(E), 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.’’.

§ 1186b

(1) Conditional basis for status

Notwithstanding any other provision of this subsection, an alien entrepreneur (as defined in subsection (f)(1)), alien spouse, and alien child (as defined in subsection (f)(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 entrepreneur, alien spouse, or alien child obtains permanent resident status on a conditional basis under paragraph (1), the Attorney General shall provide for notice to such an entrepreneur, spouse, or child respecting the provisions of this section and the requirements of subsection (c)(1) 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 the requirements of subsection (c)(1).

(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), 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) (ii) 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) 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), 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 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).

(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 entrepreneur fails to appear at the interview described in paragraph (1)(B) (if required under subsection (d)(3)),

the Attorney General shall terminate the permanent resident status of the alien (and the alien’s spouse and children if it was obtained on a conditional basis under this section or section 1186a of this title) as of the second anniversary of the alien’s lawful admission for permanent residence.

(B) Hearing in 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 entrepreneur appears at any interview described in paragraph (1)(B),

the Attorney General shall make a determination, within 90 days of the date of the such filing or interview (whichever is later), as to whether the facts and information described in subsection (d)(1) and alleged in the petition are true with respect to the qualifying commercial enterprise.

(B) Removal of conditional basis if favorable determination

If the Attorney General determines that such facts and information are true, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status effective as of the second anniversary of the alien's lawful admission for permanent residence.

(C) Termination if adverse determination

If the Attorney General determines that such facts and information are not true, the Attorney General shall so notify the alien involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien entrepreneur, alien spouse, or alien child as of the date of the determination.

(D) Hearing in 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 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 commercial enterprise.

(d) Details of petition and interview

(1) Contents of petition

Each petition under subsection (c)(1)(A) shall contain facts and information demonstrating that the alien—

(A)(i) invested, or is actively in the process of investing, the requisite capital; and

(ii) 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 requirements of section 1153(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) must be filed during the 90-day period before the second anniversary of the alien’s lawful admission for permanent residence.

(B) Date petitions for good cause

Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) Filing of petitions during 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 Attorney General 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 Service, designated by the Attorney General, which is...
convenient to the parties involved. The Attorney General, in the Attorney General’s discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

(e) Treatment of period for purposes of naturalization

For purposes of subchapter III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

(f) Definitions

In this section:

(1) The term “alien entrepreneur” means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the spouse or child, respectively, of an alien entrepreneur.

(2) The term “commercial enterprise” includes a limited partnership.

(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. 183, as known in 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.”

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 was sustaining the actions described in subparagraphs (A) and (B) throughout the period of the alien’s residence in the United States.”


1990, 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 Pub. L. 101–649 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 Pub. L. 107–273 effective Nov. 2, 2002 and applicable to aliens having certain petitions pending under this section or section 1154 of this title on or after Nov. 2, 2002, see section 11036(c) of Pub. L. 107–273, set out as a note under section 1153 of this title.

Amendment by Pub. L. 102–232 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.

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


“(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)(6) of such Act (8 U.S.C. 1158(b)(6)) 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

(2) the alien has been found to have not committed any act described in section 212(a)(9)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(A)) (or any predecessor provision) at any time after petition approval.”
“(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)(A) that was denied in the case of an alien described in 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.

“(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).

“(D) 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 610(c) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1995 (119 Stat. 1355 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 (i).

“(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 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 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. 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 alien’s lawful admission for permanent residence.

“(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)(iii), 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, subject to subsection (d), shall terminate the permanent resident status of the alien (and 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)).

(iv) Administrative and Judicial Review.—An alien may seek administrative review of an adverse determination made under subparagraph (A) 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 242(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)).

(2) 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 (1)(F)(ii) 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 enterprises is a limited partnership and regardless of whether the alien entered the enterprise after its formation), in the United States, regardless of whether the 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) in 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).

(3) 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.

(ii) Date Petitions for Good Cause.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in clause (i).

(iii) Termination of Permanent Resident Status for Failure to File Petition.—In General.—In the case of an alien with a 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 on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) 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.

(iii) 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).

(E) 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—

(1) 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

(2) 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) 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—

(1) this clause shall apply only if the Attorney General made an adverse determination with respect to the eligible alien under paragraph (1)(A)(iii); and

(ii) if the Attorney General determined under paragraph (1)(A)(iii) 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 if 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 lawful admission for permanent residence on the date of the release of the adverse determination made by the Attorney General.
tive 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 status of the alien’s status (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 subparagraph (E), the Attorney General shall so notify the alien involved and, subject to subsection (d), shall terminate the 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) HEARING 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) CLARIFICATION 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.

“(f) 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. 1102. 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 this subsection if the alien—

“(1) filed, under section 203(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154a(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 filed 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 203(b)(5) 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 revoked 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));

“(2) APPLICATIONS 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—

“(1) failed to satisfy section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)); or

“(ii) departed the United States without advance parole.

“(B) APPLICANTS ABROAD.—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 an 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 sections 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 subparagraphs (A) and (B) of section 216A(c)(1). Such petition may include the facts and information described in subparagraphs (A) and (B) of section 216A(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(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 11831(c)(1), 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 law-
fully 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 existed 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. 1186a(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.

“(1) 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 (§§11031–11034) of subtitle B of title I 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. 2, 2002]. Until such regulations are promulgated, the Attorney General shall not denies a petition filed or pending under section 216A(c)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(1)(A)) that relates to an eligible alien described in section 11031, or on an application filed or pending under section 245 of such Act (8 U.S.C. 1255) that relates to an eligible alien described in section 11032. Until such regulations are promulgated, the Attorney General shall not initiate or proceed with removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) that relate to an eligible alien described in section 11031 or 11032.

“SEC. 11034. DEFINITIONS.

“Except as otherwise provided, the terms used in this chapter shall have the meaning given such terms in section 101(b) of the Immigration and Nationality Act (8 U.S.C. 1101(b)).”

§ 1187. Visa waiver program for certain visitors

(a) Establishment of program

The Secretary of Homeland Security 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 (7)(B)(i)(II) of section 1182(a) of this title may be waived by the Secretary of Homeland Security, 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 101(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).

(3) Passport requirements

The alien, at the time of application for admission, is in possession of a valid unexpired passport that satisfies the following:

(A) Machine readable

The passport is a machine-readable passport that is tamper-resistant, incorporates document authentication identifiers, and otherwise satisfies the internationally accepted standard for machine readability.

(B) Electronic

Beginning on April 1, 2016, the passport is an electronic passport that is fraud-resistant, contains relevant biographic and biometric information (as determined by the Secretary of Homeland Security), and otherwise satisfies internationally accepted standards for electronic passports.

(4) Executes immigration forms

The alien before the time of such admission completes such immigration form as the Secretary of Homeland Security 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 title 14, Code of Federal Regulations, or 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 title 14, Code of Federal Regulations or, 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 title 14, Code of Federal Regulations or, 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 title 14, Code of Federal Regulations or, 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 title 14, Code of Federal Regulations or, 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 Secretary of Homeland Security 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 Secretary of Homeland Security under regulations or the alien is arriving

1 So in original. Probably should be followed by a comma.
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 passenger who will apply for admission under this section shall furnish such information as the Secretary of Homeland Security 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 system for travel authorization

Beginning on the date on which the electronic system for travel authorization 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 Secretary of Homeland Security the 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.

(12) Not present in Iraq, Syria, or any other country or area of concern

(A) In general

Except as provided in subparagraphs (B) and (C)—

(i) the alien has not been present, at any time on or after March 1, 2011—

(I) in Iraq or Syria;

(II) in a country that is designated by the Secretary of State under section 4605(j) of title 50 (as continued in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), section 2780 of title 22, section 2371 of title 22, or any other provision of law, as a country, the government of which has repeatedly provided support of acts of international terrorism; or

(III) in any other country or area of concern designated by the Secretary of Homeland Security under subparagraph (D); and

(ii) regardless of whether the alien is a national of a program country, the alien is not a national of—

(I) Iraq or Syria;

(II) a country that is designated, at the time the alien applies for admission, by the Secretary of State under section 4605(j) of title 50 (as continued in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), section 2780 of title 22, section 2371 of title 22, or any other provision of law, as a country, the government of which has repeatedly provided support of acts of international terrorism; or

(III) any other country that is designated, at the time the alien applies for admission, by the Secretary of Homeland Security under subparagraph (D).

(B) Certain military personnel and government employees

Subparagraph (A)(i) shall not apply in the case of an alien if the Secretary of Homeland Security determines that the alien was present—

(i) in order to perform military service in the armed forces of a program country; or

(ii) in order to carry out official duties as a full time employee of the government of a program country.

(C) Waiver

The Secretary of Homeland Security may waive the application of subparagraph (A) to an alien if the Secretary determines that such a waiver is in the law enforcement or national security interests of the United States.

(D) Countries or areas of concern

(i) In general

Not later than 60 days after December 18, 2015, the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall determine whether the requirement under subparagraph (A) shall apply to any other country or area.

(ii) Criteria

In making a determination under clause (i), the Secretary shall consider—

(I) whether the presence of an alien in the country or area increases the likelihood that the alien is a credible threat to the national security of the United States;

(II) whether a foreign terrorist organization has a significant presence in the country or area; and

(III) whether the country or area is a safe haven for terrorists.

(iii) Annual review

The Secretary shall conduct a review, on an annual basis, of any determination made under clause (i).
§ 1187

(b) Waiver of rights
The alien has waived any right—

(c) Designation of program countries

(1) In general
The Secretary of Homeland Security, 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), 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—

(I) 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) Validation of passports
Not later than October 1, 2016, the government of the country certifies that it has in place mechanisms to validate passports described in subparagraphs (A) and (B) of subsection (a)(3) at each port of entry into that country. This requirement shall not apply to travel between countries which fall within the Schengen Zone.

(C) Law enforcement and security interests
The Secretary of Homeland Security, in consultation with the Secretary of State—

(i) determines that such interests would not be compromised by the designation of the country; and

(ii) submits a written report to the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Homeland Security and Committee on Governmental Affairs 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 not later than 24 hours after becoming aware of the theft or loss 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 executable 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, and fully implements such
agreement.

(G) Interpol screening
Not later than 270 days after December 18,
2015, except in the case of a country in which
there is not an international airport, the
government of the country certifies to the
Secretary of Homeland Security that, to the
maximum extent allowed under the laws of
the country, it is screening, for unlawful ac-
tivity, each person who is not a citizen or
national of that country who is admitted to
or departs that country, by using relevant
databases and notices maintained by Interpol, or other means designated by the
Secretary of Homeland Security. This re-
quirement shall not apply to travel between
countries which fall within the Schengen
Zone.

(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 pro-
gram 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 ap-
lication for admission during such pre-
vious fiscal year as a nonimmigrant visi-
tor, and

(ii) the total number of nationals of that
country who were admitted as non-
immigrant 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 coun-
try 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 non-
immigrant 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 non-
immigrant visitor visas for nationals of
that country during either of such two pre-
vious full fiscal years was less than 2.5 per-
cent 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 begin-
ing at the end of the 30-day period described
in subsection (b)(1) 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 in-
terests of the United States (including
the interest in enforcement of the immi-
gration laws of the United States and
the existence and effectiveness of its
agreements and procedures for extradit-
ing 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);

(III) shall submit a written report to
the Committee on the Judiciary, the
Committee on Foreign Affairs, the Per-
manent Select Committee on Intel-
ligence, and the Committee on Homeland
Security, of the House of Representa-
tives and the Committee on the Judici-
ary, the Committee on Foreign Rela-
tions, the Select Committee on Intel-
ligence 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 de-
termination and the effects described in
subclause (I);

(IV) shall submit to Congress a report
regarding the implementation of the
electronic system for travel authoriza-
tion under subsection (h)(3) and the par-
ticipation of new countries in the pro-
gram through a waiver under paragraph
(8); and

(V) shall submit to the committees de-
scribed in subclause (III), a report that
includes an assessment of the threat to
the national security of the United
States of the designation of each country
designated as a program country, includ-
ing the compliance of the government of
each such country with the requirements
under subparagraphs (D) and (F) of para-
graph (2), as well as each such govern-
ment’s capacity to comply with such re-
quirements.

(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 (I) 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 consultation with the Secretary of State, determines threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States), 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 (I) 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; and

(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 credible threat which poses an imminent danger to the United States or its citizens and originates from a country participating in the visa waiver program. Upon receiving such notification, the Secretary, in consultation with the Secretary of Homeland Security, 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 clause (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) 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) 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 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 Secretary of Homeland Security, 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 dur-
ing the previous calendar year;
(iv) the total number of such nationals
who were refused United States visas dur-
ing 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 per-
mament, to each country under consider-
ation for inclusion in the visa waiver pro-
gram shall certify to the appropriate con-
gressional 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 Secretary of
Homeland Security that a country is under
consideration for inclusion in the visa waiv-
er program, the Secretary of State shall pro-
vide all of the information described in sub-
paragraph (B) to the Secretary of Homeland
Security.

(E) Definition
In this paragraph, the term “appropriate
congressional committees” means the Com-
mittee on the Judiciary and the Committee
on Foreign Relations of the Senate and the
Committee on the Judiciary and the Com-
mittee 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 nation-
als who exit through airports of the United
States and the electronic system for travel
authorization required under subsection
(h)(3) is fully operational, the Secretary of
Homeland Security shall certify to Con-
gress that such air exit system and elec-
tronic system for travel authorization 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 sub-
section (i).

(iii) Temporary suspension of waiver au-
thority
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 con-
strued as in any way abrogating the re-
porting requirements under subsection
(i)(3).

(B) Waiver
After certification by the Secretary under
subparagraph (A), the Secretary, in con-
sultation with the Secretary of State, may
waive the application of paragraph (2)(A) for
a country if—
(i) the country meets all security re-
quirements of this section;
(ii) the Secretary of Homeland Security
determines that the totality of the coun-
try’s security risk mitigation measures
provide assurance that the country’s par-
ticipation in the program would not com-
promise the law enforcement, security in-
terests, 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 con-
ditions 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 be-
fore the date of its designation as a pro-
gram country, and the Secretary of Home-
land Security and the Secretary of State
determine that such cooperation will con-
tinue; and
(v)(I) the rate of refusals for non-
immigrant 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 coun-
try 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 in-
formation from the air exit system re-
ferred to in such subparagraph to establish
a maximum visa overstay rate for coun-
tries participating in the program pursu-
ant to a waiver under subparagraph (B).
The Secretary of Homeland Security shall
certify to Congress that such rate would
not compromise the law enforcement, se-
curity interests, or enforcement of the im-
migration 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 non-immigrant 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 non-immigrant visa during that fiscal year.

(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 marshals 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).

(12) Designation of high risk program countries

(A) In general

The Secretary of Homeland Security, in consultation with the Director of National Intelligence and the Secretary of State, shall evaluate program countries on an annual basis based on the criteria described in subparagraph (B) and shall identify any program country, the admission of nationals from which under the visa waiver program under this section, the Secretary determines presents a high risk to the national security of the United States.

(B) Criteria

In evaluating program countries under subparagraph (A), the Secretary of Homeland Security, in consultation with the Director of National Intelligence and the Secretary of State, shall consider the following criteria:

(i) The number of nationals of the country determined to be ineligible to travel to the United States under the program during the previous year.

(ii) The number of nationals of the country who were identified in United States Government databases related to the identities of known or suspected terrorists during the previous year.

(iii) The estimated number of nationals of the country who have traveled to Iraq or Syria at any time on or after March 1, 2011 to engage in terrorism.

(iv) The capacity of the country to combat passport fraud.

(v) The level of cooperation of the country with the counter-terrorism efforts of the United States.

(vi) The adequacy of the border and immigration control of the country.

(vii) Any other criteria the Secretary of Homeland Security determines to be appropriate.
(C) Suspension of designation

The Secretary of Homeland Security, in consultation with the Secretary of State, may suspend the designation of a program country based on a determination that the country presents a high risk to the national security of the United States under subparagraph (A) until such time as the Secretary determines that the country no longer presents such a risk.

(D) Report

Not later than 60 days after December 18, 2015, and annually thereafter, the Secretary of Homeland Security, in consultation with the Director of National Intelligence and the Secretary of State, shall submit to the Committee on Homeland Security, the Committee on Foreign Affairs, the Permanent Select Committee on Intelligence, and the Committee on the Judiciary of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs, the Committee on Foreign Relations, the Select Committee on Intelligence, and the Committee on the Judiciary of the Senate a report, which includes an evaluation and threat assessment of each country determined to present a high risk to the national security of the United States under subparagraph (A).

(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 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.

(e) Carrier agreements

(1) In general

The agreement referred to in subsection (a)(4) 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 Secretary of Homeland Security 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).

(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 Secretary of Homeland Security, and

(D) to collect, provide, and share passenger data as required under subsection (h)(1)(B).

(2) Termination of agreements

The Secretary of Homeland Security 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 Secretary of Homeland Security shall prescribe by regulation the provision of such information as the Secretary of Homeland Security 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 Secretary of Homeland Security 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 1356(h) of this title.

So in original. Probably should be followed by a comma.
(f) Duration and termination of designation

(1) In general
   
   (A) Determination and notification of disqualification rate

   Upon determination by the Secretary of Homeland Security that a program country’s disqualification rate is 2 percent or more, the Secretary of Homeland Security 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 Secretary of Homeland Security 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 Secretary of Homeland Security 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 Secretary of Homeland Security 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 and has a disqualification rate of 2 percent or more, the Secretary of Homeland Security shall terminate the designation of the country as a program country. If the Secretary of Homeland Security determines that the program country has developed a machine-readable passport program and has a disqualification rate of less than 2 percent, the Secretary of Homeland Security shall terminate the designation of 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).

   (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), the Secretary of Homeland Security shall terminate the designation of the country as a program country.

(6) Failure to share information

(A) In general

If the Secretary of Homeland Security and the Secretary of State jointly determine that the program country is not sharing information, as required by subsection (c)(2)(F), the Secretary of Homeland Security shall terminate the designation of the country as a program country.

(B) Redesignation

In the case of a termination under this paragraph, the Secretary of Homeland Security shall redesignate the country as a program country, without regard to paragraph (2) or (3) of subsection (c) or paragraphs (1) through (4), when the Secretary of Homeland Security, in consultation with the Secretary of State, determines that the country is sharing information, as required by subsection (c)(2)(F).

(7) Failure to screen

(A) In general

Beginning on the date that is 270 days after December 18, 2015, if the Secretary of Homeland Security and the Secretary of State jointly determine that the program country is not conducting the screening required by subsection (c)(2)(G), the Secretary of Homeland Security shall terminate the designation of the country as a program country.

(B) Redesignation

In the case of a termination under this paragraph, the Secretary of Homeland Security shall redesignate the country as a program country, without regard to paragraph (2) or (3) of subsection (c) or paragraphs (1) through (4), when the Secretary of Homeland Security, in consultation with the Secretary of State, determines that the country is conducting the screening required by subsection (c)(2)(G).

(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 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), 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 Secretary of Homeland Security 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)(4).

(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 Secretary of Homeland Security to be sufficient to permit the Secretary of Homeland Security to carry out this paragraph.

(iii) Calculation

The system shall contain sufficient data to permit the Secretary of Homeland Security 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 Secretary of Homeland Security shall include a section containing 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.

(ii) System effectiveness

Not later than December 31, 2004, the Secretary of Homeland Security shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the following:

(I) The conclusions of the Secretary of Homeland Security regarding the effectiveness of the automated entry and exit control system to be developed and implemented under this paragraph.

(II) The recommendations of the Secretary of Homeland Security 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 Secretary of Homeland Security 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 Secretary of Homeland Security 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 conducting 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 system for travel authorization

(A) System

The Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a fully automated electronic system for travel authorization (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, 2020.

(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 or shorten the period of eligibility under 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.

(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) Fraud detection

The Secretary of Homeland Security shall research opportunities to incorporate into the System technology that will detect and prevent fraud and deception in the System.

(E) Additional and previous countries of citizenship

The Secretary of Homeland Security shall collect from an applicant for admission pursuant to this section information on any additional or previous countries of citizenship of that applicant. The Secretary shall take any information so collected into account when making determinations as to the eligibility of the alien for admission pursuant to this section.

(F) Report on certain limitations on travel

Not later than 30 days after December 18, 2015, and annually thereafter, the Secretary of Homeland Security, in consultation with the Secretary of State, shall submit to the Committee on Homeland Security, the Committee on the Judiciary, and the Committee on Foreign Affairs of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, and the Committee on Foreign Relations of the Senate a report on the number of individuals who were denied eligibility to travel under the program, or whose eligibility for such travel was revoked during the previous year, and the number of such individuals determined, in accordance with subsection (a)(6), to represent a threat to the national security of the United States, and shall include the country or countries of citizenship of each such individual.

(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
(B) the procedures by which the Secretary shall improve the method of calculating the rates of nonimmigrants who overspill their authorized period of stay in the United States.


REFERENCES IN TEXT


This chapter, referred to in subsec. (b)(1) and (c)(7)(B)(iv), 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


§ 1187. TITLE 8—ALIENS AND NATIONALITY


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 Relations, 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, and with respect to the Senate, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations, and with respect to the Senate, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations not later than 30 days before the effective date of such waiver.”


2001—Subsec. (a)(3). Pub. L. 107–56, §417(d), which directed the substitution of “(A) In general.—Except as provided in subparagraph (B), on or after “On or after” and the addition of subparagraph (B), was executed making the substitution for “On and after” and adding subject to reflect the probable intent of Congress.


Subsec. (a). Pub. L. 106–396, §101(a)(2)(A), (B), (403(c), struck out “pilot” before “program” in heading and two places in introductory provisions and inserted concluding provisions.

Subsec. (a). 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 “or a domestic corporation 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 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 Secretary 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), designated par. (4) as (5).

Former par. (5) redesignated (6).

Subsec. (a)(6), (7). Pub. L. 106–396, §202(a)(1), designated paras. (5) and (6) as (6) and (7), respectively.

Subsec. (a)(8). Pub. L. 106–396, §403(b), inserted “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” after “regulations”.

Pub. L. 106–396, §202(a)(1), designated par. (7) as (8).


Subsec. (c)(2). Pub. L. 106–396, §101(a)(4)(C), in introductory provisions, substituted “subsection (g)” for “subsection (g)” and struck out “pilot” before “program”.

Subsec. (c)(2)(B). Pub. L. 106–396, §202(b), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: “The government of the country certifies that it has or is in the process of developing a program to issue machine-readable passports to its citizens.”

Subsec. (c)(2)(C). Pub. L. 106–396, §204(a), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: “The Attorney General determines that the United States law enforcement interests would not be compromised by the designation of the country.”


Subsec. (c)(5). Pub. L. 106–396, §204(b), added par. (5).


Subsec. (e)(2). Pub. L. 106–396, §403(d)(1), substituted “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 “carrier” and “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” for “carrier” and “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 for “carrier’s failure”.


Subsec. (f). Pub. L. 106–396, § 101(a)(6), redesignated subsec. (g) (f) and struck out heading and text of former subsec. (f). Text read as follows: ‘‘For purposes of this section, the term ‘pilot program period’ means the period beginning on October 1, 1988, and ending on April 30, 2000.’’


Subsec. (f)(2) to (4). Pub. L. 106–396, § 101(a)(7)(C)–(E), substituted “as a program country” for “as a pilot program country” in two places in pars. (2)(A) and struck out “pilot” before “program” in pars. (3) and (4)(A).


1998—Subsec. (c)(2). Pub. L. 105–173, § 3, reenacted heading without change and amended text generally. Prior to amendment, text consisted of introductory provisions and subpars. (A) to (D) relating to low nonimmigrant visa refusal rate for previous 2-year period, low nonimmigrant visa refusal rate for each of 2 previous years, machine readable passport program, and law enforcement interests.


1996—Subsec. (a). Pub. L. 104–208, § 1635(a)(1), in introductory provisions, substituted “Attorney General, in consultation with the Secretary of State” for “Attorney General and the Secretary of State, acting jointly”.

Subsec. (a)(2)(B). Pub. L. 104–208, § 308(c)(3), struck out “or is designated as a pilot program country with probationary status under subsection (g) of this section and”.

Subsec. (b)(2). Pub. L. 104–208, § 308(e)(9), substituted “removal of” for “deportation against”.

Subsec. (c)(1). Pub. L. 104–208, § 1635(a)(2), substituted “Attorney General, in consultation with the Secretary of State,” for “Attorney General and the Secretary of State, acting jointly”.

Subsec. (a)(2)(B). Pub. L. 104–208, § 308(d)(4)(F), substituted “denied admission at the time of arrival” for “excluded from admission”.

Subsec. (b). Pub. L. 104–208, § 1635(a)(3), substituted “Attorney General, in consultation with the Secretary of State, acting jointly” for “Attorney General and the Secretary of State, acting jointly”.


Subsec. (g). Pub. L. 104–208, § 1635(c)(1), amended heading and text of subsec. (g) generally. Prior to amendment, text provided authority for Attorney General and Secretary of State to designate countries as pilot program countries with probationary status.

Subsec. (g)(4)(A)(i). Pub. L. 104–208, § 308(d)(4)(F), substituted “denied admission at the time of arrival” for “excluded from admission”.

1994—Subsec. (a)(2)(B). Pub. L. 103–416, § 211(1), inserted before period at end “or is designated as a pilot program country with probationary status under subsection (g) of this section”.

Subsec. (c)(2). Pub. L. 103–416, § 211(3), substituted “Except as provided in subsection (g)(4) of this section, a country” for “A country”.


Subsec. 103–415 substituted “1995” for “1994”.

Subsec. (g). Pub. L. 103–416, § 211(2), added subsec. (g).


1990—Subsec. (a)(2). Pub. L. 101–619, § 201(a)(1), inserted “, and presents a passport issued by,’’ after “is a national of”.

Subsec. (a)(3). Pub. L. 101–619, § 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. 101–619, § 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. 101–619, § 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. 101–619, § 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. 101–619, § 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. 101–619, § 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”.


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


EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(d)(4)(F), (e)(9) of Pub. L. 104–208 effective, with certain transitional provisions,
§ 1187a

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**

Amendment by section 308(a)(1), (2) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, see section 308(a)(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.


**Effective Date of 1990 Amendment**

Pub. L. 101–649, title II, §201(d), Nov. 29, 1990, 104 Stat. 5014, provided that: "The amendments made by this section [amending this section and section 1123 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.

**Date of Submission of First Report**

Pub. L. 114–113, div. O, title II, §205(b), Dec. 18, 2015, 129 Stat. 2993, provided that: "The Secretary of Homeland Security shall submit the first report described in subclause (V) of section 217(c)(5)(A)(I) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(5)(A)(I)), as added by subsection (a), not later than 90 days after the date of the enactment of this Act [Dec. 18, 2015]."

**Modernizing and Strengthening Security of Visa Waiver Program**

Pub. L. 110–33, title VII, §711(b), Aug. 3, 2007, 121 Stat. 338, provided that: "It is the sense of Congress that—

"(1) the United States should modernize and strengthen the security of the visa waiver program under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) by simultaneously—

"(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. 1255 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**


**Report Required**

Pub. L. 106–396, title IV, §403(e), Oct. 30, 2000, 114 Stat. 1649, provided that: "Not later than two years after the date of the enactment of this Act (Oct. 30, 2000), the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate assessing the effectiveness of the program implemented under the amendments made by this section [amending this section] for simplifying the admission of business travelers from visa waiver program countries and compliance with the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) by such travelers under that program."

**Transition Provisions**

Pub. L. 104–208, div. C, title VI, §635(c)(2), Sept. 30, 1996, 110 Stat. 3069–703, provided that: "A country designated as a pilot program country with probationary status under section 217(g) of the Immigration and Nationality Act (8 U.S.C. 1187(g)) (as in effect on the day before the date of the enactment of this Act [Sept. 30, 1996]) shall be considered to be designated as a pilot program country on and after such date, subject to placement in probationary status or termination of such designation under such section (as amended by paragraph (1))."

**Operation of Automated Data Arrival and Departure Control System; Report to Congress**

Pub. L. 101–649, title II, §201(c), Nov. 29, 1990, 104 Stat. 5014, provided that: "By not later than January 1, 1992, the Attorney General, in consultation with the Secretary of State, shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report on the operation of the automated data arrival and departure control system for foreign visitors and on admission refusals and overstays for such visitors who have entered under the visa waiver program."

**Report on Visa Waiver Pilot Program**

Pub. L. 99–603, title IV, §405, Nov. 6, 1986, 100 Stat. 3442, provided that:

"(a) Monitoring and Report on the Pilot Program.—The Attorney General and the Secretary of State shall jointly monitor the pilot program established under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) and shall report to the Congress not later than two years after the beginning of the program.

"(b) Details in Report.—The report shall include—

"(1) an evaluation of the program, including its impact—

"(A) on the control of alien visitors to the United States;

"(B) on consular operations in the countries designated under the program, as well as on consular operations in other countries in which additional consular personnel have been relocated as a result of the implementation of the program, and

"(C) on the United States tourism industry; and

"(2) recommendations—

"(A) on extending the pilot program period, and

"(B) on increasing the number of countries that may be designated under the program."

§ 1187a. Provision of assistance to non-program countries

The Secretary of Homeland Security, in consultation with the Secretary of State, shall provide assistance in a risk-based manner to countries that do not participate in the visa waiver program under section 1187 of this title to assist those countries in—
(1) submitting to Interpol information about the theft or loss of passports of citizens or nationals of such a country; and

(2) issuing, and validating at the ports of entry of such a country, electronic passports that are fraud-resistant, contain relevant biographic and biometric information (as determined by the Secretary of Homeland Security), and otherwise satisfy internationally accepted standards for electronic passports.


CODIFICATION
Section was enacted as part of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, and also as part of the Consolidated Appropriations Act, 2016, and not as part of the Immigration and Nationality Act which comprises this chapter.

§ 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)) 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) with respect to an employer if the conditions described in that subsection are not met or if any of the following conditions are met:

(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

(2)(A) The employer during the previous two-year period employed H–2A workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.

(B) No employer may be denied certification under subparagraph (A) for more than three years for any violation described in such subparagraph.

(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers’ compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker’s employment which will provide benefits at least equal to those provided under the State workers’ compensation law for comparable employment.

(4) The Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer’s job offer. The obligation to engage in positive recruitment under this paragraph shall terminate on the date the H–2A workers depart for the employer’s place of employment.

(c) Special rules for consideration of applications
The following rules shall apply in the case of the filing and consideration of an application for a labor certification under this section:

(1) Deadline for filing applications
The Secretary of Labor may not require that the application be filed more than 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)) 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)(A) if—

(i) the employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

(ii) the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

In considering the question of whether a specific qualification is appropriate in a job offer, the Secretary shall apply the normal and accepted qualifications required by non-H–2A employers in the same or comparable occupations and crops.

(B)(i) For a period of 3 years subsequent to the effective date of this section, labor certifications shall remain effective only if, from the
time the foreign worker departs for the employer's place of employment, the employer will provide employment to any qualified United States worker who applies to the employer until 50 percent of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer will offer to provide benefits, wages and working conditions required pursuant to this section and regulations.

(ii) The requirement of clause (i) shall not apply to any employer who—

(I) did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, as defined in section 203(u) of title 29,

(II) is not a member of an association which has petitioned for certification under this section for its members, and

(III) has not otherwise associated with other employers who are petitioning for temporary foreign workers under this section.

(iii) Six months before the end of the 3-year period described in clause (i), the Secretary of Labor shall consider the findings of the report mandated by section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986 as well as other relevant materials, including evidence of benefits to United States workers and costs to employers, addressing the advisability of continuing a policy which requires an employer, as a condition for certification under this section, to continue to accept qualified, eligible United States workers for employment after the date the H–2A workers depart for work with the employer. The Secretary's review of such findings and materials shall lead to the issuance of findings in furtherance of the Congressional policy that aliens not be admitted under this section unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or service needed and that the employment of the aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. In the absence of the enactment of Federal legislation prior to three months before the end of the 3-year period described in clause (i) which addresses the subject matter of this subparagraph, the Secretary shall immediately publish the findings required by this clause, and shall promulgate, on an interim or final basis, regulations based on his findings which shall be effective no later than three years from the effective date of this section.

(iv) In complying with clause (i) of this subparagraph, an association shall be allowed to refer or transfer workers among its members: Provided, That for purposes of this section an association acting as an agent for its members shall not be considered a joint employer merely because of such referral or transfer.

(v) United States workers referred or transferred pursuant to clause (iv) of this subparagraph shall not be treated disparately.

(vi) An employer shall not be liable for payments under section 655.202(b)(6) of title 20, Code of Federal Regulations (or any successor regulation) with respect to an H-2A worker who is displaced due to compliance with the requirement of this subparagraph, if the Secretary of Labor certifies that the H-2A worker was displaced because of the employer's compliance with clause (i) of this subparagraph.

(vii)(I) No person or entity shall willfully and knowingly withhold domestic workers prior to the arrival of H-2A workers in order to force the hiring of domestic workers under clause (i).

(II) Upon the receipt of a complaint by an employer that a violation of subclause (I) has occurred the Secretary shall immediately investigate. He shall within 36 hours of the receipt of the complaint issue findings concerning the alleged violation. Where the Secretary finds that a violation has occurred, he shall immediately suspend the application of clause (i) of this subparagraph with respect to that certification for that date of need.

(4) Housing

Employers shall furnish housing in accordance with regulations. The employer shall be permitted at the employer's option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing which meets the local standards for rental and/or public accommodations or other substantially similar class of habitation: Provided, That in the absence of applicable local standards, State standards for rental and/or public accommodations or other substantially similar class of habitation shall be met: Provided further, That in the absence of applicable local or State standards, Federal temporary labor camp standards shall apply: Provided further, That the Secretary of Labor shall issue regulations which address the specific requirements of housing for employees principally engaged in the range production of livestock: Provided further, That when it is the prevailing practice in the area and occupation of intended employment to provide family housing, family housing shall be provided to workers with families who request it: And provided further, That nothing in this paragraph shall require an employer to provide or secure housing for workers who are not entitled to it under the temporary labor certification regulations in effect on June 1, 1986. 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) with respect to a petition for the importation of such worker.

(d) Roles of agricultural associations

(1) Permitting filing by agricultural associations

A petition to import an alien as a temporary agricultural worker, and an application for a labor certification with respect to such a worker, may be filed by an association of agricultural producers which use agricultural services.
(2) Treatment of associations acting as employers
If an association is a joint or sole employer of temporary agricultural workers, the certifications granted under this section to the association may be used for the certified job opportunities of any of its producer members and such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the certifications were granted.

(3) Treatment of violations
(A) Member's violation does not necessarily disqualify association or other members
If an individual producer member of a joint employer association is determined to have committed an act that under subsection (b)(2) 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) 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) 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 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) or a revocation of such a certification or, at the applicant's request, for a de novo administrative hearing respecting the denial or revocation.

(2) The Secretary of Labor shall expeditiously, but in no case later than 72 hours after the time a new determination is requested, make a new determination on the request for certification in the case of an H–2A worker if able, willing, and qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified workers. If the employer asserts that any eligible individual who has been referred is not able, willing, or qualified, the burden of proof is on the employer to establish that the individual referred is not able, willing, or qualified because of employment-related reasons.

(f) Violators disqualified for 5 years
An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

(g) Authorization of appropriations
(1) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, $10,000,000 for the purposes—

(A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 1101(a)(15)(H)(ii)(a) of this title, and

(B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States.

(2) The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

(3) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under this section and under section 1182(a)(5)(A)(i) of this title.

(4) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under this section.

(h) Miscellaneous provisions
(1) The Attorney General shall provide for such endorsement of entry and exit documents of nonimmigrants described in section 1101(a)(15)(H)(ii) of this title as may be necessary to carry out this section and to provide notice for purposes of section 1324a of this title.

(2) The provisions of subsections (a) and (c) of section 1184 of this title and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

(i) Definitions
For purposes of this section:

(1) The term "eligible individual" means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 1324a(h)(3) of this title) with respect to that employment.

(2) The term "H–2A worker" means a nonimmigrant described in section 1101(a)(15)(H)(ii)(a) of this title.

REFERENCES IN TEXT

CODIFICATION
Section was classified to section 1196 of this title prior to its renumbering by Pub. L. 100–525.

AMENDMENTS
2000—Subsec. (c)(4). Pub. L. 106–554 inserted at end "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) with respect to a petition for the importation of such worker.".

1999—Subsec. (c)(1). Pub. L. 106–78, §748(1), substituted "45 days" for "30 days".

Subsec. (c)(3)(A), Pub. L. 106–78, §748(2), substituted "30 days" for "20 days" in introductory provisions.


Subsec. (1)(1), Pub. L. 102–232, §309(b)(8), as amended by Pub. L. 103–416, substituted "1324a(h)(3)" for "1324a(h)(8)".


Subsec. (c)(4), Pub. L. 100–525, §2(2)(c, 3), substituted "accommodations" for "accomodations" wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

EFFECTIVE DATE OF 1991 AMENDMENT

EFFECTIVE DATE OF 1988 AMENDMENT

EFFECTIVE DATE; REGULATIONS

"(a) 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 Naturalization Act [8 U.S.C. 1184(c), 1188] on or after the first day of the seventh month beginning after the date of the enactment of this Act (Nov. 6, 1986) (hereinafter in this section referred to as the 'effective date').

"(b) ECONOMIC DISINCENTIVES.—The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall approve all regulations to be issued implementing sections 1101(a)(15)(B)(i) and 218 of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(B)(i)(a), 1188]. Notwithstanding any other provision of law, final regulations to implement such sections shall first be issued, on an interim or other basis, not later than the effective date.

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
Pub. L. 99–603, title III, §301(f), Nov. 6, 1986, 100 Stat. 3416, as amended by Pub. L. 100–525, §2(2)(e), 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 Naturalization Act [8 U.S.C. 1188]."

REPORTS ON H–2A PROGRAM
Pub. L. 99–603, title IV, §403, Nov. 6, 1986, 100 Stat. 3441, 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 af-
fect the wages and working conditions of workers in the United States similarly employed.

“(b) DEADLINES.—A report on the H-2A temporary worker program under subsection (a) shall be submitted not later than two years after the date of the enactment of this Act [Nov. 6, 1986], and every two years thereafter.”

§ 1189. Designation of foreign terrorist organizations

(a) Designation

(1) In general

The Secretary is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the Secretary finds that—

(A) the organization is a foreign organization;

(B) the organization engages in terrorist activity (as defined in section 1182(a)(3)(B) of this title or terrorism (as defined in section 2656f(d)(2) of title 22), or retains the capability and intent to engage in terrorist activity or terrorism);¹ and

(C) the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.

(2) Procedure

(A) Notice

(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 2339B of title 18, a designation under this subsection shall take effect upon publication under subparagraph (A)(i).

(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).

(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).

(B) Review of designation upon petition

(i) In general

The Secretary shall review the designation of a foreign terrorist organization under the procedures set forth in clauses (ii) and (iv) if the designated organization files a petition for revocation within the petition period described in clause (ii).

(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.

¹ So in original. The closing parenthesis probably should follow “section 1182(a)(3)(B) of this title”.

([93x729] Title 8—Aliens and Nationality [§ 1189]

Page 237)
(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).

(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) shall apply to an amended designation upon such publication. Paragraphs (2)(A)(i), (4), (5), (6), (7), and (8) of subsection (a) 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).

(e) 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. (a)(1), is section 1(a) of Pub. L. 96–456, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

CONSIDERATION

Another section 411(c) of Pub. L. 107–56 enacted provisions set out as an Effective Date of 2001 Amendment note under section 1182 of this title.

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 para-
§ 1201

TITLE 8—ALIENS AND NATIONALITY

Page 240

§ 1201. Issuance of visas

(a) Immigrants; nonimmigrants

(1) Under the conditions hereinafter prescribed and subject to the limitations prescribed in this chapter or regulations issued thereunder, a consular officer may issue

(A) to an immigrant who has made proper application therefor, an immigrant visa which shall consist of the application provided for in section 1202 of this title, visaed by such consular officer, and shall specify the foreign state, if any, to which the immigrant is charged, the immigrant's particular status under such foreign state, the preference, immediate relative, or special immigrant classification to which the alien is charged, the date on which the validity of the visa shall expire, and such additional information as may be required; and

(B) to a nonimmigrant who has made proper application therefor, a nonimmigrant visa, which shall specify the classification under section 1101(a)(15) of this title of the nonimmigrant, the period during which the nonimmigrant visa shall be valid, and such additional information as may be required.

(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; renewal or replacement

(1) Immigrant visas

An immigrant visa shall be valid for such period, not exceeding six 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.

(2) Nonimmigrant visas

A nonimmigrant visa shall be valid for such periods as shall be by regulations prescribed. In prescribing the period of validity of a non-
immigrant visa in the case of nationals of any foreign country who are eligible for such visas, the Secretary of State shall, insofar as practicable, accord to such nationals the same treatment upon a reciprocal basis as such foreign country accords to nationals of the United States who are within a similar class; 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.

(3) Visa replacement

An immigrant visa may be replaced under the original number during the fiscal year in which the original visa was issued for an immigrant who establishes the satisfaction of the consular officer that the immigrant—

(A) was unable to use the original immigrant visa during the period of its validity because of reasons beyond his control and for which he was not responsible;

(B) is found by a consular officer to be eligible for an immigrant visa; and

(C) pays again the statutory fees for an application and an immigrant visa.

(4) Fee waiver

If an immigrant visa was issued, on or after March 27, 2013, for a child who has been lawfully adopted, prior to his coming to the United States to be adopted, by a United States citizen, any statutory immigrant visa fees relating to a renewal or replacement of such visa may be waived or, if already paid, may be refunded upon request, subject to such criteria as the Secretary of State may prescribe, if—

(A) the immigrant child was unable to use the original immigrant visa during the period of its validity as a direct result of extraordinary circumstances, including the denial of an exit permit; and

(B) if such inability was attributable to factors beyond the control of the adopting parent or parents and of the immigrant.

(d) Physical examination

Prior to the issuance of an immigrant visa to any alien, the consular officer shall require such alien to submit to a physical and mental examination in accordance with such regulations as may be prescribed. Prior to the issuance of a nonimmigrant visa to any alien, the consular officer may require such alien to submit to a physical or mental examination, or both, if in his opinion such examination is necessary to ascertain whether such alien is eligible to receive a visa.

(e) Surrender of visa

Each immigrant shall surrender his immigrant visa to the immigration officer at the port of entry, who shall endorse on the visa the date and the port of arrival, the identity of the vessel or other means of transportation by which the immigrant arrived, and such other endorsements as may be by regulations required.

(f) Surrender of documents

Each nonimmigrant shall present or surrender to the immigration officer at the port of entry such documents as may be by regulation required. In the case of an alien crewman not in possession of any individual documents other than a passport and until such time as it becomes practicable to issue individual documents, such alien crewman may be admitted, subject to the provisions of this part, if his name appears in the crew list of the vessel or aircraft on which he arrives and the crew list is issued 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 in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa or such other documentation; (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 1133 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 the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States.

(h) Nonadmission upon arrival

Nothing in this chapter shall be construed to entitle any alien, to whom a visa or other documentation has been issued, to be admitted to the United States, if, upon arrival at a port of entry in the United States, he is found to be inadmissible under this chapter, or any other provision of law. The substance of this subsection shall appear upon every visa application.

(i) Revocation of visas or documents

After the issuance of a visa or other documentation to any alien, the consular officer or the Secretary of State may at any time, in his discretion, revoke such visa or other docu-
mentation. Notice of such revocation shall be communicated to the Attorney General, and such revocation shall invalidate the visa or other documentation from the date of issuance: Provided, That carriers or transportation companies, and masters, commanding officers, agents, owners, charterers, or consignees, shall not be penalized under section 1223(b) of this title for action taken in reliance on such visas or other documentation, unless they received due notice of such revocation prior to the alien’s embarkation. There shall be no means of judicial review (including review pursuant to section 2241 of title 28 or any other habeas corpus provision, and sections 1361 and 1651 of such title) of a revocation under this subsection, except in the context of a removal proceeding if such revocation provides the sole ground for removal under section 1227(a)(1)(B) of this title.


REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (g), and (h), 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

2015—Subsec. (c). Pub. L. 114–70 amended subsec. (c) generally. Prior to amendment, subsec. (c) related to period of validity and visa requirement.

2004—Subsec. (1). Pub. L. 108–458 inserted at end “There shall be no means of judicial review (including review pursuant to section 2241 of title 28 or any other habeas corpus provision, and sections 1361 and 1651 of such title) of a revocation under this subsection, except in the context of a removal proceeding if such revocation provides the sole ground for removal under section 1227(a)(1)(B) of this title.”

2002—Subsec. (a). Pub. L. 107–173 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subs paras. (A) and (B), respectively, of par. (1), and added par. (2).

1996—Subsec. (c). Pub. L. 104–208, § 631, 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 refugees, and permanent residents, respectively, in the United States” after “within a similar class”.

Subsec. (f). Pub. L. 104–208, § 308(d)(4)(G), substituted “deny admission to” for “exclude”.

Subsec. (b). Pub. L. 104–208, § 308(c)(2)(B), substituted “be admitted” for “enter”.


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”.


1965—Subsec. (a). Pub. L. 87–301 substituted a reference to preference, nonpreference, immediate relative, and special immigration classification, for a reference to nonquota categories to which immigrants are classified.

Subsec. (b). Pub. L. 87–301, § 11(b), struck out references to ‘quota’ wherever appearing.

Subsec. (g). Pub. L. 87–301, § 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 in possession of the duplicate signed copy of the original visa, the immigrant,” and “statutory fees” for “statutory fee”.

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. 108–458, 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, 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

**Effective Date of 1986 Amendment**

Pub. L. 99–653, §23(b), as added by Pub. L. 100–525, §8(r), Oct. 24, 1988, 102 Stat. 2619, provided that: "The amendments made by sections 5, 6, 8, 9, and 10 (amending this section and sections 1302, 1301, 1302, and 1304 of this title and repealing section 1201 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, the Secretary of State shall adopt regulations for the purpose of having an immigrant visa application for an individual 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 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. 1151(b)(2)(A)(i)).


**Prevention of Consular 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 such a problem and shall submit a report to Congress describing such 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 nonimmigrants K-1 visa applications of fiancés 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, 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 of the Senate and the House of Representatives 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. 1201(c)) shall not apply in the case of an immigrant visa issued, on or after the date of the enactment of this Act (Nov. 29, 1990) and before September 1, 2001, to an alien described in subsection (b), but only if—

"(A) the alien elects, within the period of validity of the immigrant visa under such section, to have this section apply, and

"(B) before the date the alien seeks to be admitted to the United States for lawful permanent residence, the alien notifies the appropriate consular officer of the alien’s intention to seek such admission and provides such officer with such information as the officer determines to be necessary to verify that the alien remains eligible for admission to the United States as an immigrant.

"(2) Limitation on Extension.—In no case shall the period of validity of a visa be extended under paragraph (1) beyond January 1, 2002.

"(3) Treatment Under Numerical Limitations.—In applying the numerical limitations of sections 201 and 202 of the Immigration and Nationality Act (8 U.S.C. 1151, 1152) in the case of aliens for whose visas the period of validity is extended under this section, such limitations shall only apply at the time of original issuance of the visas and not at the time of admission of such aliens.

"(b) Aliens Covered.—An alien is described in this subsection if the alien—

"(1)(A) is chargeable under section 202 of the Immigration and Nationality Act (8 U.S.C. 1152) to Hong Kong or China, and

"(B) 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. 1153a)(i) 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

(ii) is issued a visa under section 124 of this Act [enacting provisions set out as a note under section 1153 of this title].

"(c) TREATMENT OF CERTAIN EMPLOYEES IN HONG KONG.—"(1) In general.—In applying the proviso of section 7 of the Central Intelligence Agency Act of 1949 [50 U.S.C. 3508], 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 the issuance of an immigrant visa to the alien described in subsection (b)(1) or, in the case described in subsection (c), as of the date of charging of the entry of the alien under the proviso under section 7 of the Central Intelligence Agency Act of 1949 [50 U.S.C. 3508]."

Sec. 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 of December 14, 1984, establishing normal migration procedures between the United States and Cuba, on and after the date of enactment of this Act [Dec. 22, 1987], consular officer(s) of the Department of State and appropriate officers of the Immigration and Naturalization Service shall, in accordance with the procedures applicable to such cases in other countries, process any application for admission to the United States as a refugee from any Cuban national who was imprisoned for political reasons by the Government of Cuba on or after January 1, 1959, without regard to the duration of such imprisonment, except as may be necessary to reassure the orderly process of available applicants.

"(b) PROCESSING OF IMMIGRANT VISA APPLICATIONS OF CUBAN NATIONALS IN THIRD COUNTRIES.—Notwithstanding section 212(f) and section 243(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)]."


Effective Date of Repeal

Repeal applicable to applications for immigrant visas made, and visas issued, on or after Nov. 14, 1986, see section 23(b) of Pub. L. 99–653, set out as an Effective Date of 1986 Amendment note under section 1201 of this title.

§ 1202. Application for visas

(a) Immigrant visas

Every alien applying for an immigrant visa and for alien registration shall make application therefor in such form and manner and at such place as shall be by regulations prescribed. In the application the alien shall state his full and true name, and any other name which he has used or by which he has been known; age and sex; the date and place of his birth; and such additional information necessary to the identification of the applicant and the enforcement of the immigration and nationality laws as may be by regulations prescribed.
(b) Other documentary evidence for immigrant visa

Every alien applying for an immigrant visa shall present a valid unexpired passport or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Secretary of State. The immigrant shall furnish to the consular officer with his application a copy of a certification by the appropriate police authorities stating what their records show concerning the immigrant; a certified copy of any existing prison record, military record, and record of his birth; and a certified copy of all other records or documents concerning him or his case which may be required by the consular officer. The copy of each document so furnished shall be permanently attached to the application and become a part thereof. In the event that the immigrant establishes to the satisfaction of the consular officer that any document or record required by this subsection is unobtainable, the consular officer may permit the immigrant to submit in lieu of such document or record other satisfactory evidence of the fact to which such document or record would, if obtainable, pertain. 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 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) 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—

(A) on the basis of a visa (other than the visa described in subparagraph (A) or to deny visas to persons who would be inadmissible to the United States.

1 So in original.

2 So in original. The period probably should be “; and”.

§ 1202
(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 ineligibility 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 state sponsor of terrorism, except such nationals who possess nationalities of countries that are not designated as state sponsors of terrorism;

(E) requires a security advisory opinion or other Department of State clearance, unless 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) an alien who qualifies for a diplomatic or official visa, or its equivalent; or

(F) is identified as a member of a group or sector that the Secretary of State determines—

(i) poses a substantial risk of submitting inaccurate information in order to obtain a visa;

(ii) has historically had visa applications denied at a rate that is higher than the average rate of such denials; or

(iii) poses a security threat to the United States.


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

2004—Subsec. (b). Pub. L. 108–458, §7203(b)(1), inserted at end “All immigrant visa applications shall be reviewed and adjudicated by a consular officer:”.


1996—Subsec. (c). Pub. L. 104–208, §834(a), struck out “personal description (including height, complexion, color of hair and eyes, and marks of identification);” after “United States;”, substituted “applicant, the determination of his eligibility for a nonimmigrant visa, for “applicant”, and inserted at end “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.”

Subsec. (e). Pub. L. 104–208, §834(b), in first sentence, substituted “an immigrant visa” for “required by this section”, and in fourth sentence, substituted “stamp, or other” for “stamp” and struck out “by the consular officer” before “in the alien’s passport.”

Subsec. (g). Pub. L. 104–208, §832(a), added subsec. (g).
dress and places of previous residence; whether married or single, and the names and places of residence of spouse and children, if any; calling or occupation; personal description (including height, complexion, color of hair and eyes, and marks of identification); languages he can speak, read, or write; names and addresses of parents, and if neither parent living then the name and address of his nearest 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".

1986—Subsec. (a). Pub. L. 100–525, § 9(b), substituted "whether or not he intends" for "whether or not the intent".


1986—Subsec. (b). Pub. L. 99–653, § 8(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", "The copy of each" for "One copy of each", and "attached to the" for "attached to each copy of".

Subsec. (e). Pub. L. 99–653, § 8(e)(2), as amended by Pub. L. 100–525, § 8(e)(2), substituted "each application" for "each copy of an application".

1965—Subsec. (a). Pub. L. 89–236 substituted "an immediate relative within the meaning of section 1151(b) of this title or a preference or special immigrant", for "preference quota or a nonquota immigrant".

Subsec. (a). Pub. L. 87–301 struck out requirement to state applicant's race and ethnic classification.

**Effective Date of 2004 Amendment**


**Effective Date of 1996 Amendment**

Pub. L. 104–208, div. C, title VI, § 602(b), Sept. 30, 1996, 110 Stat. 3009–701, provided that:

"(1) Visas.—Section 222(g)(1) of the Immigration and Nationality Act [8 U.S.C. 1222(g)(1)], as added by subsection (a), shall apply to a visa issued before, on, or after the date of the enactment of this Act [Sept. 30, 1996]."

"(2) Aliens seeking readmission.—Section 222(g)(2) of the Immigration and Nationality Act, as added by subsection (a), shall apply to any alien applying for readmission to the United States after the date of the enactment of this Act, except an alien applying for readmission on the basis of a visa that—

"(A) was issued before such date; and

"(B) is not void through the application of section 222(g)(1) of the Immigration and Nationality Act, as added by subsection (a)."

**Effective Date of 1994 Amendment**

Pub. L. 103–416, title II, § 205(b), Oct. 25, 1994, 108 Stat. 4311, provided that: "The amendments made by subsection (a) [amending this section] shall apply to applications made on or after the date of the enactment of this Act [Oct. 25, 1994]."

**Effective Date of 1988 Amendment**

Amendment by Pub. L. 99–653 applicable to applications for immigrant visas made, and visas issued, on or after Nov. 14, 1986, see section 23(b)(1) of Pub. L. 99–653, set out as a note under section 1101 of this title.

**Effective Date of 1986 Amendment**

Amendment by Pub. L. 99–653 applicable to applications for immigrant visas made, and visas issued, on or after Nov. 14, 1986, see section 23(b)(1) of Pub. L. 99–653, set out as a note under section 1201 of this title.

**Effective Date of 1965 Amendment**

For effective date of amendment by Pub. L. 89–236, see section 20 of Pub. L. 89–236, set out as a note under section 1151 of this title.

**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.

**Sharing of Certain Information**

Pub. L. 109–162, title VIII, § 834, Jan. 5, 2006, 119 Stat. 3077, provided that: "Section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1222(f)) shall not be construed to prevent the sharing of information regarding a United States petitioner for a visa under clause (i) or (ii) of section 101(a)(15)(K) of such Act (8 U.S.C. 1101(a)(15)(K)) for the limited purposes of fulfilling disclosure obligations imposed by the amendments made by section 832(a) [amending section 1184 of this title] or by section 833 [enacting section 1375a of this title], including reporting obligations of the Comptroller General of the United States under section 833(f)."

§ 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, 1922, 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 absence, 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) has been lawfully
admitted to the United States for permanent residence, or that the applicant under sub-section (a)(2) 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 proof, under regulations prescribed under this chapter, that the applicant is entitled to special immediate relative as such upon satisfactory proof, under regulations prescribed under this chapter, that the applicant is entitled to special immigrant or immediate relative status.

(§ 1204. Immediate relative and special immigrant visas

A consular officer may, subject to the limitations provided in section 1201 of this title, issue an immigrant visa to a special immigrant or immediate relative as such upon satisfactory proof, under regulations prescribed under this chapter, that the applicant is entitled to special immigrant or immediate relative status.


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) to provide to any United States border officer (as defined in subsection (i)) 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) to provide any United States border officer (as defined in subsection (i)) 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) 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 or a sum sufficient to cover such penalty.

(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) shall be transmitted electronically by the appropriate official specified in subsection (d) 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 in such form and shall contain such information 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) 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.

(May 14, 2002, ch. 4, title II, § 201(a), 116 Stat. 557.)

Amendments

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 aircraft in subsec. (d), and waiver of requirements in subsec. (e).

2000—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 infor-
mation 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 persons so transported and for the enforcement of the immigration laws. No master or commanding officer of any such vessel or aircraft shall be granted clearance papers for his vessel or aircraft until he or the authorized agent has deposited such list or lists and accompanying documents with the immigration officer at such port and made oath that they are full and complete as to the information required to be contained therein, except that in the case of vessels or aircraft which the Attorney General determines are making regular trips to ports of the United States, the Attorney General may, when expedient, arrange for the delivery of lists of outgoing persons at a later date. This subsection shall not require the master or commanding officer, or authorized agent, owner, or consignee of a vessel or aircraft to furnish a list or manifest relating (1) to an alien crewman or (2) to any other person departing by air on a trip originating in the United States who is destined to foreign contiguous territory, except (with respect to such departure by air) as may be required by regulations issued pursuant to section 1224 of this title.

Subsec. (d). Pub. L. 107–77, §115(c), directed amendment of heading by substituting "ships, aircraft, or carriers" for "vessels or aircraft" and, in text, inserting "; any public or private carrier," after "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 1224".

1991—Subsec. (d). Pub. L. 102–232 substituted "Commissioner" for "collector of customs" after "deposit with the".

1990—Subsec. (d). Pub. L. 101–649 substituted "Commissioner the sum of $300" for "collector of customs at the port of arrival or departure the sum of $100").


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 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

Effective Date of 1991 Amendment
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 may designate, and such medical officers may employ at such ports of entry as the Attorney General may prescribe, and under medical regulations as 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 1182(a)(10)(B) of this title with respect to the other alien.


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.

CODIFICATION


AMENDMENTS


Pub. L. 104–208, § 308(b)(2)(A), inserted “(a) Detention of aliens” before “For the purpose of”.

Subsec. (a). Pub. L. 104–208, § 308(d)(4)(H), substituted “inadmissible under” for “‘excluded by’” and “inadmissible classes” for “‘the excluded classes’”.

Subsec. (b). Pub. L. 104–208, § 308(b)(3)(C), transferred section 1224 of this title to subsec. (b) of this section. See Codification note above.


1986—Pub. L. 99–500, § 101(b) [title II, § 206(a), formerly § 206], as redesignated and amended by Pub. L. 100–525, § 4(b)(1), (2), substituted “by the Attorney General” for “on board the vessel or at the airport of arrival of the aircraft carrying them”, unless the Attorney General directs their detention in a United States immigration station or other place specified by him at the expense of such vessel or aircraft except as otherwise provided in this chapter, as circumstances may require or justify.

Pub. L. 99–591, § 101(b) [title II, § 206], a corrected version of Pub. L. 99–500, § 101(b) [title II, § 206(a)], was repealed by Pub. L. 100–525, § 4(d), effective as of Oct. 30, 1986.

Effective Date of 1996 Amendment

Amendment by section 308(b)(2), (3)(C), (c)(2)(A), (d)(4)(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 1988 Amendment

Pub. L. 100–525, § 4(c), Oct. 24, 1988, 102 Stat. 2615, provided that: “The amendments made by subsections (a) and (b) [amending this section and sections 1223, 1227, and 1356 of this title and enacting provisions set out as note under section 1156 of this title] shall be effective as if they were included in the enactment of the Department of Justice Appropriation Act, 1987 (as contained in section 101(b) of Public Law 99–500).”

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.

Designation of United States military physicians as civil surgeons


§ 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 passage through the United States in immediate and continuous transit of aliens destined to foreign countries. Notwithstanding any other provision of this chapter, such aliens may not have their classification changed under section 1258 of this title.

(d) Definitions

As used in this section the terms “transportation line” and “transportation company” include, but are not limited to, the owner, charterer, consignee, or authorized agent operating any vessel or aircraft or railroad train bringing aliens to the United States, to 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


Pub. L. 104–208, §308(f)(4), substituted “inspection and admission” for “entry and inspection”.


Subsec. (d), Pub. L. 104–208, §362(b), inserted “or railroad train” after “aircraft”.

Pub. L. 104–208, §362(a)(2), struck out “contiguous” after “foreign”.

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 designate as ports of entry for aliens arriving by aircraft any of the ports of entry for civil aircraft designated as such in accordance with law; (2) by regulation to provide such reasonable requirements for aircraft in civil air navigation with respect to giving notice of intention to land in advance of landing, or notice of landing, as shall be deemed necessary for purposes of administration and enforcement of this chapter; and (3) by regulation to provide for the application to civil air navigation of the provisions of this chapter where not expressly so provided in this chapter to such extent and upon such conditions as he deems necessary. Any person who violates any regulation made under this section shall be subject to a civil penalty of $2,000 which may be remitted or mitigated by the Attorney General in accordance with such proceedings as the Attorney General shall by regulation prescribe. In the 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 re-
leased 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 543(c) of Pub. L. 101–469, 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). A stowaway may apply for asylum only if the stowaway is found to have a credible fear of persecution under subsection (b)(1)(B). 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 (ii) 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 (iii) 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 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 include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. Review shall be concluded 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) Mandatory detention

Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.

(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)(I), a removal order entered in accordance with subparagraph (A)(i) or (B)(iii)(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 1325(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.

(c) 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, railroad 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, purser, 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 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. 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


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 1326 or section 1328 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 1329 and 1332 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 (27), (28), or (29) of section 1182(a) of this title”.

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 1806 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.


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.

CONSTRUCTION OF 1996 AMENDMENT


(A) the effectiveness of such procedures in deterring illegal entry;

(B) the detention and adjudication resources saved as a result of the procedures;

(C) the administrative and other costs expended to comply with the provision;

(D) the effectiveness of such procedures in processing asylum claims by undocumented aliens who assert a fear of persecution, including the accuracy of credible fear determinations, and

(E) the cooperation of other countries and air carriers in accepting and returning aliens removed under such procedures.”

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


“(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 and Nationality Act [8 U.S.C. 1225(b)(1)], as amended by subsection (a). The study shall examine—

(A) the effectiveness of such procedures in deterring illegal entry;

(B) the detention and adjudication resources saved as a result of the procedures;

(C) the administrative and other costs expended to comply with the provision;

(D) the effectiveness of such procedures in processing asylum claims by undocumented aliens who assert a fear of persecution, including the accuracy of credible fear determinations, and

(E) the cooperation of other countries and air carriers in accepting and returning aliens removed under such procedures.”
"(2) REPORT.—By not later than 18 months after the date of the enactment of this Act [Sept. 30, 1996], the Comptroller General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on the study conducted under paragraph (1)."

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of 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.

§ 1225a. Preinspection at foreign airports

(a) Establishment of preinspection stations

(1) NEW STATIONS.—Subject to paragraph (5), not later than October 31, 1998, 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, 2008, 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, 1998, or pursuant to paragraph (1).

(5) CONDITIONS.—Prior to the establishment of a preinspection station, the Attorney General, in consultation with the Secretary of State, shall ensure that—

(A) employees of the United States stationed at the preinspection station and their accompanying family members will receive appropriate protection;
(B) such employees and their families will not be subject to unreasonable risks to their welfare and safety; and
(C) the country in which the preinspection station is to be established maintains practices and procedures with respect to the return of aliens who are inadmissible to the United States who are inadmissible to the United States. Such preinspection stations shall be in addition to those established prior to 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), 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.

(4) SUBJECT TO.—Not later than December 31, 2006, the number of additional foreign airports which the Attorney General, in consultation with the Secretary of State, shall establish preinspection stations in at least 5 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 preinspection stations shall be in addition to those established prior to September 30, 1996, or pursuant to paragraph (1).

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 5 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 preinspection stations shall be in addition to those established prior to September 30, 1996, or pursuant to paragraph (1).”

Subsec. (b). Pub. L. 108–458, § 7206(a), inserted “and immigration security initiative” after “program” in heading, substituted “Secretary of Homeland Security” for “Attorney General” in text, and inserted at end “Beginning not later than December 31, 2006, the number of airports selected for an assignment under this subsection shall be at least 50.”

Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related
§ 1226

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) 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.

Revocation of bond or parole

The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.

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 1227(a)(2)(A)(i), (A)(iii), (B), (C), or (D) 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)(i) 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; and

(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

(C) 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

\(^1\) So in original. Probably should be "sentenced".
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.


AMENDMENTS

1996—Pub. L. 104–208, §303(a), amended section generally. Prior to amendment, section consisted of subsec. (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.

Subsecs. (a) to (d). Pub. L. 104–208, §371(b)(5), substituted “an immigration judge” for “a special inquiry officer”, “an immigration judge” for “a special inquiry officer”, and “immigration judge” for “special inquiry officer”, wherever appearing.

1991—Subsec. (e)(1). Pub. L. 102–232 substituted “upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense)” for “upon completion of the alien’s sentence for such conviction”.

1990—Subsec. (d). Pub. L. 101–649, §603(a)(12), substituted “has a disease, illness, or addiction which would make the alien inadmissible under paragraph (1) of section 1182(a) of this title” for “is afflicted with a disease specified in section 1182(a)(6) of this title, or with any mental disease, defect, or disability which would bring such alien within any of the classes excluded from admission to the United States under paragraphs (1) to (4) or (5) of section 1182(a) of this title” and struck out at end “If an alien is excluded by a special inquiry officer because of the existence of a physical disease, defect, or disability, other than one specified in section 1182(a)(6) of this title, the alien may appeal from the 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 [8 U.S.C. 1226(c)], as amended by subsection (a), or the amendments made by section 400(c) of Public Law 104–132 [amending section 1252 of this title], the provisions in paragraph (3) shall be in effect without regard to whether the Act 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 [8 U.S.C. 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 [8 U.S.C. 1182(a)(2)],

“(iii) is deportable by reason of having committed any offense covered in section 212(a)(3)(B) of such Act [8 U.S.C. 1182(a)(3)(B)], and


“(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 603(a)(12) of Pub. L. 101–649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

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 ARRIVAL


“SECTION 1. PROGRAM OF IDENTIFICATION OF CERTAIN DEPORTABLE ALIENS AWAITING ARRIVAL.

“(a) Establishment of Program.—Not later than 6 months after the date of the enactment of this Act.
§ 1226a

TITLE 8—ALIENS AND NATIONALITY

Page 260

[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 (i) 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 lawfully present in the United States, or otherwise removable. Such system shall include providing for recording of fingerprint records of aliens who have been 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 6 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)) 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 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 petition 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.
§ 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 under section 1201(i) of this title, is deportable.

(C) Violated nonimmigrant status or condition of entry

(i) Nonimmigrant status violators

Any alien who was admitted as a non-immigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 125B of this title, or to comply with the conditions of any such status, is deportable.

(ii) Violators of conditions of entry

Any alien whom the Secretary of Health and Human Services certifies has failed to comply with terms, conditions, and controls that were imposed under section 1182(g) of this title is deportable.

(D) Termination of conditional permanent residence

(i) In general

Any alien with permanent resident status on a conditional basis under section 1186a of this title (relating to conditional permanent resident status for certain alien spouses and sons and daughters) or under section 1186b of this title (relating to conditional permanent resident status for certain alien entrepreneurs, spouses, and children) who has had such status terminated under such respective section is deportable.

(ii) Exception

Clause (i) shall not apply in the cases described in section 1186a(c)(4) of this title (relating to certain hardship waivers).

(E) Smuggling

(i) In general

Any alien who, prior to the date of entry, at the time of any entry, or within 5 years of the date of any entry, knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is deportable.

(ii) Special rule in the case of family reunification

Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien’s spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) Waiver authorized

The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) in the case of any alien lawfully admitted for permanent residence if the alien has encouraged, induced, assisted, abetted, or aided only 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 inad-
missible 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)(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.

(ii) is a VAWA self-petitioner.

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.

(B) 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.) [now 50 U.S.C. 3801 et seq.] or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.) [now 50 U.S.C. 4301 et seq.]; or

(iv) a violation of section 1185 or 1328 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 com-
mon, 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

An alien who has failed to comply with the provisions of section 1305 of this title is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

(B) Failure to register or falsification of documents

Any alien who at any time has been convicted—

(i) under section 1306(c) of this title or under section 36(c) of the Alien Registration Act, 1940,

(ii) of a violation of, or an attempt or a conspiracy to violate, any provision of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.), or

(iii) of a violation of, or an attempt or a conspiracy to violate, section 1546 of title 18 (relating to fraud and misuse of visas, permits, and other entry documents), is deportable.

(C) Document fraud

(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 1124a 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—

1 So in original. No cl. (ii) has been enacted.

2 So in original. Probably should be “in”.

(i) upon a determination that—

(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).

(c) Waiver of grounds for deportation

Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), and (3)(A) of subsection (a) (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 1231(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 continuation of 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.

2000—Subsec. (a)(1)(H). Pub. L. 106–386, § 1050(c)(2), re-designated 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.”
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 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 “excludability”.
Subsec. (d). Pub. L. 104–208, § 308(d)(2)(D), struck out subsec. (d) which read as follows: “Notwithstanding any other provision of this chapter, an alien found not to be a citizen of 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 chapter. 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, § 114(a), added subsec. (d).
1994—Subsec. (a)(2)(A)(i)(I). Pub. L. 103–322 inserted “(or 10 years in the case of an alien provided lawful permanent resident status under section 1255(i) of this title)” after “five years”.
Subsec. (a)(2)(C). Pub. L. 103–416, § 203(b)(1), substituted “of” for “and” and after “a conspiracy” inserted “or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry,” for “in violation of any law,” and inserted “in violation of any law” after “title 18”.
Subsec. (c). Pub. L. 103–416, § 219(g), substituted “and (3)(A) of subsection (a)” for “or (3)(A) of subsection (a)”. 1991—Subsec. (a). Pub. L. 102–232, § 207(h)(1), substituted “if the alien is within one or more of the following classes of deportable aliens” for “if the alien is deportable as being within one or more of the following classes of aliens”:
Subsec. (a)(1)(D)(i). Pub. L. 102–232, § 207(h)(2), inserted “respectively” after “terminated under such”.
Subsec. (a)(1)(E)(ii). Pub. L. 102–232, § 207(h)(3), inserted “any” after “the time of” and after “within 5 years of the date of” in parenthetical provision.
Subsec. (a)(1)(H). Pub. L. 102–232, § 207(h)(6), substituted “paragraph (4)(D)” for “paragraph (6) or (7)”.
Subsec. (a)(2)(D). Pub. L. 102–232, § 207(h)(7), inserted “or attempt” after “conspiracy”.
Subsec. (a)(4)(A), (B). Pub. L. 102–232, § 207(h)(9), substituted “after entry engages” for “after entry has engaged”.
Subsec. (c). Pub. L. 102–232, § 207(k)(2), redesignated subsec. (b) as (c) and substituted “exist” for “exist”.
Subsec. (d). Pub. L. 102–232, § 207(k)(1), struck out subsec. (d) which related to applicability of this section to
aliens belonging to any of the classes enumerated in subsection (a) of this section.


Pub. L. 101-614, § 544(b), added par. (21) which read as follows: "the subject of a final order for violation of section 1326(c) of this title."

Pub. L. 101-614, § 508(a), substituted "conspiracy or attempt" for "conspiracy" in par. (11).

Subsec. (b). Pub. L. 101-614, § 682(b), redesignated subsec. (e) as (b), substituted "paragraph (4) of subsection (a)" 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. 101-614, § 505(a), struck out "(1) after "crimes shall not apply and "(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 the 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. 101-614, § 602(b)(1), struck out subsec. (c) which related to fraudulent entry.


Subsecs. (f), (g). Pub. L. 101-614, § 602(b)(1), struck out subsec. (f) and (g) which related to waiver of deportation in specified cases and hardship waivers, respectively.

Subsec. (h). Pub. L. 101-614, § 153(b)(2), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: "Paragraphs (1), (2), (5), (9), or (12) of subsection (a) of this section (other than so much of paragraph (1) as relates to a ground of exclusion described in paragraph (9), (10), (23), (27), (29), or (33) of section 1182(a) of this title) shall not apply to a special immigrant described in section 1101(a)(27)(D) of this title based upon circumstances that exist before the alien was provided such special immigrant status."


Subsec. (a)(14). Pub. L. 100-690 inserted "any firearm or destructive device (as defined in paragraphs (3) and (4)), respectively, of section 921(a) of title 18, or any revolver or" after "law."

Subsec. (a)(17). Pub. L. 100-525, § 9(m), substituted "amendment, thereof, known as the Trading With the Enemy Act" for "amendment thereof; the Trading With the Enemy Act".

Subsec. (a)(20). Pub. L. 100-325, § 32(n), substituted "an alien lawfully admitted" for "an alien who becomes lawfully admitted".


Subsec. (a)(10). Pub. L. 99-653 repealed par. (10). Prior to repeal, par. (10) read as follows: "entered the United States from foreign contiguous territory or adjacent islands, having arrived thereon a vessel or aircraft of a nonsignatory transportation company under section 1228(a) of this title and was not interior the required period of stay in such foreign contiguous territory or adjacent islands following such arrival (other than an alien described in section 1101(a)(27)(A) of this title and aliens born in the Western Hemisphere);".

Subsec. (a)(11). Pub. L. 99-638 substituted "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of this title)" 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 cultivation, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate".


1981—Subsec. (f). Pub. L. 97-116 designated existing provision as par. (1)(A), substituted provision authorizing discretionary waiver of deportation based on visa fraud or misrepresentation in the case of an alien, other than an alien described in subsec. (a)(19) of this section, who is the spouse, parent, or child of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence and who was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such entry except for those grounds specified in section 1182(a)(14), (20), and (21) of this title which were a direct result of that fraud or misrepresentation, with relief available to those who have made innocent, as well as fraudulent, misrepresentations, for provision requiring mandatory waiver of deportation based on visa fraud or misrepresentation at the time of entry in the case of an alien who is the spouse, parent, or child of a United States citizen or of an alien lawfully admitted for permanent residence who is otherwise admissible, and added pars. (1)(B) and (2).


1976—Subsec. (a)(10). Pub. L. 94-571 substituted "other than an alien described in section 1101(a)(27)(A) of this title and aliens born in the Western Hemisphere" for "other than an alien who is a native-born citizen of any of the countries enumerated in section 1101(a)(27)(A) of this title and an alien described in section 1101(a)(27)(B) of this title."


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 1162 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) [amending this section] shall take effect on the date of the enactment of this division [May 11, 2005], and the amendments, and section 227(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(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.”


Amendment by section 331(b) of Pub. L. 104–208 applicable to convictions occurring 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 331(c) of Pub. L. 104–208, set out as a note under section 1182 of this title.


Pub. L. 104–132, title IV, §435(b), Apr. 24, 1996, 110 Stat. 1275, provided that: “The amendment made by subsection (a) [amending this section] shall apply to convictions occurring or existing before, on, or after such date.”


Amendment by section 153(b)(1) of Pub. L. 101–649 effective Nov. 29, 1990, and applicable to convictions occurring before, on, or after such date. See section 153(b)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Amendment by section 1752, provided that: “The amendments made by subsection (a) [amending this section] shall be effective against whom deportation proceedings are initiated after the date of the enactment of this Act [Apr. 24, 1996].”

Effective Date of 1999 Amendment


Effective Date of 1998 Amendment


Amendment by section 153(b)(1) of Pub. L. 101–649, effective Nov. 29, 1990, and applicable to convictions occurring before, on, or after such date. See section 153(b)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Amendment by section 435(b), formerly §434(c), Nov. 29, 1990, 104 Stat. 5051, provided that: “The amendments 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 [Nov. 29, 1990].”
§ 1228

TITLe 8—ALIENS AND NATIONALITY

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 Criminal Aliens

For purposes of this title, the term "criminal alien" means any alien who has been convicted of an offense referred to in paragraph (15), (16), or (18) of section 241(a) [now 237] of the Immigration and Naturalization Act, occurred before the date of the enactment of this Act [Nov. 18, 1988], and by section 603(b) of this Act [amending this section], and by section 471 of the Immigration and Naturalization Act [Pub. L. 101–649, title VI, § 602(e), Nov. 29, 1990, 104 Stat. 5082, provided that: "The amendments made by this section, and by section 476(b) of this Act [amending this section, sections 1161, 1222, 1253, and 1254 of this title, and section 462 of Title 42, "The Public Health and Welfare"], shall not apply to deportation proceedings for which notice has been provided to the alien before March 1, 1991."]

Effectvie Date of 1988 Amendments

Pub. L. 100–690, title VII, §734(b), Nov. 18, 1988, 102 Stat. 4771, provided that: "The amendment made by subsection (a) [amending this section] shall apply to any alien who has been convicted, on or after the date of the enactment of this Act [Nov. 18, 1988], of an aggravated felony.

Pub. L. 100–690, title VI, §734(b), Nov. 18, 1988, 102 Stat. 4473, provided that: "The amendment made by subsection (a) [amending this section] shall apply to any alien convicted, on or after the date of the enactment of this Act [Nov. 18, 1988], of possessing any firearm or destructive device referred to in such subsection.


Effectvie Date of 1986 Amendments

Amendment by Pub. L. 99–633 applicable to visas issued, and admissions occurring, on or after Nov. 14, 1986, see section 23(a) of Pub. L. 99–633, set out as a note under section 1101 of this title.

Amendment by Pub. L. 99–570 applicable to convictions occurring, on or after Oct. 27, 1986, see section 1751(c) of Pub. L. 99–570, set out as a note under section 1182 of this title.

Effective Date of 1981 Amendment


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. 29, 1976, see section 10 of Pub. L. 94–571, set out as a note under section 1101 of this title.

Effective Date of 1965 Amendment

For effective date of amendment by Pub. L. 89–236 see section 20 of Pub. L. 89–236, set out as a note under section 1151 of this title.

Effective Date of 1956 Amendment

Amendment by act July 18, 1956, effective July 19, 1956, see section 401 of act July 18, 1956.

Savings Provision

Pub. L. 101–649, title VI, §602(c), Nov. 29, 1990, 104 Stat. 5681, provided that: "Notwithstanding the amendments made by this section [amending this section], any alien who was deportable because of a conviction (before the date of the enactment of this Act [Nov. 29, 1990]) of an offense referred to in paragraph (15), (16), (17), or (18) of section 241(a) [now 237] of the Immigration and Nationality Act [§ 8 U.S.C. 1227], as in effect before the date of the enactment of this Act, shall be considered to remain so deportable. Except as otherwise specifically provided in such section and subsection (d) [set out as a note above], the provisions of such section, as amended by this section, shall apply to all aliens described in subsection (a) thereof notwithstanding that (1) any such alien entered the United States before the date of the enactment of this Act, or (2) the facts, by reason of which such alien is described in such subsection, occurred before the date of the enactment of this Act."

§ 1228. Expelled 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)(ii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(i) 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 ac-
tual 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 such 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 1225b 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) 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) 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 1222 of this title.

1 So in original. Two subsecs. (c) have been enacted.
2 See References in Text note below.
§ 1228

TITLE 8—ALIENS AND NATIONALITY

Page 272

(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 1252(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 1235(a) 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.

(June 27, 1952, ch. 477, title II, ch. 4, § 238, as added Pub. L. 100–690, § 309(b)(4), Dec. 12, 1991, 105 Stat. 1759; Pub. L. 104–132, § 440(g)(2), which directed substitution of “any criminal offense covered in section 1251(a)(2)(A)(ii) of this title for which both predicate offenses are covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are covered, 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. (a)(3), (4), Pub. L. 104–208, § 308(e)(1)(F), substituted “removal” for “deportation” wherever appearing.

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 1253 of this title, referred to in subsection (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, subsection (a) no longer contains provisions relating to alternate countries. Provisions similar to those contained in former subsection (a) of section 1253 are now contained in section 1235(b) of this title.

Federal Rule of Criminal Procedure 11, referred to in subsection (c)(5), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

CODIFICATION

Section was formerly classified to section 1252a of this title prior to renumbering by Pub. L. 104–208.

P R E V I O U S


A M N E D I M N E N T S


Subsec. (c)(5). 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 1292a” for “section 1292.”


Pub. L. 104–208, § 308(e)(1)(C), substituted “section 1226(c)” for “1225(a)”. Pub. L. 104–132, § 440(g)(2), which directed substitution of “any criminal offense covered in section 1251(a)(2)(A)(i)” for “section 1252(a)”.
§ 1229

TITLE 8—ALIENS AND NATIONALITY

Page 274

by section 306(d) is effective as if included in the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132.


Amendment by section 671(b)(13) of Pub. L. 104–208 effective as if included in the enactment of the Immigration and Nationality Act [8 U.S.C. chapter 24 (Immigration Act)] shall apply in the case of any alien convicted of an aggravated felony on or after the date of enactment of this Act [Nov. 18, 1996].''

Amendment by section 671(c)(5), (6) of Pub. L. 104–208 effective as if included in the enactment of section 224(a) of the Immigration and Nationality Act of 1994, Pub. L. 103–416, see section 671(b)(14) of Pub. L. 104–208, set out as a note under section 1101 of this title.

Amendment by section 671(c)(7) of Pub. L. 104–208, set out as a note under section 1189 of this title.

Pub. L. 104–132, title IV, § 442(d), Apr. 24, 1996, 110 Stat. 1280, provided that: "The amendments made by this section [amending this section and section 1105a of this title] shall become effective no later than 60 days after the publication by the Attorney General of implementing regulations that shall be published on or before January 1, 1997."

Effective Date of 1994 Amendments

Amendment by section 224(a) of Pub. L. 103–146 applicable to all aliens whose adjudication of guilt or guilty plea is entered in the record after Oct. 25, 1994, see section 224(c) of Pub. L. 103–416, set out as a note under section 1252 of this title.

Pub. L. 103–322, title XIII, § 130004(d), Sept. 13, 1994, 108 Stat. 2028, 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

Pub. L. 101–649, title V, § 506(b), Nov. 29, 1990, 104 Stat. 5059, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990]."

Effective Date

Pub. L. 100–690, title VII, § 7347(c), Nov. 18, 1988, 102 Stat. 4472, provided that: "The amendments made by subsections (a) and (b) [enacting this section and amending section 1101 of this title] shall apply in the case of any alien convicted of an aggravated felony on or after the date of the enactment of this Act [Nov. 18, 1988]."

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 209(c)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

Expanded Special Removal Proceedings

Pub. L. 103–322, title XIII, § 130007, Sept. 13, 1994, 108 Stat. 2029, as amended by Pub. L. 104–208, div. C, title III, § 374(c), Sept. 30, 1996, 110 Stat. 3009–618, provided that: "(a) In General.—Subject to the availability of appropriations, the Attorney General may expand the program authorized by section[s] 238(a)(3) and 239(d) of the Immigration and Nationality Act [8 U.S.C. 1228(a)(3), 1229(d)] to ensure that such aliens are immediately deportable upon their release from incarceration."

"(b) Detention and Removal of Criminal Aliens.—Subject to the availability of appropriations, the Attorney General may—"

"(1) construct or contract for the construction of 2 Immigration and Naturalization Service Processing Centers to detain criminal aliens; and"

"(2) provide for the detention and removal of such aliens."

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

"(d) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section—"

"(1) $55,000,000 for fiscal year 1995;"

"(2) $54,000,000 for fiscal year 1996;"

"(3) $49,000,000 for fiscal year 1997; and"

"(4) $2,000,000 for fiscal year 1998."

§ 1229. Initiation of removal proceedings

(a) Notice to appear

(1) In general

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) and (ii) a current list of counsel prepared under subsection (b)(2).

(F) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 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) 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 (1) has elapsed and the alien has failed to secure counsel.

(c) Service by mail

Service by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with subsection (a)(1)(F).

(d) Prompt initiation of removal

(1) In the case of an alien who is convicted of an offense which makes the alien deportable, the Attorney General shall begin any removal proceeding as expeditiously as possible after the date of the conviction.

(2) 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) 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 courtroom) 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.

(6) 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.
§ 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)). 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)), 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 1252(b)(1) 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)) to attend a proceeding pursuant to section 1225(b)(2)(C) of this title.

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.

(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 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) is subject to the deadline specified in subparagraph (C) of such subsection.

\footnote{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, 1 section 1229(b)(2) of this title, or section 1254(a)(3) of this title (as in effect on March 31, 1997);

(II) if the motion is accompanied by a copy of the self-petition that has been or will be filed with the Immigration and Naturalization Service upon the granting of the motion to reopen;

(III) if the motion to reopen is filed within 1 year of the entry of the final order of removal, except that the Attorney General may, in 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 1541(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.

(3) Exceptional circumstances

The term “exceptional circumstances” 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.

(4) Exceptional circumstances

The term “Exceptional circumstances” in (3) of section 1229a(b)(2) of this title, as added by Pub. L. 109–192, was repealed by Pub. L. 110–31, effective May 11, 2005, 119 Stat. 3057, 3063.

2006—Subsec. (c)(7)(A). Pub. L. 109–162, § 825(a)(1), inserted period at end “; except that this limitation shall not apply so as to prevent the filing of one motion to reopen described in subparagraph (C)(iv)”.

Subsec. (c)(7)(C)(iv). Pub. L. 109–162, § 825(a)(2)(A), (B), substituted “spouses, children, and parents” for “spouses and children” in heading and “Any limitation under this section on the deadlines for filing such motions shall not apply” for “The deadline specified in subparagraph (C)(iv)”.

Subsec. (c)(7)(C)(iv)(I). Pub. L. 109–162, § 825(a)(2)(C), which directed substitution of “; section 1229(b)(2) of this title” for “or section 1229(b)(2) of this title”, was executed by making the substitution for “or section 1229(b)(2) of this title”, to reflect the probable intent of Congress.


Subsec. (e)(1). Pub. L. 109–162, § 813(a)(1), substituted “battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien,” for “serious illness of the alien”.

2005—Subsec. (c)(4) to (7). Pub. L. 109–13 added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively.


effective date of 2006 amendment

Pub. L. 109–162, title VIII, § 813(a)(2), Jan. 5, 2006, 119 Stat. 3058, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to a failure to appear that occurs before, on, or after the date of the enactment of this Act [Jan. 5, 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(b)(2) of Pub. L. 109–13, set out as a note under section 1106 of this title.


effective date of 2000 amendment

Pub. L. 106–386, div. B, title V, § 1506(c)(1)(B), Oct. 28, 2000, 114 Stat. 1528, provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant...

**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 set out under section 1101 of this title.

Subsec. (c)(3)(B), (C) of this section applicable to proving convictions entered before, on, or after Sept. 30, 1996, see section 322(c) of Pub. L. 104–208, set out as an effective date of 1996 Amendments 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.

**ELIMINATION OF TIME LIMITATIONS ON MOTIONS TO REOPEN DEPORTATION PROCEEDINGS FOR VICTIMS OF DOMESTIC VIOLENCE**


"'(i) there is no time limit on the filing of a motion to reopen such proceedings, and the deadline specified in section 242B(c)(3) of the Immigration and Nationality Act (as so in effect) (8 U.S.C. 1229b(c)(3)) does not apply—

"''(aa) if the basis of the motion is to apply for relief under clause (ii) or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)), clause (ii) or (iii) of section 204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)), or section 244(a)(3) of such Act (as so in effect) (8 U.S.C. 1229a(a)(3)); and

"''(bb) if the motion is accompanied by a suspension of deportation application to be filed with the Secretary of Homeland Security or by a copy of the self-petition that will be filed with the Department of Homeland Security upon the granting of the motion to reopen; and

"'(ii) any such limitation shall not apply so as to prevent the filing of one motion to reopen described in section 240(c)(7)(C)(iv) of the Immigration and Nationality Act (8 U.S.C. 1225b(c)(7)).

"'(ii) PRIMA FACIE CASE.—The filing of a motion to reopen under this subparagraph shall only stay the removal of a qualified alien (as defined in section 431(c)(1)(B) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)(1)(B)(i)) pending the final disposition of the motion, including exhaustion of all appeals if the motion establishes that the alien is a qualified alien.

"'(B) APPLICABILITY.—Subparagraph (A) shall apply to motions filed by aliens who are physically present in the United States and who—

"'(i) are, or were, in deportation or exclusion proceedings under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note)); and

"'(ii) have become eligible to apply for relief described in subparagraph (A)(i) as a result of the amendments made by—

"'(I) subtitle G [§40701 et seq.] of title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 1953 et seq.) [see Tables for classification]; or

"'(II) this title [see Short Title of 2000 Amendment note set out under section 1101 of this title]."

**REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION**

For purposes of 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 set out under section 1101 of this title.

**§ 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 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;
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

(ii) 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), for purposes of subparagraph (A)(ii) 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 battering or extreme cruelty shall count toward the 90-day or 180-day limits established in subsection (d)(2). 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 paragraph (1) or (2), 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) 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) 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)(5) of this title any alien who is a relative of an alien granted continued presence under section 7105(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 later of—

(I) the date on which the principal alien’s authority to remain in the United States under section 1101(a)(15)(J) of this title expires or the alien is subject to or has fulfilled the two-year foreign residence requirement of section 1182(e) of this title; or

(II) the date on which a 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.

(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(a)(15)(J) of this title expires; or

(II) the date on which a civil action filed by the principal alien under section 1995 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.

(c) Aliens ineligible for relief

The provisions of subsections (a) and (b)(1) 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 1321(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)(i) 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), 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) 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) 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).

References in Text

Section 1254 of this title, referred to in subsecs. (b)(2)(B), (C), (4), (c)(6), and (e)(1), (3)(B), was repealed by Pub. L. 104–208, div. C, title III, §308(b)(7), Sept. 30, 1996, 110 Stat. 3009–615.

Section 1182(c) of this title, referred to in subsec. (c)(6), was repealed by Pub. L. 104–208, div. C, title III, §304(b), Sept. 30, 1996, 110 Stat. 3009–97.

Section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, referred to in subsecs. (b)(2)(B), (C), (4), and (e)(3)(A), is section 309 of title III of div. C of Pub. L. 104–208, as amended, which is set out as a note under section 1101 of this title.

Amendments


2006—Subsec. (b)(1)(C). Pub. L. 109–162, §813(c)(1)(A), substituted “subject to paragraph (5)” for “except in a case described in section 1227(a)(7) of this title where the Attorney General exercises discretion to grant a waiver”.

Subsec. (b)(2)(A)(iv). Pub. L. 109–162, §813(c)(1)(B), substituted “subject to paragraph (5)” for “except in a case described in section 1227(a)(7) of this title where the Attorney General exercises discretion to grant a waiver”.

Subsec. (b)(2)(B). Pub. L. 109–162, §822(a)(2), which directed amendment of fourth sentence by substituting “this subparagraph, subparagraph (A)(ii),” for “subsection (b)(2)(B) of this section” was executed by making the substitution for language which read in the original “section 240A(b)(2)(B)” to reflect the probable intent of Congress.


Subsec. (b)(4)(B). Pub. L. 109–271 substituted the applicants were VAWA self-petitioners for “they were applications filed under section 1154a(a)(1)(A)(iii), (A)(iv), (B)(ii), or (B)(iii) of this title for purposes of section 1255(a) and (c) of this title”.


2000—Subsec. (b)(1)(C). Pub. L. 106–386, §1505(b)(2), inserted before semicolon “except in a case described in section 1227(a)(7) of this title where the Attorney General exercises discretion to grant a waiver”.

Subsec. (b)(2). Pub. L. 106–386, §1504(a), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “(2) 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—

(A) the alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent);

(B) 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;

(C) the alien has been a person of good moral character during such period; and

(D) the alien is not inadmissible under paragraph (2) or (3) of section 1182(a) of this title, is not deportable from the United States under subsections (b)(1) and (b)(2) 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.

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

"(2) 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."


Pub. L. 106–386, § 1506(b), substituted "(A) except in the case of an alien who applies for cancellation of removal under subsection (b)(2), when the alien is served a notice to appear under section 1229(a)(1) or (2) of this title, or (B)") for "(1)".

Subsec. (c)(1). Pub. L. 93–641, § 40701 et seq., provided that: "The amendments made by subsections (a) and (b) 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. 3039–546)."

**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 Reappraisal for Admission**

Pub. L. 109–162, title VIII, § 813(b), Jan. 5, 2006, 119 Stat. 3658, 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 reappraisal for admission after a previous order of removal, deportation, or exclusion for:

"(2) Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, see note set out under section 1551 of this title.

**Definitions**

For definition of the term "removable" used in subsec. (d)(1), see section 1229a(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)(2)(A)(iii) or section 1227(a)(4)(B) 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)(i), the Attorney General 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 1297 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.
§ 1230 TITLE 8—ALIENS AND NATIONALITY

(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, 1258, 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), nor shall any court order a stay of an alien’s removal pending consideration of any claim with respect to voluntary departure.

(1) Removal period

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”).

(2) Exception

Except as otherwise provided in this section and of each nonimmigrant as the Attorney General deems necessary for the enforcement of the immigration laws.

Amendments


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 1211 of this title 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


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 or deemed 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 235(a)1 of title 42 and paragraph (2),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 title3 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 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), 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 removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

(7) Employment authorization

No alien ordered removed shall be eligible to receive authorization to be employed in the

1See References in Text note below.
2So in original. Probably should be “subparagraph (B),”.
3So in original. Probably should be followed by a closing parenthesis.
United States unless the Attorney General makes a specific finding that—
(A) the alien cannot be removed due to the refusal of all countries designated by the alien or under this section to receive the alien;
(B) the removal of the alien is otherwise impracticable or contrary to the public interest.

(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 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, or an island adjacent 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 or aircraft on which the alien arrived in the United States.

(C) Alternative countries

If the alien boarded the vessel or aircraft on which the alien arrived in the United States or for a foreign territory contiguous to the United States or an island adjacent to a foreign territory contiguous to the United States, the alien is a native, citizen, subject, or national of, or has resided in, that designated territory or island.

(D) Alternative country

If the alien boarded the vessel or aircraft on which the alien arrived in the United States or for a foreign territory contiguous to the United States, and the alien is not a native, citizen, subject, or national of, or has resided in, that designated territory or island.

(E) Additional removal countries

If an alien is not removed to a country designated 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 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;
(iv) the Attorney General decides that removing the alien to the country is prejudicial to the United States.

(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 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;
(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 or 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
(ii) a witness fee of $1 a day.

(C) Release during stay

The Attorney General may release an alien whose removal is stayed under subparagraph (A)(ii) on—
(i) the alien’s filing a bond of at least $500 with security approved by the Attorney General; and
(ii) condition that the alien appear when required as a witness and for removal; and...
(iii) other conditions the Attorney General may prescribe.

(3) Costs of detention and maintenance pending removal

(A) In general

Except as provided in subparagraph (B) and subsection (d),\(^4\) 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), 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),

(II) subsection (d)(2)(B)(ii) or (iii) 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 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; and

(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 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 hearing under section 1225(a)(1)\(^5\) 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

---

\(^4\) So in original. Probably should be subsection “(e),”.

\(^5\) So in original. Probably should be “1225(b)(1)”.
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 1282 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 prisoner in the relevant State as determined by the Attorney General.

(3) For purposes of this subsection, the term “undocumented criminal alien” means an alien who—

(A) has been convicted of a felony or two or more misdemeanors; and

(B)(i) entered the United States without inspection or at any time or place other than as designated by the Attorney General;
(ii) was the subject of exclusion or deportation proceedings at the time he or she was taken into custody by the State or a political subdivision of the State; or

(iii) was admitted as a nonimmigrant and at the time he or she was taken into custody by the State or a political subdivision of the State has failed to maintain the non-immigrant status in which the alien was admitted or to which it was changed under section 1258 of this title, or to comply with the conditions of any such status.

(4)(A) In carrying out paragraph (1), the Attorney General shall give priority to the Federal incarceration of undocumented criminal aliens who have committed aggravated felonies.

(B) The Attorney General shall ensure that undocumented criminal aliens incarcerated in Federal facilities pursuant to this subsection are held in facilities which provide a level of security appropriate to the crimes for which they were convicted.

(5) There are authorized to be appropriated 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, may be used only for correctional purposes.

(E) Amounts appropriated pursuant to the authorization of appropriations in paragraph (5) may be used only for correctional purposes.

(6). Prior to amendment, par. (6) read as follows:

(A) In carrying out paragraph (1), the Attorney General shall give priority to the Federal incarceration of undocumented criminal aliens having 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, may be used only for correctional purposes.

(J) In carrying out paragraph (1), the Attorney General shall give priority to the Federal incarceration of undocumented criminal aliens who have committed aggravated felonies.

(S) 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, may be used only for correctional purposes.
"(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 provisos 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 provisos 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. 1252).

"(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 determination pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

"(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, any provision 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 provisos 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 242(e)(2) 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


"(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.

"(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

Pub. L. 104–208, div. C, title III, §388, Sept. 30, 1996, 110 Stat. 3009–655, 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 established under section 241(b)(3)(B) 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. 1276, 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 and 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 country 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 national-
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

(A) Minors in department of health and human services custody

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. 1522(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.

(B) Aliens transferred from Department of Health and Human Services to Department of Homeland Security custody

If a minor described in subparagraph (A) reaches 18 years of age and is transferred to the custody of the Secretary of Homeland Security, the Secretary shall consider placement in the least restrictive setting available after taking into account the alien’s danger to self, danger to the community, and risk of flight. Such aliens shall be eligible to participate in alternative to detention programs, utilizing a continuum of alternatives based on the alien’s need for supervision, which may include placement of the alien with an individual or an organizational sponsor, or in a supervised group home.

(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 well-being. 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.
§ 1232

(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 under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened, or a child whose proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence. The Secretary of Health and Human Services shall conduct follow-up services, during the pendency of removal proceedings, on children for whom a home study was conducted and is authorized to conduct follow-up services in cases involving children with mental health or other needs who could benefit from ongoing assistance from a social welfare agency.

(C) Access to information

Not later than 2 weeks after receiving a request from the Secretary of Health and Human Services, the Secretary of Homeland Security shall provide information necessary to conduct suitability assessments from appropriate Federal, State, and local law enforcement and immigration databases.

(4) Legal orientation presentations

The Secretary of Health and Human Services shall cooperate with the Executive Office for Immigration Review to ensure that custodians receive legal orientation presentations provided through the Legal Orientation Program administered by the Executive Office for Immigration Review. At a minimum, such presentations shall address the custodian's responsibility to attempt to ensure the child's appearance at all immigration proceedings or matters and protect them from mistreatment, exploitation, and trafficking.

(5) Access to counsel

The Secretary of Health and Human Services shall ensure, to the greatest extent practicable and consistent with section 292 of the Immigration and Nationality Act (8 U.S.C. 1362), that all unaccompanied alien children who are or have been in the custody of the Secretary or the Secretary of Homeland Security, and who are not described in subsection (a)(2)(A), have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking. To the greatest extent practicable, the Secretary of Health and Human Services shall make every effort to utilize the services of pro bono counsel who agree to provide representation to such children without charge.

(6) Child advocates

(A) In general

The Secretary of Health and Human Services is authorized to appoint independent child advocates for child trafficking victims and other vulnerable unaccompanied alien children. A child advocate shall be provided access to materials necessary to effectively advocate for the best interest of the child. The child advocate 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 liability for lawful conduct of duties as described in this provision.

(B) Appointment of child advocates

(i) Initial sites

Not later than 2 years after March 7, 2013, the Secretary of Health and Human Services shall appoint child advocates at 3 new immigration detention sites to provide independent child advocates for trafficking victims and vulnerable unaccompanied alien children.

(ii) Additional sites

Not later than 3 years after March 7, 2013, the Secretary shall appoint child advocates at not more than 3 additional immigration detention sites.

(iii) Selection of sites

Sites at which child advocate programs will be established under this subparagraph shall be located at immigration detention sites at which more than 50 children are held in immigration custody, and shall be selected sequentially, with priority given to locations with—

(I) the largest number of unaccompanied alien children; and

(II) the most vulnerable populations of unaccompanied children.

(C) Restrictions

(i) Administrative expenses

A child advocate program may not use more than 10 percent of the Federal funds received under this section for administrative expenses.

(ii) Nonexclusivity

Nothing in this section may be construed to restrict the ability of a child advocate program under this section to apply for or obtain funding from any other source to carry out the programs described in this section.

(iii) Contribution of funds

A child advocate program selected under this section shall contribute non-Federal funds, either directly or through in-kind contributions, to the costs of the child advocate program in an amount that is not less than 25 percent of the total amount of Federal funds received by the child advocate program under this section. In-kind contributions may not exceed 40 percent of the matching requirement under this clause.

(D) Annual report to Congress

Not later than 1 year after March 7, 2013, and annually thereafter, the Secretary of
Health and Human Services shall submit a report describing the activities undertaken by the Secretary to authorize the appointment of independent Child Advocates for trafficking victims and vulnerable unaccompanied alien children to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(E) Assessment of Child Advocate Program

(i) In general

As soon as practicable after March 7, 2013, the Comptroller General of the United States shall conduct a study regarding the effectiveness of the Child Advocate Program operated by the Secretary of Health and Human Services.

(ii) Matters to be studied

In the study required under clause (i), the Comptroller General shall—

(I) analyze the effectiveness of existing child advocate programs in improving outcomes for trafficking victims and other vulnerable unaccompanied alien children;

(II) evaluate the implementation of child advocate programs in new sites pursuant to subparagraph (B);

(III) evaluate the extent to which eligible trafficking victims and other vulnerable unaccompanied children are receiving child advocate services and assess the possible budgetary implications of increased participation in the program;

(IV) evaluate the barriers to improving outcomes for trafficking victims and other vulnerable unaccompanied children; and

(V) make recommendations on statutory changes to improve the Child Advocate Program in relation to the matters analyzed under subclauses (I) through (IV).

(iii) GAO report

Not later than 3 years after March 7, 2013, the Comptroller General of the United States shall submit the results of the study required under this subparagraph to—

(I) the Committee on the Judiciary of the Senate;

(II) the Committee on Health, Education, Labor, and Pensions of the Senate;

(III) the Committee on the Judiciary of the House of Representatives; and

(IV) the Committee on Education and the Workforce of the House of Representatives.

(F) Authorization of appropriations

There are authorized to be appropriated to the Secretary and Human Services to carry out this subsection—

(i) $1,000,000 for each of the fiscal years 2014 and 2015; and

(ii) $2,000,000 for each of the fiscal years 2016 and 2017.

(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 in the custody of the Secretary of Health and Human Services at the time a dependency order was granted for such child, 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, or has been granted status under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)), 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)), or status under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)), 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.
(c)(6) to (F), to reflect the probable intent of Congress. Other references to March 7, 2013, in subpars. (B) to (F) of subsec. (c)(6) were in the original "the date of the enactment of the Violence Against Women Reauthorization Act of 2013".

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.

AMENDMENTS


Subsec. (c)(6). Pub. L. 113–4, § 1262, designated existing provisions as subpar. (A), inserted heading, struck out "and criminal" after "immune from civil", and added subpars. (B) to (F).


PART V—ADJUSTMENT AND CHANGE OF STATUS

§ 1251. Transferred

CODIFICATION


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(b)(2) 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) 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), 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), 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), 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(a), 1182(i), 1220(a), 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) or 1227(a)(2)(A)(i)(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 any cause or claim under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, except as provided in subsection (e).

(5) Exclusive means of review

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). 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), 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 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), 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, substantial, 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) 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 1231(a) of this title;
(B) does not relieve the alien from complying with section 1231(a)(4) of this title and section 1233(r) of this title; and

1 See References in Text note below.
(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—
(1) shall attach a copy of such order, and
(2) 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) 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).

(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 by or 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. 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 1253 of this title, referred to in subsec. (b)(4)(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.


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.

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 alien is not a threat to the community and that the alien is likely to appear before any scheduled hearings.

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 alien is not a threat to the community and that the alien is likely to appear before any scheduled hearings.

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 alien is not a threat to the community and that the alien is likely to appear before any scheduled hearings.

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 alien is not a threat to the community and that the alien is likely to appear before any scheduled hearings.

Effective Date of 2005 Amendment

"(4) The amendments made by subsection (f) [amending this section] shall take effect on 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.

"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 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."
§ 1252  TITLE 8—ALIENS AND NATIONALITY  Page 304

Effective Date of 1996 Amendments
Pub. L. 104–208, div. C, title III, § 306(c), Sept. 30, 1996, 110 Stat. 3009–612, provided that: “(A) Subsections (a) and (b) [amending this section and section 1231 of this title] shall apply as provided under section 308(c)(1) of Pub. L. 104–208, set out above, is effective Oct. 1, 1994.’’

Effective Date of 1994 Amendments

Effective Date of 1991 Amendment

Effective Date of 1990 Amendment
Pub. L. 101–649, title V, § 545(c), Nov. 29, 1990, 104 Stat. 5056, provided that: “The amendments made by this section [amending this section and section 1226 of this title] shall take effect on the date of the enactment of this Act [Nov. 29, 1990].’’

Effective Date of 1988 Amendment
Pub. L. 100–690, title VII, § 7343(c), Nov. 18, 1988, 102 Stat. 4470, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 1225 of this title] shall apply to any alien who has been convicted, or 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 effectiveness of such amendment, see section 253(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
Pub. L. 101–649, title V, § 545(d), Nov. 29, 1990, 104 Stat. 5066, 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 filed 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 matter of the filing of motions in deportation proceedings which are not filed in accordance with the regulations prescribed by the Attorney General.”
“(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 242(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1252(b)), as amended by this section, or under section 309(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(b), except that subsection (b)(1) of such section shall not apply.”

TRANSITIONAL RULE CASES

Pub. L. 109–13, div. B, title I, §106(d), May 11, 2005, 119 Stat. 311, provided that: ‘‘A petition for review filed 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 1361 and 1615 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 Demeaned 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


“(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 depar-
§ 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 or with the purpose of preventing or hampering 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 1221(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)(3) 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 the immigration laws in response to an inquiry under such 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. 104–208 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(c), 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 comply with the 1967 United Nations Protocol Relating to the Status of Refugees."

1990—Subsec. (h)(1). Pub. L. 101–649, §603(b)(3), substituted "1251(a)(4)(D)(i)", for "1251(a)(4)(D)", added par. (3) which read as follows: "(A) a citizen of the United States, or an alien described in section 1229c of this title, who is or was an alien, and who is or was imprisoned in Cuba for political activities without regard to section 1229c(d) of this title, or who is or was imprisoned in Cuba for political activities without regard to section 1229c(g), shall be excluded from the United States."

Subsec. (h)(2). Pub. L. 101–649, §515(a)(2), inserted sentence at end relating to aliens who have been convicted of aggravated felonies.


1989—Subsec. (h). Pub. L. 96–212 substituted provisions relating to deportation of an alien where the Attorney General determines that the return would threaten the life or freedom of the alien on account of race, religion, nationality, membership in a particular social group, or political opinion, for provisions relating to withholding of deportation for any necessary period of time where the Attorney General decides the alien would be subject to persecution on account of race, religion, or political opinion.

1978—Subsec. (h). Pub. L. 95–549 inserted "under the description in section 1251(a) of this title" before "with 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 a note under section 1101 of this title.

Amendment by section 515(a)(2) of Pub. L. 101–649 applicable to deportation proceedings for which notice has been provided to the alien before Mar. 1, 1991, see section 309 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, §306(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...
§ 1254a

§ 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) (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), 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), 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), 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) In the case of an alien who can establish a prima facie case of eligibility for benefits under paragraph (1), but for the fact that the period of registration under subsection (c)(1)(A)(iv) has not begun, until the alien has had a reasonable opportunity to register during the first 30 days of such period, the Attorney General shall provide for the benefits of paragraph (1).

(B) In the case of an alien who establishes a prima facie case of eligibility for benefits under paragraph (1), until a final determination with respect to the alien’s eligibility for such benefits under paragraph (1) has been made, the alien shall be provided such benefits.

(5) Clarification

Nothing in this section shall be construed as authorizing the Attorney General to deny temporary protected status to an alien based on the alien’s immigration status or to require any alien, as a condition of being granted such status, either to relinquish nonimmigrant or other status the alien may have or to execute any waiver of other rights under this chapter. The granting of temporary protected status under this section shall not be considered to be inconsistent with the granting of nonimmigrant status under this chapter.

(b) Designations

(1) In general

The Attorney General, after consultation with appropriate agencies of the Government, may designate any foreign state (or any part of such foreign state) under this section only if—

(A) the Attorney General finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;

(B) the Attorney General finds that—

(i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,

(ii) the foreign state is unable, temporarily, to handle adequately the return to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

A designation of a foreign state (or part of such foreign state) under this paragraph shall not become effective unless notice of the designation (including a statement of the findings under this paragraph and the effective date of the designation) is published in the Federal Register. In such notice, the Attorney General shall also state an estimate of the number of nationals of the foreign state designated who are (or within the effective period of the designation are likely to become) eligible for temporary protected status under this section and their immigration status in the United States.

(2) Effective period of designation for foreign states

The designation of a foreign state (or part of such foreign state) under paragraph (1) shall—

(A) take effect upon the date of publication of the designation under such para-
graph, or such later date as the Attorney General may specify in the notice published under such paragraph, and

(B) shall remain in effect until the effective date of the termination of the designation under paragraph (3)(B).

For purposes of this section, the initial period of designation of a foreign state (or part thereof) under paragraph (1) is the period, specified by the Attorney General, of not less than 6 months and not more than 18 months.

(3) Periodic review, terminations, and extensions of designations

(A) Periodic review

At least 60 days before end of the initial period of designation, and any extended period of designation, of a foreign state (or part thereof) under this section the Attorney General, after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state (or part of such foreign state) for which a designation is in effect under this subsection and shall determine whether the conditions for such designation under this subsection continue to be met. The Attorney General shall provide on a timely basis for the publication of notice of each such determination (including the basis for the determination, and, in the case of an affirmative determination, the period of extension of designation under subparagraph (C)) in the Federal Register.

(B) Termination of designation

If the Attorney General determines under subparagraph (A) that a foreign state (or part of such foreign state) no longer continues to meet the conditions for designation under paragraph (1), the Attorney General shall terminate the designation by 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), 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) (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)—
§ 1254a

(1) the provisions of paragraphs (5) and (7)(A) of section 1182(a) of this title shall not apply;
(2) 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—

(A) the Attorney General finds that the alien was not in fact eligible for such status under this section,
(B) except as provided in paragraph (4) and permitting in subsection (f)(3), the alien has not remained continuously physically present in the United States from the date the alien first was granted temporary protected status under this section, or
(C) the alien fails, without good cause, to register with the Attorney General annually, at the end of each 12-month period after the granting of such status, in a form and manner specified by the Attorney General.

(4) Treatment of brief, casual, and innocent departures and certain other absences

(A) For purposes of paragraphs (1)(A)(i) and (3)(B), an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States, without regard to whether such absences were authorized by the Attorney General.

(B) For purposes of paragraph (1)(A)(ii), an alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence described in subparagraph (A) or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(5) Construction

Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for temporary protected status under this section.

(6) Confidentiality of information

The Attorney General shall establish procedures to protect the confidentiality of information provided by aliens under this section.

(d) Documentation

(1) Initial issuance

Upon the granting of temporary protected status to an alien under this section, the Attorney General shall provide for the issuance of such temporary documentation and authorization as may be necessary to carry out the purposes of this section.

(2) Period of validity

Subject to paragraph (3), such documentation shall be valid during the initial period of designation of the foreign state (or part thereof) involved and any extension of such period.

(3) Effective date of terminations

If the Attorney General terminates the designation of a foreign state (or part of such foreign state) under subsection (b)(3)(B), 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 1229b(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 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 Senate only by the 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).

(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) and, with respect to foreign states or parts thereof previously designated, why the designation was terminated or extended under subsection (b)(3).

(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.

References in text
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 Short Title note set out under section 1101 of this title and Tables.

Amendments
Subsec. (e). Pub. L. 104–208, §308(g)(8)(A)(I), substituted “section 1229(a)” for “section 1254a”.
Pub. L. 104–208, §308(e)(11), amended heading.
Subsec. (c)(1)(B). Pub. L. 102–232, §304(b)(2), as amended by Pub. L. 103–416, §219(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.
Subsec. (c)(2)(A)(i)(I). Pub. L. 102–232, § 307(l)(5)(A), substituted "paragaphs (2)(A) and (2)(B)" for "paragaphs (9) and (10)".


Subsec. (c)(2)(A)(iv). Pub. L. 101–649, § 603(a)(24)(A), which directed the substitution of "(3) (relating to security and related grounds)" for "(27) and (29) (relating to national security)" and a period for "(3)" and inserted "or" at end.

Subsec. (c)(2)(A)(ii). Pub. L. 101–649, § 603(a)(24)(B), which directed the substitution of "(2)(A) and (2)(B)" for "(Paragaphs (9) and (10))", could not be eexecuted technically due to the difference in the end punctuation and the text. See 1991 Amendment note above.


**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**

Amendment by section 301(b) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 301(b) of Pub. L. 101–649, set out as a note under section 1101 of this title.

**Effective Date of 1991 Amendment**


**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 603(a)(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 1,000 aliens in any fiscal year, beginning after Sept. 30, 1996, regardless of when aliens applied for such suspension and adjustment, see section 309(c)(7) of Pub. L. 101–649, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

**Aliens Authorized to Travel Abroad Temporarily**


"(1) In the case of an alien described in paragraph (2) whom the Attorney General authorizes to travel abroad temporarily and who returns to the United States in accordance with such authorization—

"(A) the alien shall be inspected and admitted in the same immigration status the alien had at the time of departure if—

"(i) in the case of an alien described in paragraph (2)(A), the alien is found not to be excludable on a ground of exclusion referred to in section 301(a)(1) of the Immigration Act of 1990 [Pub. L. 101–649, set out as a note under section 1255a of this title], or

"(ii) in the case of an alien described in paragraph (2)(B), the alien is found not to be excludable on a ground of exclusion referred to in section 244(c)(2)(A)(iii) of the Immigration and Nationality Act [8 U.S.C. 1254a(c)(2)(A)(iii)]; and

"(B) the alien shall not be considered, by reason of such authorized departure, to have failed to maintain continuous physical presence in the United States for purposes of section 240(a) of the Immigration and Nationality Act [8 U.S.C. 1229(a)] if the absent meets the requirements of section 240(a)(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) Eligibility.—

"(1) in general.—In applying section 244 of the Immigration and Nationality Act [8 U.S.C. 1254a] pursu-
ant 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)(2)(B) of such Act if—

"(A) the alien has been continuously physically present in the United States since September 19, 1990;

"(B) the alien is admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of such Act, and is not ineligible for temporary protected status under section 244(c)(3)(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 (h) thereof) shall apply to El Salvador (and aliens provided temporary protected status) under this section in the same manner as they apply to a foreign state designated (and aliens provided temporary protected status) under such section.

"(2) PROVISIONS NOT APPLICABLE.—Subsections (b)(1), (b)(2), (d)(3), (c)(1), (c)(4), and (d)(3), and (i) 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(d)(2)(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.

"(4) REENTRY PERMITTED AFTER DEPARTURE FOR EMERGENCY CIRCUMSTANCES.—In applying section 244(f)(3) of the Immigration and Nationality Act under this section, the Attorney General shall provide for advance parole in the case of an alien provided special temporary protected status under this section if the alien establishes to the satisfaction of the Attorney General that emergency and extenuating circumstances beyond the control of the alien requires the alien to depart for a brief, temporary trip abroad.

"(d) ENFORCEMENT OF REQUIREMENT TO DEPART AT TIME OF TERMINATION OF DESIGNATION.—

"(1) SHOW CAUSE ORDER AT TIME OF FINAL REGISTRATION.—At the registration occurring under this section closest to the date of termination of the designation of El Salvador under subsection (a), the Immigration and Naturalization Service shall serve on the alien granted temporary protected status an order to show cause that establishes a date for deportation proceedings which is after the date of such termination of designation. If El Salvador is subsequently designated under section 244(b) of the Immigration and Nationality Act (8 U.S.C. 1254a), the Service shall cancel such orders.

"(2) SANCTION FOR FAILURE TO APPEAR.—If an alien is provided an order to show cause under paragraph (1) and fails to appear at such proceedings, except for exceptional circumstances, the alien may be deported in absentia under section 240(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1229a(b)(5)) (inserted by section 545(a) of this Act) and certain discretionary forms of relief are no longer available to the alien pursuant to such section.

§ 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 1996 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 status 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 or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

(b) Record of lawful admission for permanent residence; reduction of preference visas

Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien’s lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference visas authorized to be issued under sections 1152 and 1153 of this title within the class to which the alien is chargeable for the fiscal year then current.

(b) 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) shall not be applicable to (1) an alien crewman; (2) subject to subsection (k), an alien (other than an immediate relative as defined in section 1151(b) of this title or a special immigrant described in section
1101(a)(27)(H), (I), (J), or (K) of this title) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States; (3) any alien admitted in transit without visa under section 1182(d)(4)(C) of this title; (4) an alien (other than an immediate relative as defined in section 1151(b) of this title) who was admitted as a nonimmigrant visitor without a visa under section 1182(l) of this title or section 1187 of this title; (5) an alien who was admitted as a nonimmigrant described in section 1101(a)(15)(S) of this title; (6) an alien 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(h)(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), 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), 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 nonimmigrant 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).

(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), 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), 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), 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 eligi-
bile 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 1255 of this title or section 202 of the Immigration Reform and Control Act of 1986 at any date, who—
(i) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 1160 or 1255a of this title or section 202 of the Immigration Reform and Control Act of 1986;
(ii) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and
(iii) applied for benefits under section 301(a) of the Immigration Act of 1990. The sum specified herein shall be in addition to the fee normally required for the processing of an application under this section.
(2) Upon receipt of such an application and the sum hereby required, the Attorney General may adjust the status of the alien to that of an alien lawfully admitted for permanent residence if—
(A) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence; and
(B) an immigrant visa is immediately available to the alien at the time the application is filed.
(3)(A) The portion of each application fee (not to exceed $200) that the Attorney General determines is required to process an application under this section and is 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 subsections (m), (n), and (o) of section 1356 of this title.
(B) Any remaining portion of such fees remitted under such paragraphs shall be deposited by the Attorney General into the Breached Bond/Detention Fund 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—
(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 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) and notwithstanding subsection (c)(2), (c)(7), and (c)(8), 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; and

(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.

(i) 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) 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

(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.

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)), 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 record the alien’s lawful admission for permanent residence as of the date of such approval.

(6) For purposes of paragraph (1)(B), the Secretary of Homeland Security may waive consideration of a disqualification from good moral character with respect to an alien if the disqualification was caused by, or incident to, the trafficking described in section 1101(a)(15)(T)(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).

(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, or has been physically present in the United States for a continuous period during the investigation or prosecution described in section 1101(a)(15)(T)(i) of this title.

(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

---

5 So in original. Probably should be followed by a comma.
6 So in original. The words “the alien” probably should not appear.
7 So in original. Probably should be a comma.
8 So in original. Probably should be “Secretary’s”.
9 So in original. Probably should be “Secretary’s”.
10 So in original. Probably should be “Secretary’s”.
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 in order to assist in the investigation or prosecution.

(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.

(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.

(600–2006—Subsec. (2)(A). Pub. L. 108–372, § 235(d)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “paragraphs (4), (5)(A), and (7)(A) of section 1182(a) of this title shall not apply, and—”.

Subsec. (b)(1). Pub. L. 110–457, § 201(d)(1)(C)(ii), which directed amendment of subpar. (C)(ii) by striking out ‘‘or in the case of subparagraph (C)(i), the Attorney General, as appropriate’’, was executed by striking out ‘‘, or in the case of subparagraph (C)(i), the Attorney General, as appropriate’’, before ‘‘may adjust’’ in concluding provisions of par. (1), to reflect the probable intent of Congress.

Pub. L. 110–457, § 201(d)(1)(A), substituted ‘‘in the opinion of the Secretary of Homeland Security, in consultation with the Attorney General, as appropriate’’ for ‘‘the Attorney General’’, in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 110–457, § 201(d)(1)(B), inserted ‘‘subject to paragraph (6),’’ after subpar. designation and substituted ‘‘; and’’ for ‘‘, and’’.


Subsec. (b)(1)(C)(ii), (iii). Pub. L. 110–457, § 201(d)(1)(C)(ii), (iii), which directed amendment of subpar. (C) by striking out ‘‘or in the case of subparagraph (C)(i), the Attorney General, as appropriate’’, was executed by striking out ‘‘, or in the case of subparagraph (C)(i), the Attorney General, as appropriate’’, before ‘‘may adjust’’ in concluding provisions of par. (1), to reflect the probable intent of Congress.

Pub. L. 110–457, § 201(d)(1)(A), substituted ‘‘in the opinion of the Secretary of Homeland Security, in consultation with the Attorney General, as appropriate’’ for ‘‘the Attorney General’’, in introductory provisions.


Subsec. (b)(2)(B). Pub. L. 110–457, § 235(d)(3), which directed amendment of subpar. (C) by substituting ‘‘; or’’ for period at end and adding cl. (iii), was executed by striking the substitute for ‘‘; or’’, or in the case of subparagraph (C)(i), the Attorney General, as appropriate’’, before ‘‘may adjust’’ in concluding provisions of par. (1), to reflect the probable intent of Congress.

Pub. L. 110–457, § 201(d)(1)(A), substituted ‘‘in the opinion of the Secretary of Homeland Security, in consultation with the Attorney General, as appropriate’’ for ‘‘the Attorney General’’, in introductory provisions.

Subsec. (b)(2)(C). Pub. L. 110–457, § 201(d)(2), substituted ‘‘unless’’ for ‘‘for period at end and added subpars. (A) and (B)’’.


Subsec. (c). Pub. L. 110–457, § 201(e)(2), substituted ‘‘as a WAVER self-petitioner’’ for ‘‘as a WAVER self-petitioner, for ‘‘as a WAVER self-petitioner, for ‘‘under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 1154a(a)(1) of this title’’’, added addenda (4) and (5).
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;’’.


Subsec. (m)(3). Pub. L. 109–162, § 803(b)(2), substituted ‘‘Secretary of Homeland Security may adjust’’ for ‘‘Attorney General may adjust’’ and ‘‘Secretary considers’’ for ‘‘Attorney General considers’’.


2003—Subsec. (i). Pub. L. 108–193, § 8(a)(4)(B), redesignated subsec. (i), relating to adjustment to status for victims of crimes against women, as (m).


Subsec. (k). Pub. L. 108–193, § 8(a)(4)(A), redesignated pars. (3) and (4) as (4) and (5), respectively.

Subsec. (m). Pub. L. 108–193, § 8(a)(4)(A), redesignated subsec. (i), relating to adjustment to status for victims of crimes against women, as (m).

2000—Subsec. (a). Pub. L. 106–386, § 1506(a)(1)(A), which directed the insertion of ‘‘or the status of any other alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (B)(ii), (B)(iii), or (B)(iv) of section 1154A(a)(1) of this title, subsection (a) shall not be applicable to’’ for ‘‘Subsection (a) shall not be applicable to’’

Subsec. (d). Pub. L. 106–554, § 1(a)(4) (div. B, title XV, § 1502(b)(2)), struck out ‘‘or (m)’’ after ‘‘under subsection (a)’’ in two places.

Pub. L. 106–554, § 1(a)(2) [title XI, § 1102(a)(2)(A)], substituted ‘‘under subsection (a)’’.

Pub. L. 106–553, § 1(a)(2) [title XI, § 1102(d)(2)(B)], substituted ‘‘subsection (a)’’.


Subsec. (i)(3)(B). Pub. L. 106–554, § 1(a)(4) (div. B, title XV, § 1502(a)(2)), 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’’.


Subsec. (m). Pub. L. 106–554, § 1(a)(4) (div. B, title XV, § 1502(b)(1), struck out subsec. (m), which related to adjustment of status of nonimmigrant described in section 1103(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, 2000, and ending Oct. 1, 2000.

Pub. L. 106–553, § 1(a)(2) [title XI, § 1102(c)], added subsec. (m).

1997—Subsec. (c)(2). Pub. L. 105–119, § 111(c)(1), substituted ‘‘(2) subject to subsection (k), an alien (other than)’’ for ‘‘(2) an alien (other than)’’.

Subsec. (l)(1). 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.’’

Subsec. (i)(3)(B). Pub. L. 105–119, § 1103(d), substituted ‘‘Breach Bond/Detention Fund established under section 1356(e) of this title for Immigration Detention Account established under section 1356(a) of this title’’.


Subsec. (i)(1). Pub. L. 104–208, § 376(a)(4)(A), redesignated subsec. (i), relating to adjustment to permanent resident status, as (j).

Subsec. (i)(2). 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 deposited by the Attorney General as provided in sections 1356(m), (n), and (o) of this title’’.

Subsec. (j). Pub. L. 104–208, § 376(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, §130003(c)(1), added subsec. (i) relating to adjustment to permanent resident status.
Pub. L. 103–317, §506(b), added subsec. (i) relating to adjustment in status of certain aliens physically present in 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".
Pub. L. 102–110, §2(c)(1), substituted "(1), (or (K))" for "(1)".
Subsec. (e)(3). Pub. L. 102–232, §308(a), substituted "section 1154(h) for "section 1154(h)".
Subsec. (g). Pub. L. 102–110, §2(c)(2), added subsec. (g).
1990—Subsec. (b). Pub. L. 101–614, §162(e)(3), struck out "or nonpreference" after "number of the preference" and substituted "1151(a)" for "1151(c) or 1153(a)" and "succeeding fiscal year for "fiscal year then current".
Subsec. (d)(1). Pub. L. 101–649, §702(a)(1), struck out "Except as provided in paragraph (3), an alien who is an alien fiancee or fiance or the spouse or child of a citizen under section 1153(a)" after "an alien fiancee or fiance or the spouse or child of a citizen under section 1153(a)".
1988—Subsec. (c)(2). Pub. L. 100–525, §2(f)(1), substituted "1101(a)(27)(H) or (I)" for "1101(a)(27)(H) or (I)".
Subsec. (e)(1). Pub. L. 101–649, §702(a)(1), struck out former cl. (3) which read as follows: "(3) 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 who have filed under section 1154 of this title [amending this section, enacting provisions set out as notes under section 1101 of this title]."
Subsec. (h). 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), the status of a nonimmigrant alien described in section 1101(a)(15)(K) of this title (relating to an alien fiancee or fiance or the minor child of a such alien) except to that of an alien lawfully admitted to the United States on a conditional basis under section 1168a 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. 97–116 inserted "or a special immigrant described in section 1101(a)(27)(H)" after "section 1151(b)" of this title of this section only if the portion of the quota to which the alien is chargeable is undersubscribed by applicants who have filed under section 1154 of this title [amending this section, enacting provisions set out as notes under section 1101 of this title]."
Amendment by 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 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 on or before Dec. 21, 2000, see section 1(a)(2) [title XI, §1102(d)] 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 on or before Dec. 21, 2000, see section 1(a)(2) [title XI, §1102(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 Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

Pub. L. 104–208, div. C, title III, §376(c), Sept. 30, 1996, 110 Stat. 3009–649, 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 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 Pub. L. 104–208 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. 104–222, set out as a note under section 1154 of this title.

Effective Date of 1994 Amendments


Effective Date of 1991 Amendments


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. 6, 1986, see section 5(c) of Pub. L. 99–639, set out as a note under section 1151 of this title.

Effective Date of 1988 Amendment
Pub. L. 100–505, §42(c)(3), Oct. 24, 1988, 102 Stat. 2611, provided that: "The amendments made by paragraph (1) [amending this section] and by section 117 of IRCA [section 117 of Pub. L. 99–663] applying to aliens lawfully admitted for permanent residence under this section 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.

Effective Date of 1986 Amendments
Pub. L. 99–663, §3(d)(2), Nov. 10, 1986, 100 Stat. 3542, provided that: "The amendments 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. 6, 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 1983 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.

Adjustment of Status for Certain Haitian Orphans
Pub. L. 111–293, Dec. 9, 2010, 124 Stat. 3175, provided that:

"SECTION 1. SHORT TITLE."
"This Act may be cited as—"n"
"(1) the 'Help Haitian Adoptees Immediately to Integrate Act of 2010'; or"
"(2) the 'Help Haiti Act of 2010'."

"SEC. 2. ADJUSTMENT OF STATUS FOR CERTAIN HAITIAN ORPHANS."

"(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;
"(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 1,400.

"(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 subsection; 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.

“[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 immunity under this section or the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).]

“SEC. 3. 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, provided that such statement has been submitted prior to the vote on passage.’

PERMITTING MOTION TO REOPEN


‘‘Notwithstanding any time and number limitations imposed 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 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)]), 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 Amendments note set out under section 1101 of this title] as a result of the amendments made by paragraph (1) [amending section 202 of Pub. L. 105–100, set out below], may file one motion to reopen exclusion, deportation, or removal proceedings to apply for such adjustment of status under that Act. The scope of any proceeding reopened 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].’’


‘‘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 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 1101 of this title] as a result of the amendments made by paragraph (1) [amending section 902 of section 101(h) of Div. A of Pub. L. 106–277, set out below], may file one motion to reopen exclusion, deportation, or removal proceedings to apply for such adjustment of status under that Act. The scope of any proceeding reopened 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, Oct. 27, 2000, 114 Stat. 1442, provided for adjustment of status from asylee to lawful permanent residence of not more than 2,000 persons, who must be either (1) Jewish nationals of Syria, who arrived in the United States after Dec. 31, 1991, after being permitted by the Syrian Government to depart from Syria, and were physically present in the United States at the time of filing the application for adjustment of status, or (2) who were the spouse, child, or unmarried son or daughter of such an alien provided that any such eligible person either applied for such adjustment of status not later than 1 year after Oct. 27, 2000, or applied for adjustment of status under this chapter before Oct. 27, 2000, had been physically present in the United States for at least 1 year after being granted asylum; was not firmly resettled in any foreign country; and was admissible as an immigrant under this chapter at the time of examination for adjustment of such alien.

ADJUSTMENT OF STATUS OF CERTAIN HAITIAN NATIONALS


‘‘(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 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.

‘‘(2) INAPPLICABILITY OF 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. 1255(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)(i) and (C)(i) of 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 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. If the Attorney General makes a final 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.—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 emergent reasons or reasons deemed strictly in the public interest, or

(C) the alien applies for such adjustment and is physically present in the United States on the date the application is filed; and

(D) 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 the Immigration and Nationality Act (8 U.S.C. 1182(a)(4), (5), (6)(A), (7)(A), (9)(B)) shall not apply.

(2) PROOF OF CONTINUOUS PRESENCE.—For purposes of establishing the period of continuous physical presence referred to in paragraph (1)(B), 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 aggregate to not more than 180 days.

(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) 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].

(f) LIMITATION ON JUDICIAL REVIEW.—A determination by the Attorney General as to whether the status of any alien should be adjusted under this section is final and shall not be subject to review by any court.

(g) NO OFFSET IN NUMBER OF CHILDREN.—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 removal proceedings under any provision of such Act and has applied for adjustment of status under subsection (a), except where the Attorney General has made a final determination to deny the application.

(h) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—Except as otherwise specifically provided in this title [section 101(h) [title IX] of Pub. L. 106–277, enacting sections 1377 and 1378 of this title and provisions set out as a note under section 1301 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 to the extent that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section, and provisions set out as a note under section 1301 of such Act, the detention, or the release, of an alien, a determination of status, or an order of removal, as those terms are defined in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], or a decision of the Attorney General on any matter related to the detention, release, status, or order of removal of such alien is subject to judicial review for evidentiary or legal errors, 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 aggregate to not more than 180 days.

(i) Period of Applicability.—Subsection (i) shall not apply after October 1, 2003.

(2) aliens subject to removal proceedings under section 240 of such Act [8 U.S.C. 1229a].

(j) DUTY OF ATTORNEY GENERAL TO PROVIDE NOTICE.—The Attorney General shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, notice of decisions 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].

(k) DUTY OF ATTORNEY GENERAL TO PROVIDE NOTICE.—The Attorney General shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, notice of decisions 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].

(l) DUTY OF ATTORNEY GENERAL TO PROVIDE NOTICE.—The Attorney General shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, notice of decisions 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].

ADJUSTMENT OF STATUS OF CERTAIN NICARAGUAŃOS AND CUBANS


(1) ADJUSTMENT OF STATUS.—

(a) shall demonstrate that the alien, prior to December 1, 1995—

(i) applied to the Attorney General for asylum;

(ii) was issued an order to show cause under section 242 or 242B of the Immigration and Nationality Act [8 U.S.C. 1252 et seq.] (as in effect prior to April 1, 1997);

(iii) was placed in exclusion proceedings under section 236 of such Act [8 U.S.C. 1226b (as so in effect);

(iv) applied for adjustment of status under section 245 of such Act [8 U.S.C. 1255];

(v) applied to the Attorney General for employment authorization;

(vi) performed service, or engaged in a trade or business, within the United States which is evidenced by records maintained by the Commissioner of Social Security;

(vii) applied for any other benefit under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] by means of an application establishing the alien’s presence in the United States prior to December 1, 1995; or

(b) shall make such other demonstration of physical presence as the Attorney General may provide for by regulation.

(c) STAY OF REMOVAL; WORK AUTHORIZATION.—

(1) IN GENERAL.—The Attorney General shall provide by regulation for an alien subject to a final order of deportation or removal to seek a stay of such order based on the filing of an application under subsection (a),

(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 removal proceedings under any provision of such Act and has applied for adjustment of status under subsection (a), except where the Attorney General has rendered a final administrative determination to deny the application.

(3) WORK AUTHORIZATION.—The Attorney General may authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application and may provide the alien with an ‘employment authorized’ endorsement or other appropriate document signifying authorization of employment, except that if such application is pending for a period exceeding 180 days, and has not been denied, the Attorney General shall authorize such employment.

(d) ADJUSTMENT OF STATUS FOR SPOUSES AND CHILDREN.—

(1) IN GENERAL.—The status of an alien shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if—

(A) the alien is a national of Nicaragua or Cuba;

(B) the alien—

(i) is the spouse, child, or unmarried son or daughter of an alien whose status is adjusted to that of an alien lawfully admitted for permanent residence 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 adjustment under this subsection is filed; or

(ii) was, at the time at which an alien filed for adjustment under subsection (a), the spouse or child of an alien whose status is adjusted, or was eligible for adjustment, to that of an alien lawfully admitted for permanent residence 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); and

(2) PROCEDURE.—For purposes of establishing that the period of continuous physical presence referred to in paragraph (1) commenced not later than December 1, 1995, an alien applying for adjustment of status shall—

(A) demonstrate that the alien, prior to December 1, 1995—

(1) was admitted for permanent residence, if the alien—

(2) is a national or citizen of Cambodia, Laos, or Vietnam who was 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 such subsection 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) was not admitted for permanent residence under such 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); and

(3) was admitted for permanent residence under such 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); or

(c) the alien applies for such adjustment and is physically present in the United States on the date the application is filed;
§ 1255


provided to—

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.

when 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]; or

A


during the application period (as defined in subsection (e)) the following rules shall apply with respect to such adjustment:

Finally, the Attorney General shall apply section 203(b)(3)(A)(i) of such Act [8 U.S.C. 1153(b)(3)(A)(i)].

"(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), (C), or (E) of paragraph (3)) with respect to such an adjustment for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(D) the alien is otherwise admissible to the United States for permanent residence, except in

"(A) is a national of Poland or Hungary; and

"(D) the alien is otherwise admissible to the United States for permanent residence, except in

"(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;

"(B) applies for such adjustment before April 1, 2000, or, in the case of an alien who qualifies under subparagraph (B)(ii), applies for such adjustment during the 18-month period beginning on the date of enactment of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Jan. 5, 2006).

"(2) Proof of Continuous Presence.—For purposes of establishing the period of continuous physical presence referred to in paragraph (1)(B), an alien—

"(C) A

"(1) applies for such adjustment;

"(D) was inspected and granted parole into the United States during the period beginning on November 1, 1991, and ending on December 31, 1991, after being denied refugee status.

"(3) Procedure.—In acting on an application under this section with respect to a spouse or child who has been battered or subjected to extreme cruelty, the Attorney General shall apply section 204(a)(1)(J) [8 U.S.C. 1154(a)(1)(J)].

"(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 any provision of the Immigration and Nationality Act [8 U.S.C. 1110 et seq.].

"(f) FingerPrint Checks.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section. Nothing contained in this section shall be held to repeal, amend, alter, modify, 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.

"(h) Alien Admitted for Permanent Residence Pursuant to the Immigration and Nationalization Act

"(1) the alien is otherwise admissible to the United States for permanent residence, except in

Fingerprint Checks

Pub. L. 103–317, title V, § 506(d), Aug. 26, 1994, 108 Stat. 1766, provided that: "The Immigration and Naturalization Service shall conduct full fingerprint identification checks through the Federal Bureau of Investigation for all individuals over sixteen years of age adjusting immigration status in the United States pursuant to this section [amending this section and section 1182 of this title and enacting provisions set out as a note under section 1182 of this title]."

ADJUSTMENT OF STATUS OF CERTAIN NATIONALS OF PEOPLE'S REPUBLIC OF CHINA


"(1) the alien is otherwise admissible to the United States for permanent residence, except in

"(2) the alien 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.

"(b) Aliens Eligible for Adjustment of Status.—The benefits provided in subsection (a) shall only apply to an alien who—

"(1) is a national of Poland or Hungary; and

"(2) was inspected and granted parole into the United States during the period beginning on November 1, 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), (C), or (E) of paragraph (3)) with respect to such an adjustment for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(d) Date of Approval.—Upon the approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission as 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 Nationality Act [8 U.S.C. 1110 et seq.].

ADJUSTMENT OF STATUS FOR CERTAIN NATIONALS OF HUNGARIAN PAROLES


"(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—

ADJUSTMENT OF STATUS FOR CERTAIN POLISH AND HUNGARIAN PAROLES


"(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) applies for such adjustment before April 1, 2000, or, in the case of an alien who qualifies under subparagraph (B)(ii), applies for such adjustment during the 18-month period beginning on the date of enactment of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Jan. 5, 2006).

PROOF OF CONTINUOUS PRESENCE.—For purposes of establishing the period of continuous physical presence referred to in paragraph (1)(B), an alien—

"(A) shall demonstrate that such period commenced not later than December 1, 1995, in a manner consistent with subsection (b)(2); and

"(B) 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 in the aggregate not exceeding 180 days.

"(2) Procedure.—In acting on an application under this section with respect to a spouse or child who has been battered or subjected to extreme cruelty, the Attorney General shall apply section 204(a)(1)(J) [8 U.S.C. 1154(a)(1)(J)].

"(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. 1228a].

"(4) Limitation on Judicial Review.—A determination by the Attorney General as to whether the status of any alien should be adjusted under this section is final and shall not be subject to review by any court.

"(g) No Offset in Number of Visas Available.—When an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under any provision of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].

"(5) Application of Immigration and Nationality Act Provisions.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section. Nothing contained in this section shall be held to repeal, amend, alter, modify, 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.

"(h) Alien Admitted for Permanent Residence Pursuant to the Immigration and Naturalization Act

"(1) the alien shall be deemed to have had a petition approved under section 204(a) of such Act [8 U.S.C. 1153(a)] for classification under section 208(b)(3)(A)(i) of such Act [8 U.S.C. 1158(b)(3)(A)(i)].

"(i) Adjustment of Status for Certain Nationalities of People's Republic of China


"(1) the alien shall be deemed to have had a petition approved under section 204(a) of such Act [8 U.S.C. 1153(a)] for classification under section 208(b)(3)(A)(i) of such Act [8 U.S.C. 1158(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

(2) the Attorney General may waive any other provision of section 212(a) (other than paragraph (2)(C) and subparagraph (A), (B), (C), or (E) of paragraph (3)) of such Act with respect to such adjustment for humanitarian purposes, for purposes of ascertaining family unity, or if otherwise in the public interest.

(4) The numerical level of section 202(a) of such Act [8 U.S.C. 1152(a)(2)] shall not apply.

(a) ALIEN 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].

(b) 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.

(c) 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)];

(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.

(d) APPLICABLE FISCAL YEAR.—

(1) In general.—In this subsection, the term 'applicable fiscal year' means each fiscal year during the period—

(i) beginning with the fiscal year in which the application period begins; and

(ii) ending with the first fiscal year by the end of which the cumulative number of aliens counted for all fiscal years under subparagraph (B) equals or exceeds the total number of aliens whose status has been adjusted under section 245 of the Immigration and Nationality Act [8 U.S.C. 1255] pursuant to subsection (a).

(2) 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 the year before.

(e) APPLICATION PERIOD DEFINED.—In this section, the term 'application period' means the 12-month period beginning July 1, 1993.

ADJUSTMENT OF STATUS FOR CERTAIN H-1 NONIMMIGRANT NURSES


(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. 1152(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] of the case of an alien who, as of September 1, 1989, is present in the United States in the status of a nonimmigrant under section 101(a)(15)(H)(i) of such Act [8 U.S.C. 1101(a)(15)(H)(i)] to perform services as a registered nurse, who, as of September 1, 1989, is present in the United States and had been admitted to the United States in the status of nonimmigrant under section 101(a)(15)(H)(i) of such Act to perform services as a registered nurse but has failed to maintain that status due to the expiration of the time limitation with respect to such status, or who is the spouse or child of such an alien, unauthorized employment performed before the date of the enactment of the Immigration Act of 1990 [Nov. 29, 1990] shall not be taken into account in applying section 245(c)(2) of the Immigration and Nationality Act and such alien shall be considered as having continued to maintain lawful status throughout his or her stay in the United States as a nonimmigrant until the end of the 120-day period beginning on the date the Attorney General promulgates regulations carrying out the amendments made by section 162(f)(1) of the Immigration Act of 1990 [Pub. L. 101–649, amending this note].

(c) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—The definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

(d) APPLICATION PERIOD.—The alien, and accompanying spouse and children, must apply for such adjustment within the 5-year period beginning on the date the Attorney General promulgates regulations required under subsection (a).


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 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.

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 before 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 under 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 (9) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4), (5), (7)(A), (9)) 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 (D) with respect to such an alien in order to prevent extreme hardship to the alien or the alien’s spouse, parent, 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.

(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, the Secretary of Homeland Security shall—

(1) adjudicate applications for adjustment under this section, notwithstanding any limitation on the number of adjustments under this section or any deadline for such applications that previously existed in law or regulation; and

(2) not charge a fee in addition to any fee that previously was submitted with such application.


Brought to you by | New York University (NYU) Library | 721 Broadway | New York, NY 10003 | www.library.nyu.edu

Page 326

\(\text{§1255\ TITLE 8—ALIENS AND NATIONALITY}\)
“(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.].


Pub. L. 95–145, title I, §§101–107, Oct. 27, 1977, 91 Stat. 1223, as amended by Pub. L. 96–212, title II, §203(i), Mar. 17, 1980, 94 Stat. 108, provided that status of alien who was native or citizen of Vietnam, Laos, or Cambodia, and had resided continuously in the United States as a nonimmigrant alien worker under section 1101(a)(15)(H)(ii) of this title, or as spouse or minor child of such worker, and had resided in United States as a refugee between Mar. 31, 1975, and Jan. 1, 1979, or was inspected and admitted or paroled into United States on or before Mar. 31, 1975, and was physically present in United States on Mar. 31, 1975, could be adjusted by Attorney General to that of an alien lawfully admitted for permanent residence if alien applied for such adjustment within six years of entry into United States, and met certain other eligibility requirements.

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

Pub. L. 97–271, Sept. 30, 1982, 96 Stat. 1157, as amended by Pub. L. 101–649, title I, §162(e)(6), Nov. 29, 1990, 104 Stat. 1749, provided that status of alien who was lawfully admitted for permanent residence as of the date the alien originally arrived in the United States as a nonimmigrant alien worker under section 1101(a)(15)(H)(ii) of this title, or as spouse or minor child of such worker, and had resided continuously in the Virgin Islands of the United States since June 30, 1975, could be adjusted by Attorney General to that of an alien lawfully admitted for permanent residence if alien applied for such adjustment during one-year period beginning Sept. 30, 1982, and met certain other eligibility requirements.

DEVELOPMENT OF ELIGIBILITY CRITERIA FOR ADMISSION OF REFUGEES FROM CAMBODIA

Pub. L. 95–624, §16, Nov. 9, 1978, 92 Stat. 3665, provided that: ‘‘The Attorney General, in consultation with the Congress, shall develop special eligibility criteria under the current United States parole program for Indochina Refugees which would enable a larger number of refugees from Cambodia to qualify for admission to the United States.”

CUBAN REFUGEES: ADJUSTMENT OF STATUS


‘‘(b) LIMITATION.—Subsection (a) shall not apply to aliens for whom an application for adjustment of status is pending on such effective date.’’

Pub. L. 89–732, Nov. 2, 1966, 80 Stat. 1161, as amended by Pub. L. 94–571, §8, Oct. 20, 1976, 90 Stat. 2706; Pub. L. 96–212, title II, §203(i), Mar. 17, 1980, 94 Stat. 108; Pub. L. 106–366, div. B, title V, §1509(a), Oct. 28, 2000, 114 Stat. 1530; Pub. L. 109–162, title VIII, §823(a), Jan. 5, 2006, 119 Stat. 3063, provided: ‘‘That, notwithstanding the provisions of section 245(c) of the Immigration and Nationality Act [subsec. (c) of this section], the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1969 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. Upon approval of such an application for adjustment of status, the Attorney General shall create a record of the alien’s admission for permanent residence as of a date thirty months prior to the filing of such an application or the date of his last arrival into the United States, whichever date is later. The provisions of this Act shall be applicable to the spouse and child of any alien described in this section, regardless of their citizenship and place of birth, who are residing with such alien in the United States, except that such spouse or child who has been battered or subjected to extreme cruelty may adjust to permanent resident status under this Act without demonstrating that he or she is residing with the Cuban spouse or parent in the United States. In acting on applications under this section with respect to spouses or children who have been battered or subjected to extreme cruelty, the Attorney General shall apply the provisions of section 204(a)(1)(J) [probably means section 204(a)(1)(J) of the Immigration and Nationality Act, which is classified to section 1154(a)(1)(J) of this title]. An alien who was the spouse of any Cuban alien described in this section and has resided with such spouse shall continue to be treated as such a spouse if later, 2 years after the date on which the Cuban alien dies (or, if later, 2 years after the date of enactment of Violence Against Women and Department of Justice Reauthorization Act of 2005) if there is demonstrated a connection between the termination of the marriage and the battering or extreme cruelty by the Cuban alien.

‘‘(c) In the case of any alien described in section 1 of this Act who prior to the effective date thereof [Nov. 2, 1966], has been lawfully admitted into the United States for permanent residence, the Attorney General shall, upon application, record his admission for permanent residence as of the date the alien originally arrived in the United States as a nonimmigrant or as a parolee, or a date thirty months prior to the date of enactment of this Act [Nov. 2, 1966], whichever date is later.

‘‘SEC. 3. Section 13 of the Act entitled ‘An Act to amend the Immigration and Nationality Act, and for other purposes’, approved October 3, 1965 (Public Law 89–236) [amending subsec. (b) and (c) of this section] is amended by adding at the end thereof the following new subsection: ‘‘(c) Nothing contained in subsection (b) of this section [amending subsec. (c) of this section] shall be construed to affect the validity of any application for adjustment under section 245 (the immigration provisions of this Act) prior to December 1, 1965, which would have been valid on that date; but as to all such applications the statutes or parts of statutes repealed or amended by this Act [Pub. L. 89–236] are, unless otherwise specifically provided therein, continued in force and effect.’’

‘‘SEC. 4. Except as otherwise specifically provided in this Act, the definitions contained in section 101(a) and (b) of the Immigration and Nationality Act [section 1101(a), (b) of this title] shall apply in the administration of this Act. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act [this chapter] or any other law relating to immigration, nationality, or naturalization.

‘‘SEC. 5. The approval of an application for adjustment of status to that of lawful permanent resident of the United States pursuant to the provisions of section 101(a), (b) of this title shall not require the Secretary of State to reduce the number of visas authorized to be issued in...
§ 1255a

TITLE 8—ALIENS AND NATIONALITY

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),

(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. 3801 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 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) to that of an alien lawfully admitted for permanent resi-
dence 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), and

(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States.

(D) Basic citizenship skills

(i) In general

The alien must demonstrate that he either—

(I) meets the requirements of section 1423(a) of this title (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or

(II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) Exception for elderly or developmentally disabled individuals

The Attorney General may, in his discretion, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older or who is developmentally disabled.

(iii) Relation to naturalization examination

In accordance with regulations of the Attorney General, an alien who has demonstrated under clause (i)(I) that the alien meets the requirements of section 1423(a) of this title may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under subchapter III.

(2) Termination of temporary residence

The Attorney General shall provide for termination of temporary resident status granted an alien under subsection (a)—

(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), 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)—

(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.

(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) may be filed—

(A) with the Attorney General, or

(B) with a qualified designated entity, but only if the applicant consents to the forwarding of the application to the Attorney General.

As used in this section, the term “qualified designated entity” means an organization or person designated under paragraph (2).

(2) Designation of qualified entities to receive applications

For purposes of assisting in the program of legalization provided under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, and community organizations, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 1159 or 1255 of this title, Public Law 89-732 [8 U.S.C. 1255 note], or Public Law 95-145 [8 U.S.C. 1255 note].
(3) Treatment of applications by designated entities

Each qualified designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(B) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(4) Limitation on access to information

Files and records of qualified designated entities relating to an alien’s seeking assistance or information with respect to filing an application under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

(5) Confidentiality of information

(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

(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). The Attorney General shall provide for an additional fee for filing an application for adjustment under subsection (b)(1) after the end of the first year of the 2-year period described in subsection (b)(1)(A).

(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

Provided, That such amounts shall be in addition to any funds appropriated to the Office of Special Counsel for such purposes:
(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)—

(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 marijuana.

(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 101(a)(1) of the Social Security Act [42 U.S.C. 1382a(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) and who can establish a prima facie case of eligibility to have his status adjusted under subsection (a) (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) 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), or attempted to file a complete application and application fee with an authorized legal alien 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 final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

(h) Temporary disqualification of newly legalized aliens from receiving certain public welfare assistance

(1) In general

During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), 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 residence status granted under subsection (a) shall not be considered (for pur-
poses of any law of a State or political sub-

division 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 de-

fined 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 as- 

sistance 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 in-

dividual (as defined in section 1314(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 subpara-

graph (B), for the purpose of providing aliens 

with eligibility to receive medical assis-

tance—

(i) paragraph (1) shall not apply,

(ii) aliens who would be eligible for med-

ical assistance but for the provisions of

paragraph (1) shall be deemed, for purposes 

of title XIX of the Social Security Act

[42 U.S.C. 1396 et seq.], to be so eligible, and

(iii) aliens lawfully admitted for tem-

porary residence under this section, such 

status not having changed, shall be consid-

ered 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)(B), (C)), aliens who, but

for subparagraph (A), would be ineligible for

medical assistance under paragraph (1), are

only eligible for such assistance with

respect to—

(I) emergency services (as defined for

purposes of section 1916(a)(2)(D) of the

Social Security Act [42 U.S.C. 1386b(a)(2)(D)])

and

(II) services described in section

1916(a)(2)(B) of such Act (relating to

service for pregnant women).

(ii) No restriction for exempt aliens and

children

The restrictions of clause (1) shall not

apply to aliens who are described in para-

graph (2) or who are under 18 years of age.

(C) Definition of medical assistance

In this paragraph, the term “medical as-

sistance” 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 para-

graph (1)(A)(i):

(A) The Richard B. Russell National

School Lunch Act [42 U.S.C. 1751 et seq.].

(B) The Child Nutrition Act of 1966 [42

U.S.C. 1771 et seq.].

(C) The The Carl D. Perkins Career and


2301 et seq.].

(D) Title I of the Elementary and Sec-


seq.].

(E) The Headstart-Follow Through Act [42

U.S.C. 2921 et seq.].

(F) Title I of the Workforce Innovation 

and Opportunity Act [29 U.S.C. 3111 et seq.].

(G) Title IV of the Higher Education Act of


seq.].

(H) The Public Service Act [42 U.S.C.

201 et seq.].

(I) Titles V, XVI, and XX [42 U.S.C. 701 et

seq., 1381 et seq., 1397 et seq.]; and parts B, D,

and E of title IV [42 U.S.C. 620 et seq., 651 et 

seq., 670 et seq.], of the Social Security Act

(and titles I, X, XIV, and XVI of such Act [42

U.S.C. 301 et seq., 1201 et seq., 1351 et seq.,

1381 et seq.] as in effect without regard to

the amendment made by section 301 of the


(5) Adjustment not affecting Fascell-Stone

benefits

For the purpose of section 501 of the Refugee

Education Assistance Act of 1980 (Public Law

96–122)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 adjust-

ment of status under this section.

(i) Dissemination of information on legaliza-

tion program

Beginning not later than the date designated 

by the Attorney General under subsection

(a)(1)(A), the Attorney General, in cooperation 

with qualified designated entities, shall broadly 

disseminate information respecting the benefits

which aliens may receive under this section and 

the requirements to obtain such benefits.

(June 27, 1952, ch. 477, title II, ch. 5, § 2145a, as 

added Pub. L. 99–603, title II, § 201(a)(1), Nov. 6,

1986, 100 Stat. 3355; Pub. L. 100–525, § 2(b)(1), Oct. 24,

1988, 102 Stat. 2611; Pub. L. 101–649, title VI, § 603(a)(13),

Nov. 29, 1990, 104 Stat. 5083, 5086; Pub. L. 102–140, title


III, §§ 308(g)(2)(B), (5)(A)(iii), 377(a), 384(d)(1), title


1 So in original.

2 So in original. Probably should be “(Public Law 96–422)”. 
§ 108(b), substituted “1423(a)” for “1423".

stituted “State program of assistance” for “program of aid to families with dependent children”.

stituted “assistance under a State program funded par. (C).

by inserting “(i)’’ after “except the Attorney General’’, was executed by making the insertion after “except

margins and substituted “subparagraph (B)” for “sub -
Training Partnership Act.”

stituted “The Job Training Partnership Act or title I of

of the alien to be used—

disclosure of information contained in the application

court may grant, an order authorizing

provisions to reflect the probable intent of Congress.

§ 308(g)(5)(A)(iii), inserted “(as in effect before October 1, 1996)” after “section 1232 of this title’’.

duced 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. 101–208, § 308(g)(5)(A)(iii), inserted “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 five years, or both.” in concluding provi-

sions.

Pub. L. 101–132, § 431(a)(2), which directed the inser-
tion after “Title 18”, was executed by making the insertion after “title 18” 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 se-
verely incapacitated; or “(ii) for criminal law enforcement purposes against the alien whose application is to be disclosed.”

Pub. L. 101–132, § 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)(5). Pub. L. 101–208, § 308(g)(2)(B), in-

ferred at end “Subclause (II) (prohibiting the waiver of

al cannot apply to an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Secu-

status under subsection (a) of this section” after “per-
maker closing provisions generally without change.

Subsec. (c)(5). Pub. L. 100–525, § 2(h)(1)(D)(i), inverted “or for the preparation of reports to Congress under section 404 of the Immigration Reform and Con-

Act of 1986” after “paragraph (b)’’.

Subsec. (d)(2)(B)(ii). Pub. L. 100–525, § 2(h)(1)(E)(ii), inverted “by an alien other than an alien who is eligi-

gible for benefits under title XVI of the Social Security Act or section 212 of Public Law 95–65 for the month in which such alien is granted lawful temporary residence

status under subsection (a) of this section” after “per-
maker closing provisions generally without change.

Effective Date of 2014 Amendment

Amendment by Pub. L. 113–128 effective on the first day of the first full program year after July 22, 2014 (July 1, 2015), see section 506 of Pub. L. 113–128, set out as an Effective Date note under section 101 of Title 29, Labor.

Effective Date of 2008 Amendment


110–246, set out as a note under section 1161 of Title 2, The Congress.

**Effective Date of 1998 Amendment**


**Effective Date of 1996 Amendments**

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.


Amendment by section 384(d)(1) of Pub. L. 104–208 applicable to offenses occurring on or after Sept. 30, 1996, see section 384(d)(2) of Pub. L. 104–208, set out as a note under section 1101 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**


**Effective Date of 1990 Amendment**

Amendment by section 603(a)(13) of Pub. L. 101–649 applicable to applications for adjustment of status made on or after June 1, 1991, see section 601(e)(2) of Pub. L. 101–649, set out as a note under section 1101 of this title.

**Effective Date of 1988 Amendment**


**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**

Pub. L. 104–416, title I, § 109, Oct. 25, 1994, 108 Stat. 4310, provided that: "Not later than June 30, 1996, the Commissioner of the Immigration and Naturalization Service shall prepare and submit to the Congress a report concerning the citizenship status of aliens legalized under section 245A and section 210 of the Immigration and Nationality Act (8 U.S.C. 1255a, 1160). Such report shall include the following information by district office for each national origin group:"

1. The number of applications for citizenship filed.
2. The number of applications approved.
3. The number of applications denied.
4. The number of applications pending.

**Family Unity**


(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, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C)) or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A)), who has entered the United States before such date, who resided in the United States on such date, and who is not lawfully admitted for permanent residence, the alien—

1. May not be removed or otherwise required to depart from the United States or be excluded from the United States or be 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)(1)(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 work permit.

(b) Eligible Immigrant and Legalized Alien Defined.—In this section:

1. The term 'eligible immigrant' means a qualified immigrant who is the spouse or unmarried child of a legalized alien.
2. The term 'legalized alien' means an alien lawfully admitted for temporary or permanent residence under section 210 of the Immigration and Nationality Act [8 U.S.C. 1160].
3. The term 'legalized alien' means an alien who is an eligible immigrant (as defined in subsection (b)(1)) as of May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C)) or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A)), who has entered the United States before such date, who resided in the United States on such date, and who is not lawfully admitted for permanent residence, the alien—

1. May not be removed or otherwise required to depart from the United States or be excluded from the United States or be 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)(1)(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 work permit.

(c) Application of Definitions.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section.

(d) Temporary Disqualification From Certain Public Welfare Assistance.—Aliens provided the benefits of this section by virtue of their relation to a legalized alien described in subsection (b)(2)(A) or (b)(2)(B) shall be ineligible for public welfare assistance in the same manner and for the same period as the legalized alien is ineligible for such assistance under section 245A(b)(1) or 210(f), respectively, of the Immigration and Nationality Act [8 U.S.C. 1255a(b), 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.
2. The alien is described in section 238(b)(2)(A) of the Immigration and Nationality Act [8 U.S.C. 1158(b)(2)(A)], or...
“§ 1255a  TITLE 8—ALIENS AND NATIONALITY

(3) [the alien] has committed an act of juvenile delinquency which if committed by an adult would be classified as—

1. a felony crime of violence that has an element the use or attempted use of physical force against another individual, or

2. a felony offense that by its nature involves a substantial risk that physical force against another individual may be used in the course of committing the offense.

(4) CONSTRUCTION.—Nothing in this section shall be construed as authorizing an alien to apply for admission or to be admitted to, the United States in order to obtain benefits under this section.

(5) EFFECTIVE DATE.—This section shall take effect on October 1, 1991; except that the delay in effectiveness of this section shall not be construed as reflecting a Congressional belief that the existing family fairness program should be modified in any way before such date.


USE OF CAPITAL ASSETS BY IMMIGRATION AND NATURALIZATION SERVICE

Pub. L. 101–162, title II, Nov. 21, 1989, 103 Stat. 1000, provided: “That for fiscal year 1990 and hereafter capital assets acquired by the Immigration Legalization account may be made available for the general use of the Immigration and Naturalization Service after they are no longer needed for immigration legalization purposes.”

ADJUSTMENT TO LAWFUL RESIDENT STATUS OF CERTAIN NATIONALS OF COUNTRIES FOR WHICH EXTENDED VOLUNTARY DEPARTURE HAS BEEN MADE AVAILABLE

Pub. L. 100–204, title IX, § 902, Dec. 22, 1987, 101 Stat. 1400, provided that:

(a) ADJUSTMENT OF STATUS.—The status of any alien who is a national of a foreign country the nationals of which were provided (or allowed to continue in) ‘‘extended voluntary departure’’ by the Attorney General on the basis of a nationality group determination at any time during the 5-year period ending on November 1, 1987, shall be adjusted by the Attorney General to that of an alien lawfully admitted for temporary residence if the alien—

(1) applies for such adjustment within two years after the date of the enactment of this Act [Dec. 22, 1987];

(2) establishes that (A) the alien entered the United States before July 21, 1984, and (B) has resided continuously in the United States since such date and through the date of the enactment of this Act;

(3) establishes continuous physical presence in the United States (other than brief, casual, and innocent absences) since the date of the enactment of this Act;

(4) in the case of an alien who entered the United States as a nonimmigrant before July 21, 1984, establishes that (A) the alien’s period of authorized stay as a nonimmigrant expired not later than six months after such date through the passage of time or (B) the alien applied for asylum before July 21, 1984; and

(5) meets the requirements of section 245(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1255a(a)(4)).

The Attorney General shall provide for the acceptance and processing of applications under this subsection by not later than 90 days after the date of the enactment of this Act.

(b) STATUS AND ADJUSTMENT OF STATUS.—The provisions of subsections (b), (c), (d), (f), (g), (h), and (i) of section 245A of the Immigration and Nationality Act (8 U.S.C. 1255(a)) 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 265A(a) of such Act.

Similar provisions were contained in Pub. L. 100–202, § 101(a) [title IX, §§ 901, 902], Dec. 22, 1987, 101 Stat. 1329, 1329–43.

PROCEEDURES FOR PROPERTY ACQUISITION OR LEASING

Pub. L. 99–663, title II, § 201(c)(1), Nov. 6, 1986, 100 Stat. 3403, provided that notwithstanding Federal Property and Administrative Services Act of 1949 [see chapters 1 to 11 of Title 40, Public Buildings, Property, and Works, and Division C (except section 1301 of title 40)] of subtitle I of title 41, Public Contracts, the Attorney General was authorized for period of up to two years after effective date of legalization program to extend from appropriation provided for administration and enforcement of this chapter, such amounts necessary for leasing or acquisition of property in fulfillment of section 201 of Pub. L. 99–663, which enacted this section and amended sections 662, 672, and 673 of Title 42, The Public Health and Welfare.

USE OF RETIRED FEDERAL EMPLOYEES

Pub. L. 99–663, title II, § 201(c)(2), Nov. 6, 1986, 100 Stat. 3404, as amended by Pub. L. 100–525, § 2(1)(2), Oct. 24, 1988, 102 Stat. 2612, provided that: “Notwithstanding any other provision of law, the retired or retainer pay of a member or former member of the Armed Forces of the United States or the pay and annuity of a retired employee of the Federal Government who retired on or before January 1, 1986, shall not be reduced while such individual is temporarily employed by the Immigration and Naturalization Service for a period of not to exceed 18 months to perform duties in connection with the adjustment of status of aliens under this section [enacting this section and amending sections 662, 672, and 673 of Title 42, The Public Health and Welfare]. The Public Health and Welfare Service shall not temporarily employ more than 300 individuals under this paragraph. Notwithstanding any other provision of law, the annuity of a retired employee of the Federal Government shall not be increased or redetermined under chapter 83 or 84 of title 5, United States Code, as a result of a period of temporary employment under this paragraph.”

CUBAN-HAITIAN ADJUSTMENT

Pub. L. 99–663, title II, § 202, Nov. 6, 1986, 100 Stat. 3404, as amended by Pub. L. 100–525, § 2(1), Oct. 24, 1988, 102 Stat. 2612, provided that the status of an alien who received an immigration designation as a Cuban/Haitian Entrant as of Nov. 6, 1986, or who was a national of Cuba or Haiti, who arrived in the United States before Jan. 1, 1982, could be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence if the alien applied for such adjustment within two years after Nov. 6, 1986, and met certain other eligibility requirements.

STATE LEGALIZATION IMPACT-ASSISTANCE GRANTS

§ 1255b  

APPLICATION OF CERTAIN STATE ASSISTANCE PROVISIONS


REPORTS ON LEGALIZATION PROGRAM

Pub. L. 99–603, title IV, §404, Nov. 6, 1986, 100 Stat. 3442, provided that:

“(a) In General.—The President shall transmit to Congress two reports on the legalization program established under section 245A of the Immigration and Nationality Act [8 U.S.C. 1255a].

“(b) Initial Report Describing Legalized Aliens.—The first report, which shall be transmitted not later than 18 months after the end of the application period for adjustment to lawful temporary residence status under the program, shall include a description of the population whose status is legalized under the program, including—

“(1) geographical origins and manner of entry of these aliens into the United States,

“(2) their demographic characteristics, and

“(3) a general profile and characteristics.

“(c) Second Report on Impact of Legalization Program.—The second report, which shall be transmitted not later than three years after the date of transmittal of the first report, shall include a description of—

“(1) the impact of the program on State and local governments and on public health and medical needs of individuals in the different regions of the United States,

“(2) the patterns of employment of the legalized population, and

“(3) the participation of legalized aliens in social service programs.”

[Functions of President under section 404 of Pub. L. 99–603 relating to initial report described in section 404(b) delegated to Secretary of Homeland Security and to second report described in section 404(c) delegated to Secretary of Labor by sections 1(c) and 2(c) of Pub. L. 99–603, title IV, §403(c), Nov. 6, 1986, 100 Stat. 3432; Pub. L. 104–208, div. C, title VI, §671(b)(4), Sept. 30, 1996, 110 Stat. 3009–721.]

§ 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)(B)(i) or (ii) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(A)(i), (ii), (B)(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 admissible for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], and that such action would not be contrary to the national welfare, safety, or security, the Attorney General, in his discretion, may record the alien’s lawful admission for permanent residence as of the date the order of the Attorney General approving the application for adjustment of status is made.

(c) Report to the Congress; resolution not favoring adjustment of status; reduction of quota

A complete and detailed statement of the facts and pertinent provisions of law in the case shall be reported to the Congress with the reasons for such adjustment of status. Such reports shall be submitted on the first day of each calendar month in which Congress is in session. The Secretary of State shall, if the alien was classifiable as a quota immigrant at the time of his entry, reduce by one unit 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. 757, 66 Stat. 163, 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.
date 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 subsecs. (a) and (b) of section 1101 of this title apply to this section, see section 14 of Pub. L. 85–316, set out as a note under section 1101 of this title.

**§ 1256. Recission of adjustment of status; effect upon naturalized citizen**

(a) If, at any time within five years after the status of a person has been otherwise adjusted under the provisions of section 1255 or 1259 of this title or any other provision of law to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall rescind the action taken granting an adjustment of status to such person and cancelling 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, 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, §378(a), inserted at end "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."

Pub. L. 104–208, §308(e)(1)(H), substituted "removal" for "deportation."

1994—Subsec. (a). Pub. L. 103–416 struck out first three sentences which read as follows: "If, at any time within five years after the status of a person has been adjusted under the provisions of section 1254 of this title or under section 19(c) of the Immigration Act of February 5, 1917, to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall submit to the Congress a complete and detailed statement of the facts and pertinent provisions of law in the case. Such reports shall be submitted on the first and fifteenth day of each calendar month in which Congress is in session. If during the session of the Congress at which a case is reported, or prior to the close of the session of the Congress next following the session at which a case is reported, the Congress passes a concurrent resolution withdrawing suspension of deportation, the person shall thereupon become subject to all provisions of this chapter to the same extent as if the adjustment of status had not been made."

**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.

Pub. L. 104–208, div. C, title III, §378(b), Sept. 30, 1996, 110 Stat. 3009–649, 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 309(a) of this division [set out as a note under section 1101 of this title])."

**Effective Date of 1994 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.

**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.

**§ 1257. Adjustment of status of certain resident aliens to nonimmigrant status; exceptions**

(a) The status of an alien lawfully admitted for permanent residence shall be adjusted by the Attorney General, under such regulations as he
may prescribe, to that of a nonimmigrant under paragraph (15)(A), (E), or (G) of section 1101(a) of this title, if such alien had at the time of admission or subsequently acquires an occupational status which would, if he were seeking admission to the United States to entitle him to a nonimmigrant status under such paragraphs. As of the date of the Attorney General’s order making such adjustment of status, the Attorney General shall cancel the record of the alien’s admission for permanent residence, and the immigrant status of such alien shall thereby be terminated.

(b) The adjustment of status required by subparagraph (J) of section 1101(a)(15) of this title or section 1101(a)(15) of this title and has not received a waiver thereof, unless such alien applies to have the alien’s classification changed from classification under subparagraph (J) of section 1101(a)(15) of this title to a classification under subparagraph (A) or (G) of such section, and

(4) an alien admitted as a nonimmigrant visitor without a visa under section 1182(l) of this title or section 1187 of this title.

(b) The exceptions specified in paragraphs (1) through (4) of subsection (a) 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


1996—Pub. L. 104–208, § 301(b)(2), in introductory provisions, inserted “and who is not inadmissible under section 1122(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)” after “maintain that status”.


1981—Pub. L. 97–116 permitted certain exchange visitors who are not subject to a requirement of returning to their home countries for two years, or who have had such requirement waived, to adjust to a visitor or diplomat status, prohibited the adjustment of nonimmigrant status by fiancee or fiance nonimmigrants, and specifically precluded the change of status with respect to doctors who have entered the United States as exchange visitors for graduate medical training, even if they have received a waiver of the two-year foreign residence requirement.

1961—Pub. L. 87–256 inserted references to paragraph (15)(J) of section 1101(a) of this title in two places.

(b) The exceptions specified in paragraphs (1) through (4) of subsection (a) 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


1996—Pub. L. 104–208, § 301(b)(2), in introductory provisions, inserted “and who is not inadmissible under section 1122(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)” after “maintain that status”.


1981—Pub. L. 97–116 permitted certain exchange visitors who are not subject to a requirement of returning to their home countries for two years, or who have had such requirement waived, to adjust to a visitor or diplomat status, prohibited the adjustment of nonimmigrant status by fiancee or fiance nonimmigrants, and specifically precluded the change of status with respect to doctors who have entered the United States as exchange visitors for graduate medical training, even if they have received a waiver of the two-year foreign residence requirement.

1961—Pub. L. 87–256 inserted references to paragraph (15)(J) of section 1101(a) of this title in two places.

Effective Date of 1996 Amendment

Amendment by section 301(b)(2) 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 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.

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 399 of Pub. L. 104–208, set out as a note under section 1101 of this title.

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 1990 AMENDMENT

Amendment by Pub. L. 101–649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT


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.

APPLICABILITY OF NUMERICAL LIMITATIONS


§ 1260. Removal of aliens falling into distress

The Attorney General may remove from the United States any alien who falls into distress or who needs public aid from causes arising subsequent to his entry, and is desirous of being so removed, to the native country of such alien, or to the country from which he came, or to the country of which he is a citizen or subject, or to any other country to which he wishes to go and which will receive him, at the expense of the appropriation for the enforcement of this chapter. Any alien so removed shall be ineligible to apply for or receive a visa or other documentation for readmission, or to apply for admission to the United States except with the prior approval of the Attorney General.

(June 27, 1952, ch. 477, title II, ch. 5, § 250, 66 Stat. 219.)

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
§ 1281

PART VI—SPECIAL PROVISIONS RELATING TO ALIEN CREWMEN

§ 1281. Alien crewmen

(a) Arrival; submission of list; exceptions

Upon arrival of any vessel or aircraft in the United States from any place outside the United States it shall be the duty of the owner, agent, consignee, master, or commanding officer of a vessel shall secure services of an alien crewman described in section 1101(a)(15)(D)(i) of this title to perform longshore work not included in the normal operation and service on board the vessel under section 1288 of this title, the owner, agent, consignee, master, or commanding officer shall pay to the Commissioner the sum of $5,000, and such fine shall be a lien against the vessel. No such vessel or aircraft shall be granted clearance from any port at which it arrives pending the determination of the question of the liability to the payment of such fine, and if such fine remains unpaid. No such fine shall be remitted or refunded. Clearance may be granted prior to the determination of such question upon deposit of a bond or a sum sufficient to cover such fine.

(e) Regulations

The Attorney General is authorized to prescribe by regulations the circumstances under which a vessel or aircraft may at any time be found the sum of $10" and inserted after first sentence "In the case that any owner, agent, consignee, master, or commanding officer shall pay to the Commissioner the sum of $200" for "pay to the collector of customs of any customs district in which the vessel or aircraft may at any time be found the sum of $10; and inserted after first sentence "In the case that any owner, agent, consignee, master, or commanding officer shall pay to the collector of customs the sum of $200 for "pay to the collector of customs the sum of $200"

(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, any case 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 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.

(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), such owner, agent, consignee, master, or commanding officer, shall, if required by the Attorney General, pay to the Commissioner the sum of $200 for each alien concerning whom such lists are not delivered or such reports are not made as required in the preceding subsections. In the case that any owner, agent, consignee, master, or commanding officer of a vessel shall secure services of an alien crewman described in section 1101(a)(15)(D)(i) of this title to perform longshore work not included in the normal operation and service on board the vessel under section 1288 of this title, the owner, agent, consignee, master, or commanding officer shall pay to the Commissioner the sum of $5,000, and such fine shall be a lien against the vessel.

Amendments


1990—Subsec. (d). Pub. L. 101-649 substituted "pay to the Commissioner the sum of $200" for "pay to the collector of customs the sum of $200; and inserted after first sentence "In the case that any owner, agent, consignee, master, or commanding officer shall pay to the collector of customs the sum of $200"

Effective Date of 1990 Amendment

Amendment by Pub. L. 101-649 applicable to services performed on or after 180 days after Nov. 29, 1990, see section 203(d) of Pub. L. 101-649, set out as a note under section 1101 of this title.
§ 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), and for a period of time, in any event, not to exceed—

(1) the period of time (not exceeding twenty-nine days) during which the vessel or aircraft on which he arrived remains in port, if the immigration officer is satisfied that the crewman intends to depart on the vessel or aircraft on which he arrived; or

(2) twenty-nine days, if the immigration officer is satisfied that the crewman intends to depart, within the period for which he is permitted to land, on a vessel or aircraft other than the one on which he arrived.

(b) Revocation; expenses of detention

Pursuant to regulations prescribed by the Attorney General, any immigration officer may, in his discretion, if he determines that an alien is not a bona fide crewman, or does not intend to depart on the vessel or aircraft which brought him, revoke the conditional permit to land which was granted such crewman under the provisions of subsection (a)(1), 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) shall be fined under title 18 or imprisoned not more than 6 months, or both.

Section 1282(a) of Pub. L. 101–649, set out as a note under section 1282 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 of 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.)

§ 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 completedly 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, shall pay to the Commissioner the sum of $3,000 for each alien crewman in respect to whom any such failure occurs. No such vessel or aircraft shall be granted clearance pending the determination of the liability to the payment of such fine, or while the fine remains unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the Commissioner. The Attorney General may, upon application in writing therefor, mitigate such penalty to not less than $500 for each alien crewman in respect to 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.

(c) Removal on other than arriving vessel or aircraft; expenses

If the Attorney General finds that removal of an alien crewman under this section on the vessel or aircraft on which he arrived is impracticable or impossible, or would cause undue hardship to such alien crewman, he may cause the alien crewman to be removed from the port of arrival or any other port on another vessel or aircraft of the same transportation line, unless the Attorney General finds this to be impracticable. All expenses incurred in connection with such removal, including expenses incurred in transferring an alien crewman from one place in the United States to another under such conditions and safeguards as the Attorney General shall impose, shall be paid by the owner or owners of the vessel or aircraft on which the alien arrived in the United States. The vessel or aircraft on which the alien arrived shall not be granted clearance until such expenses have been paid or their payment guaranteed to the satisfaction of the Attorney General. An alien crewman who is transferred within the United States in accordance with this subsection shall not be regarded as having been landed in the United States.


AMENDMENTS

1996—Pub. L. 104–208 substituted “remove” for “deport” in subsecs. (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” for “Commissioner the sum of $3,000” for “collector of customs of the customs district in which the port of arrival is located or in which the failure to comply with the order of the officer occurs the sum of $1,000” and “$500” for “$300”.

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 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.

§ 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 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 $1,000” for “‘collector of customs of the customs district in which the违法 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
§ 1288. Limitations on performance of longshore work by alien crewmen

(a) In general

For purposes of section 1101(a)(15)(D)(i) of this title, the term “normal operation and service on board a vessel” does not include any activity that is longshore work (as defined in subsection (b)), except as provided under subsection (c), (d), or (e).

(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) shall not apply to a particular activity of longshore work in and about a local port if—

(A)(i) there is in effect in the local port one or more collective bargaining agreements each covering at least 30 percent of the number of individuals employed in performing longshore work and (ii) each such agreement (covering such percentage of longshore workers) permits the activity to be performed by alien crewmen under the terms of such agreement; or

(B) there is no collective bargaining agreement in effect in the local port covering at least 30 percent of the number of individuals employed in performing longshore work, and an employer of alien crewmen (or the employer’s designated agent or representative) has filed with the Secretary of Labor at least 14 days before the date of performance of the activity (or later, if necessary due to an unanticipated emergency, but not later than the date of performance of the activity) an attestation setting forth facts and evidence to show that—

(i) the performance of the activity by alien crewmen is permitted under the prevailing practice of the particular port as of the date of filing of the attestation and that the use of alien crewmen for such activity—

(I) is not during a strike or lockout in the course of a labor dispute, and

(II) is not intended or designed to influence an election of a bargaining representative for workers in the local port; and

(ii) notice of the attestation has been provided by the owner, agent, consignee, master, or commanding officer to the bargaining representative of longshore workers in the local port, or, where there is no such bargaining representative, notice of the 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 who 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) is made and, for each such entity, a copy of the entity’s attestation under paragraph (1) or subsection (d)(1) (and accompanying documentation) and each such list filed by the entity.

(B)(i) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting an entity’s failure to meet conditions attested to, an entity’s misrepresentation of a material fact in an attestation, or, in the case described in the last sentence of paragraph (1), whether the performance of the particular activity is or is not described in paragraph (1)(B)(i).

(ii) Complaints may be filed by any aggrieved person or organization (including bargaining
representatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary).

(iii) The Secretary shall promptly conduct an investigation under this subparagraph if there is reasonable cause to believe that an entity fails to meet conditions attested to, an entity has misrepresented a material fact in the attestation, or, in the case described in the last sentence of paragraph (1), the performance of the particular activity is not described in paragraph (1)(B)(i).

(C)(i) If the Secretary determines that reasonable cause exists to conduct an investigation with respect to an attestation, a complaining party may request that the activities attested to by the employer cease during the hearing process described in subparagraph (D), if such a request is made, the attesting employer shall be issued notice of such request and shall respond within 14 days to the notice. If the Secretary makes an initial determination that the complaining party's position is supported by a preponderance of the evidence submitted, the Secretary shall require immediately that the employer cease and desist from such activities until completion of the process described in subparagraph (D).

(ii) If the Secretary determines that reasonable cause exists to conduct an investigation with respect to a matter under the last sentence of paragraph (1), a complaining party may request that the activities of the employer cease during the hearing process described in subparagraph (D) unless the employer files with the Secretary of Labor an attestation under paragraph (1). If such a request is made, the employer shall be issued notice of such request and shall respond within 14 days to the notice. If the Secretary makes an initial determination that the complaining party's position is supported by a preponderance of the evidence submitted, the Secretary shall require immediately that the employer cease and desist from such activities until completion of the process described in subparagraph (D) unless the employer files with the Secretary of Labor an attestation under paragraph (1).

(D) Under the process established under subparagraph (B), the Secretary shall provide, within 180 days after the date a complaint is filed (or later for good cause shown), for a determination as to whether or not a basis exists to make a finding described in subparagraph (E). The Secretary shall provide notice of such determination to the interested parties and an opportunity for a hearing on the complaint within 60 days of the date of the determination.

(E)(i) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an entity has failed to meet a condition attested to or has made a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and, 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), this subsection shall not apply to longshore work performed in the State of Alaska.

(d) State of Alaska exception

(1) Subsection (a) shall not apply to a particular activity of longshore work at a particular location in the State of Alaska if an employer of alien crewmen has filed an attestation with the Secretary of Labor at least 30 days before the date of the first performance of the activity (or anytime up to 24 hours before the first performance of the activity, upon a showing that the employer could not have reasonably anticipated the need to file an attestation for that location at that time) setting forth facts and evidence to show that—

(A) the employer will make a bona fide request for United States longshore workers who are qualified and available in sufficient numbers to perform the activity at the particular time and location from the parties to whom notice has been provided under clauses (ii) and (iii) of subparagraph (D), except that—

(i) wherever two or more contract stevedoring companies have signed a joint collective bargaining agreement with a single labor organization described in subparagraph (D)(i), the employer may request longshore workers from only one of such contract stevedoring companies, and

(ii) a request for longshore workers to an operator of a private dock may be made only for longshore work to be performed at that dock and only if the operator meets the requirements of section 932 of title 33;

(B) the employer will employ all those United States longshore workers made available in response to the request made pursuant to subparagraph (A) who are qualified and available in sufficient numbers and who are needed to perform the longshore activity at the particular time and location;

(C) the use of alien crewmembers for such activity is not intended or designed to influence an election of a bargaining representative for workers in the State of Alaska; and

(D) notice of the attestation has been provided by the employer to—

(i) labor organizations which have been recognized as exclusive bargaining rep-
§ 1288

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 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 does not intend to make available United States longshore workers to the location at which the longshore work is to be performed.

(C) If a party if that party has notified the employer in writing that it does not intend to make available United States longshore workers from a party if that party has notified the employer in writing that it does not intend to make available United States longshore workers to the location at which the longshore work is to be performed.

(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 who are qualified and available in sufficient numbers to perform the longshore activity to the location at which the longshore work is to be performed, then the employer’s obligations to that party under subparagraph (A) and (B) of paragraph (1) shall begin 60 days following the issuance of such notice.

(B) In a party that has provided such notice subsequently notifies the employer in writing that it is prepared to make available United States longshore workers who are qualified and available in sufficient numbers to perform the longshore activity to the location at which the longshore work is to be performed, the employer shall not be required to request longshore workers from a party if that party has notified the employer in writing that it does not intend to make available United States longshore workers to the location at which the longshore work is to be performed.

(4) Subject to the determination of the Secretary of Labor, and

(a) the term “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) 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.

(2) Establishment of list

The Secretary of State shall, in accordance with section 553 of title 5, compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country. By not later than 90 days after November 29, 1990, the Secretary shall publish a notice of proposed rulemaking to establish such list. The Secretary shall first publish 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.

(1962 ed., §§ 553)

REFERENCES IN TEXT


The National Labor Relations Act, referred to in subsec. (d)(1)(i), is act July 5, 1935, ch. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104–208 substituted “section 5108(b), 5104, 5107, or 5109 of this title” for “section 5108(b), 5104, or 5107 of this title”.


See 1993 Amendment note below.

1993—Subsec. (a). Pub. L. 103–206, §§233(b)(1), substituted “subsection (c), (d), or (e)” for “subsection (c) or subsection (d)”.

Pub. L. 103–198, §§8(b)(1), which amended subsec. (a) identically, was repealed by Pub. L. 103–416, §219(gg).


Pub. L. 103–198, §8(b)(2), which amended subpar. (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


EFFECTIVE DATE OF 1991 AMENDMENT


EFFECTIVE DATE

Section applicable to services performed on or after 180 days after Nov. 29, 1990, see section 203(d) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.

§1302. Registration of aliens

(a) It shall be the duty of every alien now or hereafter in the United States, who (1) is fourteen years of age or older, (2) has not been registered and fingerprinted under section 1201(b) of this title or section 30 or 31 of the Alien Registration Act, 1940, and (3) remains in the United States for thirty days or longer, to apply for...
§ 1303

TITLE 8—ALIENS AND NATIONALITY

Page 350

registration and to be fingerprinted before the expiration of such thirty days.

(b) It shall be the duty of every parent or legal guardian of any alien now or hereafter in the United States, who (1) is less than fourteen years of age, (2) has not been registered under section 1201(b) of this title or section 30 or 31 of the Alien Registration Act, 1940, and (3) remains in the United States for thirty days or longer, to apply for the registration of such alien before the expiration of such thirty days. Whenever any alien attains his fourteenth birthday in the United States he shall, within thirty days thereafter, apply in person for registration and to be fingerprinted.

(c) The Attorney General may, in his discretion and on the basis of reciprocity pursuant to such regulations as he may prescribe, waive the requirement of fingerprinting specified in subsections (a) and (b) in the case of any nonimmigrant.


References in Text

The Alien Registration Act, 1940, referred to in subsecs. (a) and (b), is act June 28, 1940, ch. 439, 54 Stat. 670, as amended. Sections 30 and 31 of that act were classified to sections 451 and 452 of this title and were repealed by section 403(a)(39) of act June 27, 1952.

Amendments

1994—Subsec. (c). Pub. L. 104–416 substituted “subsections (a) and (b)” for “subsection (a) and (b)”.


1986—Pub. L. 99–653, § 9, as amended by Pub. L. 100–525, added subsec. (c). As originally enacted, Pub. L. 99–653, § 9, amended subsec. (a) of this section by striking out “section 1201(b) of this title or” after “registered and fingerprinted under”, Pub. L. 100–525 revised Pub. L. 99–653, § 9, so as to add subsec. (c) and eliminate the original amendment of subsec. (a), thereby restoring the words “section 1201(b) of this title or”. See Effective Date of 1988 Amendment note below.

Effective Date of 1994 Amendment


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.

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 nonimmigrant under section 1101(a)(15)(A) or (a)(15)(G) of this title until the alien ceases to be entitled to such a nonimmigrant status.


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, Transfer of Functions, and Treatment of Related References

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 Dened 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.

§ 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). 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.

§ 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.

References in Text

The Alien Registration Act, 1940, referred to in subsec. (d), is act June 28, 1940, ch. 611, 54 Stat. 670, as amended. Title III of that act, which related to register and fingerprinting of aliens, was classified to sections 451 to 460 of this title, was repealed by section 1307(f)(2) of this title, and (2) after “only”.

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–525 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 1301 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.


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.

§ 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) 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). 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) (within the meaning of paragraph (1) of this subsection).


AMENDMENTS


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 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.

§ 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 in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (B) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if such person establishes to the satisfaction of the Attorney General that the existence of the 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 determ ination 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.


AMENDMENTS


Subsec. (a). Pub. L. 101–649, § 603(a)(15)(A), substituted “excludable under section 1182(a)(1) of this title” for...
§ 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 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 and every 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), 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 con-
signee 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. 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(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 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 such failure occurs.”

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 $3,000”.

Subsec. (c). Pub. L. 103–416, §209(a)(4), (5), substituted “Except as provided in subsection (e), 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 such failure occurs.”

Pub. L. 103–416, §209(a)(1), which directed that subsec. (d) be amended by substituting “a fine of $3,000” for “the sum of $3000”, was executed in the first sentence by making the substitution for “the sum of $3,000”, to reflect the probable intent of Congress.

Pub. L. 105–416, §209(a)(3), in second sentence substituted “an amount” for “a sum” before “sufficient to cover such fine”.


Subsec. (b). Pub. L. 101–649, §543(a)(10)(A), substituted “Commissioner the sum of $3,000” for “collector of customs of the customs district in which the port of arrival is located the sum of $1,000”.

Subsec. (c). Pub. L. 101–649, §201(b)(2), inserted “valid passport or” before “visa was required”.

Subsec. (d). Pub. L. 101–649, §543(a)(10)(B), substituted “Commissioner the sum of $3,000” for “collector of customs of the customs district in which the port of arrival is located the sum of $1,000” in first sentence and “Commissioner” for “collector of customs” in second sentence.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(c)(3), (e)(13) 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.


§ 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; and
(ii) in the case of a violation of subparagraph (A)(ii), (iii), (iv), or (v)(II), be fined under title 18, imprisoned not more than 5 years, or both; and
(iii) in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under title 18, or both.

(C) It is not a violation of clauses (i) or (ii) or (iii) of subparagraph (A), or of clause (iv) of subparagraph (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, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the 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; and
(B) in the case of—
(i) an offense committed with the intent or with reason to believe that the alien unlawfully 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 commercial advantage or private financial gain, or
(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry, be fined under title 18 and shall be imprisoned, in the case of a first or second violation of

1So in original. Probably should be “clause”.

Effective Date of 1994 Amendment

Effective Date of 1991 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.
paragraph (B)(iii), not more than 10 years, in the case of a first or second violation of paragraph (B)(i) or (B)(ii), not less than 3
nor more than 10 years, and for any other violation, 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 1324a(h)(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 commercial 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, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a), 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 subsection shall be governed by the provisions of chapter 46 of title 18 relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons 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 subsection (a) 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 remained in the United States in violation of law:

(A) Records of any judicial or administrative proceeding in which that alien’s status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(B) Official records of the Service or of the Department of State showing that the alien

(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) 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.

(AMENDMENTS)


2000—Subsec. (b). Pub. L. 106–185 inserted heading and amended text of subsec. (b) generally, substituting present provisions for provisions relating to conveyances subject to seizure and forfeiture, exceptions, off-
cers and authorized persons, disposition of forfeited conveyances, and suits and actions.


Subsec. (a)(1)(A)(iv). Pub. L. 104–208, §203(b)(1), which directed the amendment of subsec. (a)(1)(A) by adding cl. (v) at end, was executed by adding cl. (v) after cl. (iv), to reflect the probable intent of Congress.

Subsec. (a)(1)(B)(i). Pub. L. 104–208, §203(a), (b)(2)(A), inserted “or (v)(I) 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” after “subparagraph (A)(i)”.

Subsec. (a)(1)(B)(i)(I), (iv). Pub. L. 104–208, §203(b)(2)(C), (D), substituted “(iv)”, or (v)” for “or (iv)’”.

Subsec. (a)(2). Pub. L. 104–208, §203(d), substituted “for each alien in respect to whom a violation of this paragraph occurs” for “for each transaction constituting a violation of this paragraph, regardless of the number of aliens involved” in introductory provisions.

Subsec. (a)(2)(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)(i) or (B)(ii), not less than 5 nor more than 10 years, in the case of a first or second violation of subparagraph (B)(ii), imprisoned not 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)(i), imprisoned not more than 10 years, or both; or in the case of a violation of subparagraph (B)(i) or (B)(ii), imprisoned not more than 5 years, or both.”

Subsec. (a)(2)(B)(i). Pub. L. 104–208, §203(c), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “a second or subsequent offense.”


Subsec. (e). Pub. L. 104–208, §322, §60221(1)(f), as amended by Pub. L. 104–208, §6761(a)(1), substituted “shall be punished 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, for each alien in respect to whom any violation of this paragraph occurs” in concluding provisions.

Pub. L. 103–322, §60024(1)(A)(E), (G), designated existing provisions of par. (1) as subpar. (A) of par. (1), redesignated subpars. (A) to (D) of former par. (1) as cls. (i) to (iv), respectively, of subpar. (A), and added subpar. (B).

Subsec. (a)(2)(B). Pub. L. 103–322, §60024(2), in concluding provisions, substituted “or in the case of a violation of subparagraph (B)(ii), imprisoned not more than 10 years, or both; or in the case of a violation of subparagraph (B)(i) or (B)(ii), imprisoned not more than five years, or both.” for “or imprisoned not more than five years, or both”.

1988—Subsec. (a)(1). Pub. L. 100–525, §2(d)(i), 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;

“(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 fined not more than $2,000 and, upon conviction thereof, be imprisoned 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 “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)(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 “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 “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 probably that the conveyance had been seize 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 lienholder 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 2462 of title 28, Judiciary and Judicial Procedure], this Act [see Short Title of 2000 Amendment note set out under section 981
§ 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)) 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) 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).

(2) Continuing employment

It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

(3) Defense

A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

(4) Use of labor through contract

For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after November 6, 1986, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

(5) Use of State employment agency documentation

For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) 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)) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) 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) with respect to the employment of the individual,

the subsequent employer shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of the employee and shall not be liable for civil penalties described in subsection (e)(5).

(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) and the individual is an alien

Note: The text continues with further details and context related to immigration law and the enforcement of employment regulations.
§ 1324a

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).

(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) 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 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 has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such another document.

(B) Documents establishing both employment authorization and identity

A document described in this subparagraph is an individual’s—

(i) United States passport; ¹

(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 for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section; or

(ii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver’s license) referred to in clause (i), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

(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

¹So in original. Probably should be followed by "or".
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—

(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).

(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) 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) 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) 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.
§ 1324a

(D) Privacy of information

The system must protect the privacy and security of personal information and identifiers utilized in the system.

(E) Limited denial of verification

A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

(F) Limited use for law enforcement purposes

The system may not be used for law enforcement purposes, other than for enforcement of this chapter or sections 1001, 1028, 1546, and 1621 of title 18.

(G) Restriction on use of new documents

If the system requires individuals to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this chapter (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18) nor to be carried on one’s person.

(3) Notice to Congress before implementing changes

(A) In general

The President may not implement any change under paragraph (1) unless at least—

(i) 60 days,

(ii) one year, in the case of a major change described in subparagraph (D)(iii), or

(iii) two years, in the case of a major change described in clause (i) or (ii) of subparagraph (D),

before the date of implementation of the change. The President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the Committee on the Judiciary of the Senate a written report setting forth the proposed change. If the President proposes to make any change regarding social security account number cards, the President shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the 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 referree 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) are such cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act [42 U.S.C. 405(c)(2)(D)].

(E) General revenue funding of social security card changes

Any costs incurred in developing and implementing any change described in subparagraph (D)(iii) for purposes of this subsection shall not be paid for out of any trust fund established under the Social Security Act [42 U.S.C. 301 et seq.].

(4) Demonstration projects

(A) Authority

The President may undertake demonstration projects (consistent with paragraph (2)) of different changes in the requirements of subsection (b). 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),
(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) 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) 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), the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) Conduct of hearing

Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General’s imposition of the order shall constitute a final and unappealable order.

(C) Issuance of orders

If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated subsection (a) or (g)(1), the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (4), (5), or (6).

(4) Cease and desist order with civil money penalty for hiring, recruiting, and referral violations

With respect to a violation of subsection (a)(1)(A) or (a)(2), the order under this subsection—
(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of—
(i) not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred,
(ii) not less than $2,000 and not more than $5,000 for each such alien in the case of a person or entity previously subject to one order under this paragraph, or
(iii) not less than $3,000 and not more than $10,000 for each such alien in the case of a person or entity previously subject to more than one order under this paragraph; and
(B) may require the person or entity—
(i) to comply with the requirements of subsection (b) (or subsection (d) if applicable) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years, and
(ii) to take such other remedial action as is appropriate.

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(5) Order for civil money penalty for paperwork violations

With respect to a violation of subsection (a)(1)(B), 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), the order under this subsection may provide for the remedy described in subsection (g)(2).

(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 vacate (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) 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 any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

(2) Preemption

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), 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), to have violated paragraph (1) shall be subject to a civil penalty of $3,000 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


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)(A). Pub. L. 104–208, §412(a)(1)(A), redesignated cl. (v) as (ii), substituted "other alien registration card, or other document designated by the Attorney General, if the document" for "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 not expired, or other personal identification number, or other document designated cl. (v) as (ii), substituted '', alien registration card, or other document designated by the Attorney General, if the document".

Subsec. (b)(1)(B). Pub. L. 104–208, §412(a)(1)(B), redesignated cl. (v) as (ii), substituted ", alien registration card, or other document designated by the Attorney General, if the document" for ", 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 not expired, or other personal identification number, or other document designated cl. (v) as (ii), substituted '', alien registration card, or other document designated by the Attorney General, if the document".

"Such attestation may be manifested by either a handwritten or electronic signature of 

"(a) the final agency decision and order under this subsection;"

Subsec. (b)(1)(C). Pub. L. 104–208, §412(a)(1)(C), redesignated cl. (v) as (ii), struck out "or" at end of cl. (i), substituted ", and" for "and" at end of cl. (ii), substituted "and" for "or" before "such other personal" and struck out "and" at end, 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 "such other personal" and struck out "and" at end, in subcl. (iii), substituted "and" for "or" before "such other personal" and struck out "and" at end, in subcl. (iv), substituted "and" for "or" before "such other personal" and struck out "and" at end, in subcl. (v), substituted "and" for "or" before "such other personal" and struck out "and" at end, in subcl. (vi), substituted "and" for "or" before "such other personal" and struck out "and" at end.

Subsec. (b)(1)(D)(ii). Pub. L. 104–208, §412(a)(1)(D)(ii), redesignated cl. (v) as (ii), substituted "and" for "or" before "such other personal" and struck out "and" at end.


1998—Subsec. (b)(1)(A). Pub. L. 100–525, §2(a)(1)(A), substituted the first sentence of this paragraph for "such sentence" and "such another document" for "such a document."

Subsec. (d)(3)(D). Pub. L. 100–525, §2(a)(1)(B), in heading substituted "defined" for "requiring two years notice and congressional review."


Subsec. (e)(4)(A)(ii). Pub. L. 100–525, §2(a)(1)(C)(ii), inserted "or" for "and" at end of subcl. (i), substituted "and" for "or" at end of cl. (i), redesignated cl. (ii) as (i), and inserted "or" at end of cl. (ii) which read as follows:

"(i) the date on which final regulations implementing such amendments take effect; or"

"(ii) if the person or entity is an agricultural association, or an organization, or an individual, the first sentence of this paragraph for "such a document."

Subsec. (e)(5). Pub. L. 100–525, §2(a)(1)(C)(iii), inserted "or" for "and" at end of cl. (i), redesignated cl. (ii) as (i), inserted "or" for "and" before "such other personal" and struck out "and" at end, and added cl. (iii).


Subsec. (e)(6) to (9). Pub. L. 100–525, §2(a)(1)(C)(iii), (iv), added par. (6) and redesignated former pars. (8) to (10) as (7) to (9), respectively.


Pub. L. 104–208, div. C, title III, §379(b), Sept. 30, 1996, as amended by Pub. L. 103–416, §219(z)(4), made technical amendment to provision of original act which was translated as "November 6, 1986," and struck out "of the United States; or"

"The amendments made by subsection (a) [amending this section] shall apply to individuals hired on or after the date of the enactment of this Act [Oct. 30, 2004]."

Subsec. (d)(3)(D). Pub. L. 103–416, §219(a)(4), inserted "an order" for "a order" and "subsection (a)(1)(A) of this section" for "paragraph (1)(A)."

Subsec. (a)(2). Pub. L. 100–525, §2(a)(1)(G), made technical amendment to provision of original act which was translated as "November 6, 1986," and struck out "of the United States; or"

"The amendments made by subsection (a) [amending this section] shall apply with respect to hiring (or recruitment or referral) occurring on or after such date that is not later than 18 months after the date of the enactment of this Act [Oct. 30, 2004]."

Effective Date of 2004 Amendment

Pub. L. 108–390, §1(b), Oct. 30, 2004, 118 Stat. 2242, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the earlier of—"

"(1) the date on which final regulations implementing such amendments take effect; or"

"(2) 180 days after the date of the enactment of this Act [Oct. 30, 2004]."

Effective Date of 1996 Amendment

Pub. L. 104–208, div. C, title III, §379(b), Sept. 30, 1996, 110 Stat. 3009–650, provided that: "The amendments made by subsection (a) [amending this section and section 1324c of this title] shall apply to orders issued on or after the date of the enactment of this Act [Sept. 30, 1996]."

Pub. L. 104–208, div. C, title IV, §412(b), Sept. 30, 1996, 110 Stat. 3009–668, 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]."


"(1) The amendments made by subsection (a) [amending this section] shall apply with respect to hiring (or recruitment or referral) occurring on or after such date that is not later than 18 months after the date of the enactment of this Act [Sept. 30, 1996] as the Secretary of Homeland Security shall designate.

"(2) The amendment made by subsection (b) [amending this section] shall apply to individuals hired on or
§ 1324a

TITLE 8—ALIENS AND NATIONALITY  Page 366

after 60 days after the date of the enactment of this Act.

“(3) The amendment made by subsection (c) (amend-
ing this section) shall take effect on the date of the en-
actment of this Act.

“(4) The amendment made by subsection (d) (amend-
ing this section) applies to hiring occurring before, on,
or after the date of the enactment of this Act, but no penalty
shall be imposed under subsection (e) or (f) of section 274A of the Immigration and Nationality Act [subsec.
(e) and (f) of this section] for such hiring occurring before such date.”

[Pub. L. 105–54, §3(b), Oct. 6, 1997, 111 Stat. 1176, pro-
vided that: “The amendment made by subsection (a) [amending section 422(e) of div. C 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

EFFECTIVE DATE OF 1994 AMENDMENT

4318, provided that the amendment made by section
219(z)(4) is effective as if included in the Miscellaneous
4318, provided that: “The amendment made by section
10, 1992, 57 F.R. 24345, provided:

in enactment of Immigration Reform and Control Act
of 1990, Pub. L. 101–649, see section 310(1) of
section 8704 of Title 46, Shipping, as the date 180 days after Jan. 11, 1988, see
section 5(f)(3) of Pub. L. 100–239, set out as a Construc-
tion note under section 8704 of Title 46.

(i) Authority of Secretary of Homeland Security shall provide for the
issue Social Security number cards to individuals who
are assigned Social Security numbers.

(ii) The amendment made by subsection (a) [amending section
412(e) of div. C of Pub. L. 104–208, set
out as a note set out under section 1551 of this
Title 46, 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.

DELегATION 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 (sec-
tion 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 Immi-
gration 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 Fed-
eral Register the substance of any change in the Social
Security number card so proposed and reported to the
designated congressional committees, to the extent
required by section 274A(d)(3)(A) of the Act.

The authority delegated by this memorandum may be
further redelegated within the Department of Health
and Human Services.

You are hereby authorized and directed to publish
this memorandum in the Federal Register.

GEORGE BUSH.

Authority of President under subsec. (d)(4) of this
section to undertake demonstration projects of
different changes in requirements of employment verifica-
tion system delegated to Attorney General by section
out as a note under section 301 of Title 3, The Presid-
ent.

PILOT PROGRAMS FOR EMPLOYMENT ELIGIBILITY
CONFIRMATION

Pub. L. 104–208, div. C, title IV, subtitle A, Sept. 30,
28, 2012, 126 Stat. 1325, provided that:

“SEC. 401. ESTABLISHMENT OF PROGRAMS.
“(a) IN GENERAL.—The Secretary of Homeland Secu-
rity shall conduct 3 pilot programs of employment eli-

gence 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 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 Sec-

Secretary of Homeland Security shall terminate a pilot
program on September 30, 2015.

“(c) SCOPE OF OPERATION OF PILOT PROGRAMS.—The
Secretary of Homeland Security shall provide for the
operation—

“(1) of the R-Verify Program (described in section
403a 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 (de-
scribed 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 pro-
gram (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 ‘pro-
gram’ or ‘pilot program’ refer to any of the 3 pilot
programs provided for under this subtitle.

“(2) CONFIRMATION SYSTEM.—The term ‘confor-
mation system’ means the confirmation system estab-
lished under section 404 of this division.
"(3) REFERENCES TO SECTION 274A.—Any reference in this subtitle to section 274A (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(a)(1)(A) or such other form as the Secretary of Homeland Security determines to be appropriate.

"(5) LIMITED APPLICATION TO RECRUITERS AND REFEREES.—Any reference to recruitment or referral (or a recruiting or referring entity 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)(i).

"(6) UNITED STATES CITIZENSHIP.—The term 'United States citizenship' includes United States nationality.

"(7) STATE.—The term 'State' has the meaning given it in subdivision (a) of section 101 of this division.

"SEC. 402. VOLUNTARY ELECTION TO PARTICIPATE IN A PILOT PROGRAM.

"(a) Voluntary Election.—Subject to subsection (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 such pilot program. Except as specifically provided in subsection (b), the Secretary of Homeland Security shall 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) 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 any fee as a condition of making an election or participating in a pilot program.

"(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.

"(4) 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) of making an election under this section.

"(3) Assistance Through District Offices.—The Secretary of Homeland Security shall designate one or more individuals in each District office of the Immigration and Naturalization Service for a Service District in which a pilot program is being implemented—

"(A) to inform persons and other entities that seek information about pilot programs of the voluntary nature of such programs, and

"(B) to assist persons and other entities in electing and participating in any pilot programs in effect in the District, in complying with the requirements of section 274A, and in facilitating confirmation of the identity and employment eligibility of individuals consistent with such section.

"(4) Select Entities Required to Participate in a Pilot Program.—

"(1) Federal Government.—

"(A) Executive Departments.—

"(i) In General.—Each Department of the Federal Government shall elect to participate in a pilot program and shall comply with the terms and conditions of such an election.

"(ii) Election.—Subject to clause (iii), the Secretary of each such Department—

"(I) shall elect the pilot program (or programs) in which the Department shall participate, and

"(II) may limit the election to hiring occurring in certain States (or geographic areas) covered by the program (or programs) and in specified divisions within the Department, so long as all hiring by such divisions and in such locations is covered.

"(iii) Role of Secretary of Homeland Security.—The Secretary of Homeland Security shall assist and coordinate elections under this subparagraph in such manner as assures that—

"(I) a significant portion of the total hiring within each Department within States covered by a pilot program is covered under such a program, and

"(II) there is significant participation by the Federal Executive branch in each of the pilot programs.

"(2) Legislative Branch.—Each Member of Congress, each officer of Congress, and the head of each agency of the legislative branch, that conducts hiring in a State in which a pilot program is operating shall elect to participate in a pilot program, may specify which pilot program or programs (if there is more than one) in which the Member, officer, or agency will participate, and shall comply with the terms and conditions of such an election.

"(3) Application to Certain Violators.—An order under section 274(a)(4) or section 274(g) of the Im-
§ 1324a

migration and Nationality Act (8 U.S.C. 1324a(e)(4), 1324b(g)) may require the subject of the order to participate in, and comply with the terms of, a pilot program with respect to the subject’s hiring (or recruitment or referral) of individuals in a State covered by 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 requirements of such program with respect to an individual—

(A) such failure to participate 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)(A). Subparagraph (B) shall not apply in any prosecution under section 274A(i)(1).

“(1) Construction.—This subtitle shall not affect the authority of the Secretary of Homeland Security 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, and

(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)(A) to a verification that an individual is not an unauthorized alien shall be deemed to be a verification of the individual’s identity.

(B) Seeking confirmation.—

(A) In general.—The person or other entity shall make an inquiry, as provided in section 404(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 times during a day, the person or entity merely has to assert that the individual attempted to make the inquiry on that day for the previous sentence to apply to such an inquiry, and does not have to provide any additional proof concerning such inquiry.

“(4) Confirmation or 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 404(b) of this division, the person or entity shall record on the I-9 or similar form an appropriate code and notify the individual whose identity and work eligibility is confirmed under 404(b) of this division.

(B) Nonconfirmation upon initial inquiry and secondary verification.—

(I) Confirmation or nonconfirmation.—If the person or other entity receives a tentative nonconfirmation of an individual’s identity or work eligibility under the confirmation system within the time period specified under 404(b) of this division, the person or entity shall record the tentative nonconfirmation on the I-9 or similar form an appropriate code that is provided under the system and that indicates a final confirmation of such identity and work eligibility of the individual.

(ii) Tentative nonconfirmation.—If a person or other entity receives a tentative nonconfirmation of an individual’s identity or work eligibility under the confirmation system within the time period specified under 404(b) of this division, the person or entity shall so inform the individual for whom the confirmation is sought.

(iii) Tentative nonconfirmation.—If the individual does contest the nonconfirmation within the time period specified in section 404(c) of this division, the nonconfirmation shall be considered final. The person or entity shall then record on the I-9 or similar form an appropriate code which has been provided under the system to indicate a tentative nonconfirmation.

(iv) Final nonconfirmation.—If the individual does not contest the nonconfirmation, the individual shall utilize the process for secondary verification provided under section 404(c) of this division. 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.

(v) Recording of conclusion on form.—If a final confirmation or nonconfirmation is provided by the confirmation system under section 404(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.

“(C) Consequences of Nonconfirmation.—

“(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) with respect to that individual and the applicable civil monetary penalty under section 274A(a)(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) Continued 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)(A). The previous sentence shall not apply in any prosecution under section 274A(a)(1).”

“(b) Citizen Attestation Pilot Program.—

“(1) In general.—Except as provided in paragraphs (3) through (5), the procedures applicable under the citizen attestation pilot program under this subsection shall be the same procedures as those under the E-Verify Program under subsection (a).

“(2) Restrictions.

“(A) State document requirement to participate in pilot program.—The Secretary of Homeland Security may not provide for the operation of the citizen attestation pilot program in a State unless the driver’s license or similar identification document described in section 274A(b)(1)(D)(i) issued by the State—

“(I) contains a photograph of the individual involved, and

“(ii) has been determined by the Secretary of Homeland Security to have security features, and to be issued and used through application and issuance procedures, which make such document sufficiently resistant to counterfeiting, tampering, and fraudulent use such that it is a reliable means of identification for purposes of this section.

“(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 the 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 the law for a false representation of United States citizenship)—

“(A) the person or entity may fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document specified in either 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 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, to rely on the individual as consistent with paragraph (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) Nonreviewable 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 the driver’s license and similar identification documents described in section 274A(b)(1)(D)(i) 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 may 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 274(b)(2), the individual’s identification or authorization number described in subsection (a)(1)(B) shall be provided as part of the inquiry.

“(4) Protection from liability for actions 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
declaration of 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 nonconfirma-
tion of an individual’s identity and employment eligi-
bility 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 noncon-
firmation.

“(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 Immigra-
tion and Naturalization Service, an available secondary
verification process to confirm the validity of informa-
tion provided and to provide a final confirmation or
nonconfirmation within 10 working days after the date
of the tentative nonconfirmation. When final confirma-
tion or nonconfirmation is provided, the confirmation
system shall provide an appropriate code indicating
such confirmation or nonconfirmation.

“(d) DESIGN AND OPERATION OF SYSTEM.—The con-
firmation 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 insulat-
ing and protecting the privacy and security of the un-
derlying information;

“(2) to respond to all inquiries made by such per-
sons and entities on whether individuals are author-
zied to be employed and to register all times when
such inquiries are not received;

“(3) with appropriate administrative, technical, and
physiological safeguards to prevent unauthorized disclo-
sure of personal information; and

“(4) to have reasonable safeguards against the sys-
tem’s resulting in unlawful discriminatory practices
based on national origin or citizenship status, includ-
ing—

“(A) the selective or unauthorized use of the sys-
tem to verify eligibility;

“(B) the use of the system prior to an offer of em-
ployment; or

“(C) the exclusion of certain individuals from
consideration for employment as a result of a per-
cision that additional verification will be
required, beyond what is required for most job
applicants.

“(e) 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),
comparisons the name and alien identification
number or authorization number described in section
403(a)(1)(B) of this division which are provided in an in-
quiry against such information maintained by the
Commissioner in order to confirm (or not confirm) the
validity of the information provided, the correspond-
ence of the name and number, and whether the alien is
authorized to be employed in the United States.

“(f) UPDATING INFORMATION.—The Commissioners of
Social Security and the Immigration and Naturaliza-
tion Service shall update their information in a man-
ner that promotes the maximum accuracy and shall
provide a process for the prompt correction of erro-
neous information, including instances in which it is
brought to their attention in the secondary verification
process described in subsection (c).

“(g) LIMITATION ON USE OF THE CONFIRMATION
SYSTEM AND ANY RELATED SYSTEMS.—

“(1) IN GENERAL.—Notwithstanding any other provi-
sion of law, nothing in this subtitle shall be con-
strued to permit or allow any department, bureau, or
other agency of the United States Government to uti-
(Continued on following page)
REPORT ON ADDITIONAL AUTHORITY OR RESOURCES NEEDED FOR ENFORCEMENT OF EMPLOYER SANCTIONS PROVISIONS

Pub. L. 104–208, div. C, title IV, §413(a), Sept. 30, 1996, 110 Stat. 3009–668, as amended by Pub. L. 108–156, §3(d), Dec. 3, 2003, 117 Stat. 1137, provided that: Not later than one 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. 12899, set out below, and to expand the restrictions in such programs, and other Federally subsidized assistance programs.

PILOT PROJECTS FOR SECURE DOCUMENTS

Pub. L. 101–236, §5, Dec. 18, 1989, 103 Stat. 2194, provided that:-(a) Consultation.—Before June 1, 1991, the Attorney General shall consult with State governments on any proper State initiative to improve the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a). The result of such consultations shall be reported, before September 1, 1991, to the Committees on the Judiciary of the Senate and House of Representatives of the United States.

(b) Assistance for State Initiatives.—After such consultation described in subsection (a), the Attorney General shall make grants to, and enter into contracts with, to such extent or in such amounts as are provided in an appropriation Act, the State of California and at least 2 other States with large immigrant populations to promote any State initiatives to improve the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(1))

(c) Authorization of Appropriations.—There are authorized to be appropriated to the Attorney General $10,000,000 for fiscal year 1992 to carry out subsection (b).

(d) Report Required.—The Attorney General shall report to the Committees on the Judiciary of the Senate and House of Representatives not later than August 1, 1991, on the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(1)), and any improvements in such documents that have occurred as a result of this section.

INTERIM REGULATIONS

Pub. L. 99–603, title I, §101(a)(2), Nov. 6, 1986, 100 Stat. 3372, provided that: “The Attorney General shall, not later than the first day of the seventh month beginning after the date of the enactment of this Act [Nov. 6, 1986], file an interim regulation with the Committee on Finance and Judiciary of the Senate, within 2 years after the date of the enactment of this Act [Nov. 6, 1986], a full and complete report on the results of the study together with such recommendations as may be appropriate.”

GRAFTFATHER PROVISION FOR CURRENT EMPLOYERS

Pub. L. 99–603, title I, §101(a)(3), Nov. 6, 1986, 100 Stat. 3372, provided that: “(A) Section 274A(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1)) shall not apply to the hiring, or recruiting or referring of an individual for employment which has occurred before the date of the enactment of this Act [Nov. 6, 1986].”

“(B) Section 274A(a)(2) of the Immigration and Nationality Act shall not apply to continuing employment of an alien who was hired before the date of the enactment of this Act.”

STUDY OF USE OF TELEPHONE VERIFICATION SYSTEM FOR DETERMINING EMPLOYMENT ELIGIBILITY OF ALIENS

Pub. L. 99–603, title I, §101(d), Nov. 6, 1986, 100 Stat. 3373, 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 computer 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

Pub. L. 99–603, title I, §101(e), Nov. 6, 1986, 100 Stat. 3373, provided that: “The Secretary of Health and Human Services, acting through the Social Security Administration and in cooperation with the Attorney General and the Secretary of Labor, shall conduct a study of the feasibility and costs of establishing a social security number validation system to assist in carrying out the purposes of section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a), and of the privacy concerns that would be raised by the establishment of such a system. The Secretary shall submit to the Committees on Ways and Means and Judiciary of the House of Representatives and to the Committees on Finance and Judiciary of the Senate, within 2 years after the date of the enactment of this Act [Nov. 6, 1986], a full and complete report on the results of the study together with such recommendations as may be appropriate.”

REPORTS ON UNAUTHORIZED ALIEN EMPLOYMENT

Pub. L. 99–603, title IV, §402, Nov. 6, 1986, 100 Stat. 3441, 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 accuracy of the employment verification system provided under subsection (b) of that section;
§ 1324a

TITLED—ALIENS AND NATIONALITY

Page 372

"(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 non-immigrant visas by foreign visitors."

[Functions of President under section 402 of Pub. L. 99–683 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 1904 of this title.]

EX. ORD. NO. 12889. ECONOMY AND EFFICIENCY IN GOVERNMENT PROCUREMENT THROUGH COMPLIANCE WITH CERTAIN IMMIGRATION AND NATIONALITY ACT PROVISIONS AND USE OF AN ELECTRONIC EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM


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 measures to verify the employment 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 knowingly 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 12(a) of section 301 of title 5, 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.

(c) It is the policy of the executive branch to enforce fully the antidiscrimination provisions of the INA. Nothing in this order relieves employers of anti-discrimination obligations under section 274B of the INA (8 U.S.C. 1324b) or any other law.

(d) All discretion under this order shall be exercised consistent with the policies set forth in this section.

Scc. 2. Contractor, as used in this Executive order, shall have the same meaning as defined in subpart 9.4 of the Federal Acquisition Regulation.

Scc. 3. Using the procedures established pursuant to 8 U.S.C. 1324a(e): (a) the Secretary of Homeland Security may investigate to determine whether a contractor or an organizational unit thereof is not in compliance with the INA employment provisions;

(b) the Secretary of Homeland Security shall receive and may investigate complaints by employees of any entity covered under section 3(a) of this order where such complaints allege noncompliance with the INA employment provisions; and

(c) the Attorney General shall hold such hearings as are required under 8 U.S.C. 1324a(e) to determine whether an entity covered under section 3(a) is not in compliance with the INA employment provisions.

Scc. 4. (a) Whenever the Secretary of Homeland Security or the Attorney General determines that a contractor or an organizational unit thereof is not in compliance with the INA employment provisions, the Secretary of Homeland Security or the Attorney General shall transmit that determination to the appropriate contracting agency and such other Federal agencies as the Secretary of Homeland Security or the Attorney General may determine. Upon receipt of such determination, the Secretary of Homeland Security or the Attorney General, the head of the appropriate contracting agency shall consider the contractor or an organizational unit thereof for debarment and may investigate to determine whether such other action as may be appropriate in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation.

(b) The head of the contracting agency may debar the contractor or an organizational unit thereof based on the determination of the Secretary of Homeland Security or the Attorney General that it is not in compliance with the INA employment provisions. Such determination shall not be reviewable in the debarment proceedings.

(c) The scope of the debarment generally should be limited to those organizational units of a Federal contractor that the Secretary of Homeland Security or 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.
§ 1324b

Prohibition of discrimination based on national origin or citizenship status

(a) General rule

It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual in a manner that would impair or otherwise affect:

(1) a person or entity's employment opportunity or the discharge 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 by law to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(3) "Protected individual" defined

As used in paragraph (1), the term "protected individual" means an individual who—

(A) is a citizen or national of the United States, or

(B) is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 1160(a) or 1255a(a)(1) of this title, is admitted as a refugee under section 1158 of this title, is admitted as a refugee under section 1157 of this title, or is granted asylum under section 1158 of this title; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986, and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.
§ 1324b

(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)). Charges shall be in writing under oath or affirmation and shall contain such information as the Attorney General requires. The Special Counsel by certified mail shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within 10 days.

(2) No overlap with EEOC complaints

No charge may be filed respecting an unfair immigration-related employment practice 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

(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).

(d) Investigation of charges

(1) By Special Counsel

The Special Counsel shall investigate each charge received and, within 120 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and subject to paragraph (3), file a complaint before such a judge.

(2) Private actions

If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within such 120-day period, the Special Counsel shall notify the person making the charge of the determination not to file such a complaint during such period and the person
making the charge may (subject to paragraph (3)) file a complaint directly before such a judge within 90 days after the date of receipt of the notice. The Special Counsel’s failure to file such a complaint within such 120-day period shall not affect the right of the Special Counsel to investigate the charge or to bring a complaint before an administrative law judge during such 90-day period.

(3) Time limitations on complaints

No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1).

(e) Hearings

(1) Notice

Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, an administrative law judge shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing, upon the motion of the party filing the complaint, in the judge’s discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

(2) Judges hearing cases

Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Attorney General as having special training respecting employment discrimination and, to the extent practicable, before such judges who only consider cases under this section.

(3) Complainant as party

Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a party to any complaint before an administrative law judge respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the judge conducting the hearing, any other person may be allowed to intervene in the proceeding and to present testimony.

(f) Testimony and authority of hearing officers

(1) Testimony

The testimony taken by the administrative law judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further testimony or hear argument.

(2) Authority of administrative law judges

In conducting investigations and hearings under this subsection 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).

(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) except as provided in subclauses (III) and (IV), to pay a civil penalty of not less than $250 and not more than $2,000 for each individual discriminated against;

(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 $2,000 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.

1 So in original. Probably should be “section”.
(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), 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 employees' 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 practice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.

(h) Awarding of attorney's fees

In any complaint respecting an unfair immigration-related employment practice, an administrative law judge, in the judge’s discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

(i) Review of final orders

(1) In general

Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(2) Further review

Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(j) Court enforcement of administrative orders

(1) In general

If an order of the agency is not appealed under subsection (i)(1), 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), 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) 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 re-
port required to be transmitted under section 1324a(j) 2 of this title if—
(A) the Comptroller General determines, and so reports in such report that—
(1) 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) 2 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) 2 of such section.

(i) 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.


REFERENCES IN TEXT
§ 1324c  TITLE 8—ALIENS AND NATIONALITY  Page 378

Subsec. (g)(2)(B)(iv), Pub. L. 101–649, §539(a)(2), which directed the substitution of a comma for a period at end of cl. (iv)(II), could not be executed because of the general amendment of cl. (iv) by Pub. L. 101–649, §536(a), see below.

Pub. L. 101–649, §536(a), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows:


"(IV) except as provided in subclause (II), to pay a civil penalty of not more than $1,000 for each individual discriminated against, and

"(V) 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.""


Pub. L. 101–649, §536(b), Nov. 29, 1990, 104 Stat. 5057, 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 1998 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.

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 239 of Pub. L. 101–599, set out in a note under section 5376 of Title 5.

No Effect on EEOC Authority

Pub. L. 99–603, title I, §102(b), Nov. 6, 1986, 100 Stat. 3379, 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 sections occurring on or after the date of the enactment of this Act 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

(6)(A) to present before boarding a common carrier for the purpose of coming to the United States a document which relates to the alien’s eligibility to enter the United States, and (B) to fail to present such document to an immigration officer upon arrival at a United States port of entry.

(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), the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) Conduct of hearing

Any hearing so requested shall be conducted before an administrative law judge.

The hearing shall be conducted in accordance with the requirements of section 554 of title 5. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General’s imposition of the order shall constitute a final and unappealable order.

(C) Issuance of orders

If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity has violated subsection (a), 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), 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), 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).

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(4) Administrative appellate review

The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless 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, the administrative law judge may modify or vacate the decision and order (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)(6) 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 Service, knowingly and willfully discloses, conceals, or covers up the fact that they have, 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)) 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 Service, 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


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 “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)” 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 1231(b) of this title”.

Pub. L. 104–208, §212(d), added par. (7).


1991—Subsec. (a)(2) to (4). Pub. L. 102–232 inserted “or to provide” after “receive” in pars. (2) and (4) and “or to provide or attempt to provide” after “attempt to use” in par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT


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 sec-
§ 1235. Improper entry by alien

(a) Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18 or imprisoned not more than 2 years, or both.

(b) 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 shall be subject to a civil penalty of—

(1) at least $50 and not more than $250 for each such entry (or attempted entry); or

(2) twice the amount specified in paragraph (1) in the case of an alien who has been previously subject to a civil penalty under this subsection.

Civil penalties under this subsection are in addition to, and not in lieu of, any criminal or other civil penalties that may be imposed.

(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 $250,000, or both.

(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, fined in accordance with title 18, or both.

(6) Subsec. (b) to (d). Pub. L. 101–232 substituted “fined under title 18” for “fined not more than $2,000 (or, if greater, the amount provided under title 18)”.


AMENDMENTS

1996—Subsecs. (b) to (d). Pub. L. 104–208 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

1991—Subsec. (a). Pub. L. 102–232 substituted “‘fined under title 18’” for “(fined not more than $2,000 (or, if greater, the amount provided under title 18))”.

1990—Subsec. (a). Pub. L. 101–649, § 543(b)(2), inserted “or attempts to enter” after “(1) enters” and “attempts to enter” after “or (3)”; and substituted “shall, for the first commission of any such offense, be fined not more than $2,000 (or, if greater, the amount provided under title 18) or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years” for “shall, for the first commission of any such offenses, be guilty of a misdemeanor

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.
§ 1326  TITLE 8—ALIENS AND NATIONALITY  Page 382

and upon conviction thereof be punished by imprisonment for not more than six months, or by a fine of not more than $500, or by both, and for a subsequent commission of any such offenses shall be guilty of a felony and upon conviction thereof be punished by imprisonment for not more than two years, or by a fine of not more than $1,000.


1986—Pub. L. 99–639 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT
Pub. L. 104–208, div. C, title I, § 105(b), Sept. 30, 1996, 110 Stat. 3009–556, provided that: ‘‘The amendments made by subsection (b) [amending this section] shall apply to illegal entries or attempts to enter occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act [Sept. 30, 1996].’’

EFFECTIVE DATE OF 1991 AMENDMENT

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 543(b)(2) of Pub. L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101–649, set out as a note under section 1221 of this title.

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.

§ 1326. Reentry of removed aliens
(a) In general
Subject to subsection (b), 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), 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 incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.

(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) or subsection (b) 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.


1 So in original. The period probably should be a semicolon.
2 See References in Text note below.

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 Tables.

Section 1222 of this title, referred to in subsec. (c), was amended generally by Pub. L. 104–208, div. C, title III, §306(a)(2), Sept. 30, 1996, 110 Stat. 3009–607, and, as so amended, does not contain a subsec. (h). For provisions similar to those formerly contained in section 1252(h)(2) of this title, see section 1231(a)(4) of this title.

AMENDMENTS


Subsec. (a)(1). Pub. L. 104–208, §308(d)(4)(J)(i), substituted "denied admission, excluded, deported, or removed" for "arrested and deported, has been excluded and deported," and "exclusion, deportation, or removal" for "exclusion or deportation".

Pub. L. 104–208, §324(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "has been arrested and deported or excluded and deported, and thereafter".


Pub. L. 104–208, §324(b), inserted "(or not during)" after "during" in concluding provisions.

Pub. L. 104–208, §308(e)(1)(K), substituted "removal" for "deportation" wherever appearing in pars. (1) and (2) and in concluding provisions.

Subsec. (b)(2). Pub. L. 104–208, §305(b)(1), struck out "or" at end.

Subsec. (b)(3). Pub. L. 104–208, §305(b)(2), inserted "or" at end.

Pub. L. 104–132, §401(c), added par. (3).


1994—Subsec. (b). Pub. L. 103–322, in par. (1), inserted "three or more misdemeanors involving drugs, crimes against the person, or both, or, after commission of and substituted "10" for "5", in par. (2), substituted "20" for "15", and added concluding sentence.

1990—Subsec. (a). Pub. L. 101–649 substituted "shall be fined under title 18, or imprisoned not more than 2 years" for "shall be guilty of a felony, and upon conviction thereof, be punished by imprisonment of not more than two years, or by a fine of not more than $1,000".

1988—Pub. L. 100–690 designated existing provisions as subsec. (a), substituted "Subject to subsection (b), any alien" for "Any alien", and added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by sections 303(b) and 308(d)(4)(J), (e)(1)(K), (14)(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.

Pub. L. 104–208, div. C, title III, §324(c), Sept. 30, 1996, 110 Stat. 3009–629, provided that: "The amendment made by subsection (a) [amending this section] shall apply to departures that occurred before, on, or after the date of the enactment of this Act [Sept. 30, 1996], but only with respect to entries (and attempted entries) occurring on or after such date."

Pub. L. 104–132, title IV, §401(f), Apr. 24, 1996, 110 Stat. 1268, provided that: "The amendments made by this section [enacting sections 1531 to 1537 of this title and amending this section and section 1105a 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."

Pub. L. 104–132, title IV, §441(b), Apr. 24, 1996, 110 Stat. 1279, provided that: "The amendments made by subsection (a) [amending 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 1221 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–690, title VII, §743(b), Nov. 18, 1988, 102 Stat. 4471, provided that: "The amendments made by this section (and section 1182(a)(9), (10), (27), (28), (29) thereof) 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 DUE 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 308(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) of this title to enter the United States, or who connives or conspires with any person or persons to allow, procure, or permit any such alien to enter, procure, or permit any such alien to enter the United States, shall be fined under title 18, or imprisoned not more than 10 years, or both.


AMENDMENTS


1990—Pub. L. 101–649, §603(a)(b), substituted "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) of this title to enter the United States," for "1182(a)(9), (10), (27), (28), (29) of this title to enter the United States," in section 603(a)(b) of Pub. L. 101–649, and substituted "and shall apply to all aliens without regard to the date of entry or attempted entry into the United States."
§ 1328. Importation of alien for immoral purpose

The importation into the United States of any alien for the purpose of prostitution, or for any other immoral purpose, is forbidden. Whoever shall, directly or indirectly, import, or attempt to import into the United States any alien for the purpose of prostitution or for any other immoral purpose, or shall hold or attempt to hold any alien for any such purpose in pursuance of such illegal importation, or shall keep, maintain, control, support, employ, or harbor in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien in pursuance of such illegal importation, shall be fined under title 18, or imprisoned not more than 10 years, or both. The trial and punishment of offenses under this section may be in any district to or into which such alien is brought in pursuance of importation by the person or persons accused, or in any district in which a violation of any of the provisions of this section occurs. In all prosecutions under this section, the testimony of a husband or wife shall be admissible and competent evidence against each other.

(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.")

§ 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.

(b)(2) The amounts described in this paragraph are the following:

(A) The increase in penalties collected resulting from the amendments made by sec-
tions 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;

(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 years 1994 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 sections 1221, former 1227, 1229 (now 1224), 1234, 1285, 1286, 1287, 1321, 1322, and 1323 of this title.


AMENDMENTS

1996—Subsec. (a). 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

(1) for the Immigration and Naturalization Service for activities that enhance enforcement of provisions of this subchapter, including—

(A) the identification, investigation, and apprehension of criminal aliens;

(B) the implementation of the system described in subsection (a)(3)(A) of this title, and

(C) for the repair, maintenance, or construction on the United States border, in areas experiencing high levels of apprehensions of illegal aliens, of structures to deter illegal entry into the United States;

(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. 101–649 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.

Pub. L. 104–208, div. C, title III, § 382(c), Sept. 30, 1996, 110 Stat. 3009–651, provided that: “The amendments made by this section [amending this section and section 1356 of this title] shall apply to fines and penalties collected on or after the date of the enactment of this Act [Sept. 30, 1996].”

EFFECTIVE DATE OF 1994 AMENDMENT


EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–649, title V, § 542(b), Nov. 29, 1990, 104 Stat. 5057, 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 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 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 head-
quarters 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.


REFERENCES IN TEXT
The Headquarters Agreement, referred to in text, is set out as a note under section 297 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.”

1968—Pub. L. 90–609 struck out provisions fixing statutory fees for specified immigration and nationality benefits and services rendered, including those pertaining to immigrant visas, reentry permits, adjustments of status to permanent residence, creation of record of admission for permanent residence, suspension of deportation, extension of stay to nonimmigrants, and application for admission to practice as attorney or representative before the Service.

1965—Subsec. (a). Pub. L. 89–236, §14(a), (b), designated opening provision beginning “The following fees shall be charged:” and ending with the end of part (b) as subsec. (a) and substituted reference to section 1154 of this title for sections 1154(b) and 1154(c) of this title in subsec. (a).


Subsec. (c). Pub. L. 89–236, §14(d), designated closing provision consisting of the paragraph beginning “The fees for the furnishing” as subsec. (c).

EFFECTIVE DATE OF 1997 AMENDMENT
Pub. L. 105–54, §2(b), Oct. 6, 1997, 111 Stat. 1175, 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 1151 of this title.

SURCHARGE FOR PROCESSING MACHINE-READABLE NONIMMIGRANT VISAS
Pub. L. 113–160, §2, Aug. 8, 2014, 128 Stat. 1853, provided that:

“(a) In General.—Notwithstanding any other provision of law, the Secretary of State, not later than January 1, 2015, shall increase the fee or surcharge author-
140(a)(5), and the second sentence of section 140(a)(3), of Pub. L. 103–236 [below], fees could be collected during fiscal years 2002 and 2003, under the authority of section 140(a)(5), and that all fees collected would be deposited in fiscal years 2002 and 2003 as an offsetting collection to appropriations made under this heading to recover costs under section 140(a)(2) and would remain available until expended, were enacted 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.’.’  [Pub. L. 106–113, div. B, § 1000(a)(1) [title IV, § 404], Nov. 29, 1999, 113 Stat. 1535, 1501A–43, provided that: ‘‘Beginning in fiscal year 2000 and thereafter, section 410(a) of the Department of State and Related Agencies Appropriations Act, 1999, as included in Public Law 106–277 [set out above], shall be in effect.’’ ]

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) Notwithstanding any other provision of law, the Secretary of State is authorized to charge a fee or surcharge for processing machine readable nonimmigrant visas and machine readable combined border crossing identification cards and nonimmigrant visas.

‘‘(2) Fees collected under the authority of paragraph (1) shall be deposited as an offsetting collection to any Department of State appropriation, to recover the costs of providing consular services. Such fees shall remain available for obligation until expended.

‘‘(3) For the fiscal year 2003, any amount that exceeds $460,000,000 may be made available only if a notification is submitted to Congress in accordance with the procedures applicable to reprogramming notifications under section 34 of the State Department Basic Authorities Act of 1956 [22 U.S.C. 2708].’’

Provisions directing the continuing effect for specific periods of authorities provided under section 140(a) of Pub. L. 103–236, set out above, were contained in the following appropriation acts:


§ 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 Director of the Government Publishing Office 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.

(6) 1992—Subsec. (a) reenacted the 1989 amendment.

(6) 1991—Subsec. (a) reenacted the 1989 amendment.

(6) 1990—Subsec. (a) reenacted the 1989 amendment.

(6) 1989—Pub. L. 101–154 § 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 Director of the Government Publishing Office 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.

(6) 1992—Subsec. (a) reenacted the 1989 amendment.

(6) 1991—Subsec. (a) reenacted the 1989 amendment.

(6) 1990—Subsec. (a) reenacted the 1989 amendment.

§ 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


§ 1353a. Officers and employees; overtime services; extra compensation; length of working day

The Attorney General shall fix a reasonable rate of extra compensation for overtime services of immigration officers and employees of the Immigration and Naturalization Service who may be required to remain on duty between the hours of five o’clock postmeridian and eight o’clock antemeridian, or on Sundays or holidays, to perform duties in connection with the examination and landing of passengers and crews of steamships, trains, airplanes, or other vehicles, arriving in the United States from a foreign port by water, land, or air, such rates to be fixed on a basis of one-half day’s additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o’clock postmeridian (but not to exceed two and one-half days’ pay for the full period from five o’clock postmeridian to eight o’clock antemeridian) and two additional days’ pay for Sunday and holiday duty; in those ports where the customary working hours are other than those heretofore mentioned, the Attorney General is vested with authority to regulate the hours of such employees so as to agree with the prevailing working hours in said ports, but nothing contained in this section shall be construed in any manner to affect or alter the length of a working day for such employees or the overtime pay herein fixed.


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 199a of this title.

AMENDMENTS

1952—Act June 27, 1952, substituted “immigration officers” for “inspectors”.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees by 1950 Reorg. Plan No. 2, §§1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees. See also sections 509 and 510 of Title 28, Judiciary and Judicial Procedure.

§ 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 pas-
sengers 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. 1940 Reorg. Plan No. V is authority for the substitution of “Attorney General” for “Secretary of Labor.” See note set out under section 1551 of this title. Section was formerly classified to section 342d of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378. Prior thereeto, section was classified to section 109d of this title.

Transfer of Functions

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees. See sections 569 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.

§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 for “Immigration and Naturalization Service—Salaries and Expenses.”

(Mar. 4, 1921, ch. 161, §1, 41 Stat. 1424; Sept. 3, 1954, ch. 1203, §6, 68 Stat. 1227.)

Codification

“Section 209 of title 18” substituted in text for “section 1914 of title 18” on authority of section 2 of Pub. L. 87-849, Oct. 23, 1962, 76 Stat. 1126, which repealed section 1914 and supplanted it with section 209, and which provided that exemptions from section 1914 shall be deemed exemptions from section 209. For further details, see Exemptions note set out under section 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 63 of former Title 5), inapplicable to immigration officials under the circumstances stated.

Section was formerly classified to section 68 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378. Prior thereto, section was classified to section 109c of this title.

Amendments


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 1355a and 1355b 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 342e of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378. Prior thereto, section was classified to section 109d of this title.

Amendments

1952—Act June 27, 1952, substituted “immigration officers” for “inspectors”.

Transfer of Functions

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 2, §§1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees. See sections 569 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.

§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.


**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. 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**

2008—Pub. L. 110–181 designated existing provisions as subsec. (a) and added subsec. (b).

§ 1355. Disposal of privileges at immigrant stations; rentals; retail sale; disposition of receipts

(a) Subject to such conditions and limitations as the Attorney General shall prescribe, all exclusive privileges of exchanging money, transporting passengers or baggage, keeping eating houses, or other like privileges in connection with any United States immigrant station, shall be disposed of to the lowest responsible and capable bidder (other than an alien) in accordance with the 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.)

**CODIFICATION**


**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.

§ 1356. Disposition of moneys collected under the provisions of this subchapter

(a) Detention, transportation, hospitalization, and all other expenses of detained aliens; expenses of landing stations

All moneys paid into the Treasury to reimburse the Service for detention, transportation, hospitalization, and all other expenses of detained aliens paid from the appropriation for the enforcement of this chapter, and all moneys paid into the Treasury to reimburse the Service for expenses of landing stations referred to in section 1223(b) of this title paid by the Service from the appropriation for the enforcement of this chapter, shall be credited to the appropriation for the enforcement of this chapter for the fiscal year in which the expenses were incurred.

(b) Purchase of evidence

Moneys expended from appropriations for the Service for the purchase of evidence and subsequently recovered shall be reimbursed to the current appropriation for the Service.

(c) Fees and administrative fines and penalties; exception

Except as otherwise provided in subsection (a) and subsection (b), 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) 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 1111(b)(5) of this title).

(2) No fee may be charged under subsection (d) 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 and preinspection services for 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) at the time the document or ticket is issued; and
(B) identify on that document or ticket the fee charged under subsection (d) 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) 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) and the remittance of such fees to the Treasury of the United States shall be consistent with the regulations issued by the Secretary of the Treasury for the collection and remittance of the taxes imposed by subchapter C of chapter 33 of title 26, but only to the extent the regulations issued with respect to such taxes do not conflict with the provisions of this section.

(g) Provision of immigration inspection and preinspection services

Notwithstanding section 1353b of this title, or any other provision of law, the immigration services required to be provided to passengers upon arrival in the United States on scheduled airline flights shall be adequately provided when needed and at no cost (other than the fees imposed under subsection (d)) to airlines and airline passengers at—

(1) Immigration serviced airports, and
(2) places located outside of the United States at which an immigration officer is stationed for the purpose of providing such immigration services.

(h) Disposition of receipts

(1)(A) There is established in the general fund of the Treasury a separate account which shall be known as the “Immigration User Fee Account”. Notwithstanding any other section of this subchapter, there shall be deposited as offsetting receipts into the Immigration User Fee Account all fees collected under subsection (d) of this section, to remain available until expended.1 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 1253(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.

(2)(A) The Secretary of the Treasury shall refund out of the Immigration User Fee Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Attorney General in providing immigration inspection and preinspection services for commercial aircraft or vessels and in—

(i) providing overtime immigration inspection services for commercial aircraft or vessels;

1 So in original.
§ 1356

(i) Reimbursement

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).

(j) Regulations

The Attorney General may prescribe such rules and regulations as may be necessary to carry out the provisions of this section.

(k) Advisory committee

In accordance with the provisions of the Federal Advisory Committee Act, the Attorney General shall establish an advisory committee, whose membership shall consist of representatives from the airline and other transportation industries who may be subject to any fee or charge authorized by law or proposed by the Immigration and Naturalization Service for the purpose of covering expenses incurred by the Immigration and Naturalization Service. The advisory committee shall meet on a periodic basis and shall advise the Attorney General on issues related to the performance of the inspectional services of the Immigration and Naturalization Service. This advice shall include, but not be limited to, such issues as the time periods during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. The Attorney General shall give substantial consideration to the views of the advisory committee in the exercise of his duties.

(l) Report to Congress

In addition to the reporting requirements established pursuant to subsection (h), the Attorney General shall prepare and submit annually to the Congress, not later than March 31st of each year, a statement of the financial condition of the "Immigration User Fee Account" including beginning account balance, revenues, withdrawals and their purpose, ending balance, projections for the ensuing fiscal year and a full and complete workload analysis showing on a port by port basis the current and projected need for inspectors. The statement shall indicate the success rate of the Immigration and Naturalization Service in meeting the forty-five minute inspection standard and shall provide detailed statistics regarding the number of passengers inspected within the standard, progress that is being made to expand the utilization of United States citizen by-pass, the number of passengers for whom the standard is not met and the length of their delay, locational breakdown of these statistics and the steps being taken to correct any nonconformity.

(m) Immigration Examinations Fee Account

Notwithstanding any other provisions of law, all adjudication fees as are designated by the Attorney General in regulations shall be deposited as offsetting receipts into a separate account entitled "Immigration Examinations Fee Account" in the Treasury of the United States, whether collected directly by the Attorney General or through clerks of courts: Provided, however, That all fees received by the Attorney General from applicants residing in the Virgin Islands of the United States, and in Guam, under this subsection shall be paid over to the treasury of the Virgin Islands and to the treasury of Guam: Provided further, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.
(n) Reimbursement of administrative expenses; transfer of deposits to General Fund of United States Treasury

All deposits into the “Immigration Examinations Fee Account” shall remain available until expended to the Attorney General to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the “Immigration Examinations Fee Account”.

(o) Annual financial reports to Congress

The Attorney General shall prepare and submit annually to Congress statements of financial condition of the “Immigration Examinations Fee Account”, including beginning 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 points 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 ports of entry, shall be deposited as offsetting receipts into a separate account within the general fund of the Treasury of the United States, to remain available until expended. Such amount 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 surety bonds, in excess of $5,000,000, posted under this chapter which are recovered by the Department of Justice, and amount described in section 1255(i)(3)(B) 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.

So in original. Probably should be clause “(i)”.

So in original. Probably should be section “1255(i)(3)(B)”. 
§ 1356

TITe 8—ALIENS AND NATIONALITY

Page 394

(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 3224a 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 1669c 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 systemwide 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 1182(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 for carrying 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 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 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.

(t) 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 or pursuant to the terms of a memorandum of understanding or other agreement between the Secretary of State and 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, programs or for enforcement programs and activities described in section 1182(n) of this title and enforcement programs and activities related to section 1184(c)(14)(A)(l) 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)(i) of this title.

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 subsecs. (a), (h)(1)(B), and (r)(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 chapter 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to subchapter C of chapter 33 of title 26, referred to in subsec. (v)(2), is section 606 of Pub. L. 101–162, title VI, subsec. (k), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, the Code, see Short Title note set out under section 1101 of this title and Tables.

Subchapter C of chapter 33 of title 26, referred to in subsec. (f)(3), is classified to section 2421 et seq. of Title 26, Internal Revenue Code.


AMENDMENTS

2009—Subsec. (v)(2)(B), (C). Pub. L. 111–117, which directed substitution of subpars. (B) and (C) for “subparagraphs (H) and (C) that appear within section 106(b)(2) of division J of” Pub. L. 108–447, was executed by adding subpars. (B) and (C) to subsec. (v)(2) and striking out former subpars. (B) and (C), to reflect the probable intent of Congress. See 2004 Amendment note below. Prior to amendment, subpars. (B) and (C) read as follows:

“(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 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)(B)(i)(I) of this title until period at end.”


2002—Subsec. (v)(2)(D), Pub. L. 109–13, § 403(b)(1)(A), (D), struck out “H–1B and L” before “Fraud Prevention” and inserted “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)(B)(i)(I) of this title” before period at end.

Subsec. (v)(2)(E), Pub. L. 109–13, § 403(b)(1)(A), (E), struck out “H–1B and L” before “Fraud Prevention” and inserted “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)(B)(i)(I) of this title” before period at end.

Subsec. (v)(2)(F), Pub. L. 109–13, § 403(b)(1)(A), (F), struck out “H–1B and L” before “Fraud Prevention” and inserted “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)(B)(i)(I) of this title” before period at end.


1998—Subsec. (v)(2)(G), Pub. L. 108–447, § 427(5), substituted “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” for “Beginning with fiscal year 2000, 2 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, and 2 percent of such amounts shall remain available to the Secretary until expended for carrying out section 1182(n)(2) of this title. Notwithstanding the preceding sentence, both of the amounts made available for any fiscal year (beginning with fiscal year 2000) pursuant to the preceding sentence shall be available to such Secretary, and shall remain available until expended, only for decreasing the processing time for applications under section 1182(n)(1) of this title until the Secretary submits to the Congress a report containing a certification that, during the most recently concluded calendar year, the Secretary substantially complied with the requirement in section 1182(n)(1) of this title relating to the provision of the certification described in section 1101(a)(15)(B)(i)(b) of this title within a 7-day period”.

Subsec. (v), Pub. L. 108–447, § 426(b), added subsec. (v). 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 other than the United States and destined ports of entry of passengers arriving by the following vessels, when operating on a regular schedule: Great Lakes international ferries, Great Lakes Vessels on the Great Lakes and connecting waters.”


Subsec. (e)(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 “shall” for “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, § 108–7, § 108–13, § 403(b)(1)(A), (C), struck out “H–1B and L” before “Fraud Prevention” and substituted “(H)(i), (H)(ii),” for “(H)(i)”.

Subsec. (q)(2). Pub. L. 107–273 inserted “, including receipts for services performed in processing forms I–94,
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. (1) read as follows: ‘‘The program authorized in this subparagraph shall terminate on September 30, 2000, unless further authorized by an Act of Congress.’’

Subsec. (s). Pub. L. 105–119, § 1102(a)(5), substituted ‘‘immigrant’’ for ‘‘alien’’ in subsec. (s)(4). Pub. L. 105–119, § 1102(a)(4), added 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 102–365.’’

Subsec. (t). Pub. L. 105–119, § 1101, struck out heading and text of subsec. (t) which established Immigration Detention Account in general fund of the Treasury to be drawn upon to refund any appropriation amounts paid out for expenses incurred by Attorney General for detention of aliens.


Subsec. (w). Pub. L. 105–304, § 101(b)(1), substituted ‘‘immigrant’’ for ‘‘alien’’ as being the subject of the act and struck out ‘‘who was rendered inadmissible pursuant to any provision of law’’ before the first ‘‘in the period’’.

Subsec. (x). Pub. L. 105–119, § 1102(a)(5), added par. (5) which read as follows: ‘‘Each of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation under section 1862(a)(1) of title 42, for programs that provide opportunities for enrollment in year-round academic enrichment courses in mathematics, engineering, or science.’’

Subsec. (y). Pub. L. 105–119, § 1102(a)(5), added par. (6) which read as follows: ‘‘Each of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation under section 1862(a)(1) of title 42, for systemic reform activities established in section 286(q)(1)(A) of the Immigration and Nationality Act of 1952, was executed by making the substitution in section 286(q)(1)(A) of the Immigration and Nationality Act to reflect the probable intent of Congress.

Subsec. (z). Pub. L. 105–119, § 1102(a)(5), added par. (7) which read as follows: ‘‘Each of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation under section 1862(a)(1) of title 42, for funding systemic reform activities administered by the National Science Foundation under section 1862(a)(1) of title 42,’’

Subsec. (a). Pub. L. 104–208, § 308(g)(4)(L), substituted ‘‘section 1223(b)(2)’’ for ‘‘section 1223(b)’’.

Subsec. (b). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (c). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (d). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (e). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (f). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (g). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (h). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (i). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (j). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (k). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (l). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (m). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (n). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (o). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (p). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (q). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (r). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (s). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (t). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (u). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (v). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (w). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (x). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (y). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.

Subsec. (z). Pub. L. 104–208, § 671(e)(6), inserted ‘‘and’’ after ‘‘for’’.
“(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, 1996.

“(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, 1996.”


1986—Subsec. (a). Pub. L. 99–653, §7(d)(1), as added by Pub. L. 100–525, §19(f), substituted “section 1228(b) of this title” for “section 1228(c) of this title”.

Subsecs. (d) to (l). Pub. L. 99–500, §101(b) [title II, §205(b)], as redesignated by Pub. L. 100–525, §4(a)(2)(A), added subsecs. (d) to (l).

Pub. L. 99–591, §101(b) [title II, §205], a corrected version of Pub. L. 99–500, §101(b) [title II, §205(a)], was repealed by Pub. L. 100–525, §4(d), effective as of Oct. 30, 1986.

1981—Subsecs. (b), (c). Pub. L. 97–116 added subsec. (b), redesignated former subsec. (b) as (c), and inserted “and subsection (b)” after “subsection (a)”.

EFFECTIVE DATE OF 2000 AMENDMENT


EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 403(b) of Pub. L. 109–13 effective 14 days after May 11, 2005, and applicable to filings for a fiscal year after fiscal year 2005, see section 403(c) of Pub. L. 109–13, 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. 9, 2004, and the fees imposed under such amendment applicable to petitions under section 1144(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. 9, 2004, see section 426(c) of Pub. L. 108–447, set out as a note under section 1184 of this title.

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 ceases to be effective on the date the Agreement ceases to be in force, see section 107 of Title 16, Customs Duties.

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.

EFFECTIVE DATE OF 1996 AMENDMENT


Amendment by section 308(d)(3)(A), (4)(K), (e)(1)(L), (g)(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 1101 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


EFFECTIVE DATE OF 1991 AMENDMENT


EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–515, title II, §219(b), Nov. 5, 1990, 104 Stat. 2120, provided that: “The amendment made by subsection (a) of this section [amending this section] shall apply to fees charged only with respect to immigration inspection or preinspection services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after November 30, 1990.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 4(a)(1), (2)(A) of Pub. L. 100–525 effective as if included in enactment of Department of Justice Appropriation Act, 1987 (as contained in section 101(b) of Pub. L. 99–500), see section 4(c) of Pub. L. 100–525, set out as a note under section 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.


“(2) Fees may be charged under section 286(d) of the Immigration and Nationality Act [8 U.S.C. 1356(d)] only
with respect to immigration inspection services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after November 30, 1986."

§ 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 railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings, for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States;

(4) to make arrests for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, 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

Similar provisions were contained in the following prior appropriations act:


§ 1357. Powers of immigration officers and employees
may carry a firearm and may execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States. The authority to make arrests under paragraph (5)(B) shall only be effective on and after the date on which the Attorney General publishes final regulations which (i) prescribe the categories of officers and employees of the Service who may use force (including deadly force) and the circumstances under which such force may be used, (ii) establish standards with respect to enforcement activities of the Service, (iii) require that any officer or employee of the Service is not authorized to make arrests under paragraph (5)(B) unless the officer or employee has received certification as having completed a training program which covers such arrests and standards described in clause (ii), and (iv) establish an expedited, internal review process for violations of such standards, which process is consistent with standard agency procedure regarding confidentiality of matters related to internal investigations.

(b) Administration of oath; taking of evidence

Any officer or employee of the Service designated by the Attorney General, whether individually or as one of a class, shall have power and authority to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of this chapter and the administration of the Service; and any person to whom such oath has been administered, (or who has executed an unsworn declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28) under the provisions of this chapter, who shall knowingly or willfully give false evidence or swear (or subscribe under penalty of perjury as permitted under section 1746 of title 28) to any false statement concerning any matter referred to in this subsection shall be guilty of perjury and shall be punished as provided by section 1621 of title 18.

(c) Search without warrant

Any officer or employee of the Service authorized and designated under regulations prescribed by the Attorney General, whether individually or as one of a class, shall have power to conduct a search, without warrant, of the person, and of the personal effects in the possession of any person seeking admission to the United States, concerning whom such officer or employee may have reasonable cause to suspect that grounds exist for 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,

(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), 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(a) 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 political subdivision.

(6) The Attorney General may not accept a service under this subsection if the service will be used to displace 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 2671 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)(L) of this title.


References in Text

This chapter, referred to in subsecs. (b) and (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.

Amendments


Subsec. (i). Pub. L. 109–162, which directed the amendment of this section “as amended by section 726” by adding cl. (i) at end, was executed by adding subsec. (i) at end to reflect the probable intent of Congress. Pub. L. 109–162 does not contain a section 726.


Subsec. (c). Pub. L. 104–208, § 308(d)(4)(L)(i), substituted “denial of admission to” for “exclusion from’’.


Subsec. (g). Pub. L. 104–208, § 308(e)(1)(M), which directed amendment of subsec. (g) by substituting “removal” for “deportation” wherever appearing, could not be executed because the word “deportation” did not appear in subsec. (g).

Pub. L. 104–208, § 133, added subsec. (g).


1990—Subsec. (a). Pub. L. 101–649, § 503(a), struck out “and” at end of par. (3), substituted “United States, and” for “‘United States. Any such employee shall also have the power to execute any warrant or other process issued by any officer under any law regulating the admission, exclusion, or expulsion of aliens.” at end of par. (4), and added par. (5) and concluding provisions.


1988—Subsec. (d). Pub. L. 100–525, § 5, added par. (3) and closing provisions and struck out former par. (3) which read as follows: “requests the Service to determine promptly whether or not to issue a detainer to detain the alien, the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien.”


Subsec. (e). Pub. L. 99–553, as amended by Pub. L. 100–525, § 2(e), added subsec. (e), which prior to amendment by Pub. L. 100–525, was designated as a second subsec. (d) of this section.

1976—Subsec. (b). Pub. L. 94–550 inserted “or who has executed an unsworn declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28” after “to whom such oath has been administered” and “or subscribe under penalty of perjury as permitted under section 1746 of title 28” after “give false evidence or swear”.

Effective Date of 1996 Amendment

Amendment by section 308(d)(4)(L), (e)(1)(M), (g)(5)(A)(i) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first
§ 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 hereafter 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, during 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.


REMARKS 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


Subsec. (c), Pub. L. 104–208, § 414(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The Secretary of Health and Human Services shall notify the Attorney General upon request whenever any alien is issued a social security account number and social security card. The Secretary shall also furnish such available information as may be requested by the Attorney General regarding the identity and location of aliens in the United States.”

1988—Subsec. (c). Pub. L. 100–525 substituted “Secretary of Health and Human Services” for “Federal Se-
§ 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.

(Amendment by section 308(d)(4)(O) 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.)

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

1996—Pub. L. 104–204, § 308(g)(9)(A), substituted "part IV" for "Part V".

Pub. L. 104–204, § 308(e)(1)(N), substituted "removal" for "deportation".

Pub. L. 104–204, § 308(d)(4)(N), substituted "inadmissible" for "subject to exclusion" in two places.

1981—Pub. L. 97–116 substituted "immigrant, special immigrant, immediate relative, or refugee" for "quota immigrant, or nonquota immigrant".

§ 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.

(Amendment by section 308(d)(4)(O) 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.)

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

1996—Pub. L. 104–204, § 308(g)(9)(A), substituted "part IV" for "Part V".

Pub. L. 104–204, § 308(e)(1)(N), substituted "removal" for "deportation".

Pub. L. 104–204, § 308(d)(4)(N), substituted "inadmissible" for "subject to exclusion" in two places.

1981—Pub. L. 97–116 substituted "immigrant, special immigrant, immediate relative, or refugee" for "quota immigrant, or nonquota immigrant".

Effective Date of 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 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.

§ 1363. Deposit of and interest on cash received to secure immigration bonds

(a) Cash received by the Attorney General as security on an immigration bond shall be depos-
vided in the Treasury of the United States in trust for the obligor on the bond, and shall bear interest payable at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum. Such interest shall accrue from date of deposit occurring after April 27, 1966, to and including date of withdrawal or date of breach of the immigration bond, whichever occurs first: Provided, That cash received by the Attorney General as security on an immigration bond, and deposited by him in the postal savings system prior to discontinuance of the system, shall accrue interest as provided in this section from the date such cash ceased to accrue interest under the system. Appropriations to the Treasury Department for interest on uninvested funds shall be available for payment of said interest.

(b) The interest accruing on cash received by the Attorney General as security on an immigration bond shall be subject to the same disposition as prescribed for the principal cash, except that interest accruing to the date of breach of the immigration bond shall be paid to the obligor on the bond.


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 630(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), are no longer necessary for the conduct of 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) 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.


CODIFICATION


In subsec. (a)(1)(B), (C), (F), “section 630(a) and (b)(1) to (3) of title 41” substituted for “section 3732(a) of the Revised Statutes (41 U.S.C. 3732)”.


§ 1363b TITLED 8—ALIENS AND NATIONALITY Page 406


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.


Section, act June 27, 1952, ch. 477, title II, ch. 9, §295, 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 295 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.

§ 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)) 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 subsec. (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.

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.

EX. ORD. NO. 12789. DELEGATION OF REPORTING FUNCTIONS UNDER THE IMMIGRATION REFORM AND CONTROL ACT OF 1986


By the authority vested in me as President by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, and title IV of the Immigration Reform and Control Act of 1986, Public Law 99–603 (“Reform Act”) (title IV of Pub. L. 99–603, Nov. 6, 1986, 100 Stat. 3440, which enacted section 1364 of this title and provisions set out as notes under sections 1101, 1187, 1188, 1255a, and 1324a of this title), it is hereby ordered as follows:

SECTION 1. The Secretary of Homeland Security shall:

(a) perform, in coordination with the Secretary of Labor, the functions vested in the President by section 401 of the Reform Act (8 U.S.C. 1364);

(b) perform, except for the functions in section 402(5)(A), the functions vested in the President by section 402 of the Reform Act (8 U.S.C. 1324a note); and

(c) perform, insofar as they relate to the initial report described in section 404(b), the functions vested in the President by section 404 of the Reform Act (8 U.S.C. 1255a note).

SISC. 2. The Secretary of Labor shall:

(a) perform the functions vested in the President by section 402(5)(A) of the Reform Act (8 U.S.C. 1324a note);

(b) perform the functions vested in the President by section 403 of the Reform Act (8 U.S.C. 1188 note); and

(c) perform, insofar as they relate to the second report described in section 404(c), the functions vested in the President by section 404 of the Reform Act (8 U.S.C. 1255a note).

SISC. 3. The functions deleated by sections 1 and 2 of this order shall be performed in accordance with the procedures set forth in OMB Circular A–19.
§ 1365. Reimbursement of States for costs of incarcerating illegal aliens and certain Cuban nationals

(a) Reimbursement of States

Subject to the amounts provided in advance in appropriation Acts, the Attorney General shall reimburse a State for the costs incurred by the State for the imprisonment of any illegal alien or Cuban national who is convicted of a felony by such State.

(b) Illegal aliens convicted of a felony

An illegal alien referred to in subsection (a) is any alien who is any alien convicted of a felony who is in the United States unlawfully and—

(1) whose most recent entry into the United States was without inspection, or
(2) whose most recent admission to the United States was as a nonimmigrant who is in the United States unlawfully and—

(A) whose period of authorized stay as a nonimmigrant expired, or
(B) whose unlawful status was known to the Government,

before the date of the commission of the crime for which the alien is convicted.

(c) Marielito Cubans convicted of a felony

A Marielito Cuban convicted of a felony referred to in subsection (a) is a national of Cuba who—

(1) was allowed by the Attorney General to come to the United States in 1980,
(2) after such arrival committed any violation of State or local law for which a term of imprisonment was imposed, and
(3) at the time of such arrival and at the time of such violation was not an alien lawfully admitted to the United States—

(A) for permanent or temporary residence, or
(B) under the terms of an immigrant visa or a nonimmigrant visa issued under the laws of the United States.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

(e) “State” defined

The term “State” has the meaning given such term in section 1101(a)(36) of this title.


CODIFICATION

§ 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 nonimmigrant, 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).

(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.

REGULATIONS

Pub. L. 103–317, title VIII, Aug. 26, 1994, 108 Stat. 1778, provided in part: “That the Attorney General shall promulgate regulations to (a) prescribe requirements for program participation eligibility for States, (b) require verification by States of the eligible incarcerated population data with the Immigration and Naturalization Service, (c) prescribe a formula for distributing assistance to eligible States, and (d) award assistance to eligible States.”
(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) 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 an airport or seaport, are entered into the system and can be accessed by immigration officers at other airports and seaports.

(2) High-traffic land border ports of entry

Not later than December 31, 2004, the Attorney General shall implement the integrated entry and exit data system using the data described in paragraph (1) and available alien arrival and departure data described in subsection (b)(1) pertaining to aliens arriving in, or departing from, the United States at the 50 land border ports of entry determined by the Attorney General to serve the highest numbers of arriving and departing aliens. 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). 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), 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 integrated 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.


REFERENCES IN TEXT

Section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000, referred to in subsec. (g), is section 3 of Pub. L. 106–215, set out as a note below.
shall develop an automated entry and exit control system that will—

“(1) collect a record of departure for every alien departing the United States and match the records of departure with the record of the alien’s arrival in the United States;

“(2) enable the Attorney General to identify, through on-line searching procedures, lawfully admitted nonimmigrants who remain in the United States beyond the period authorized by the Attorney General; and

“(3) not significantly disrupt trade, tourism, or other legitimate cross-border traffic at land border ports of entry.

“(b) REPORT.—

“(1) DEADLINE.—Not later than December 31 of each year following the development of the system under subsection (a) of this section, the Attorney General shall submit an annual report to the Committees on the Judiciary of the House of Representatives and of the Senate on such system.

“(2) INFORMATION.—The report shall include the following information:

“(A) The number of departure records collected, with an accounting by country of nationality of the departing alien.

“(B) The number of departure records that were successfully matched to records of the alien’s prior arrival in the United States, 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 as non-immigrants, or as a visitor under the visa waiver program under section 1187 of this title, for whom no matching departure record has 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) USE OF INFORMATION ON OVERSTAYS.—Information regarding aliens who have remained in the United States beyond their authorized period of stay identified through the system shall be integrated into appropriate data bases of the Immigration and Naturalization Service and the Department of State, including those used at ports of entry and at consular offices.”


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.

VISA INTEGRITY AND SECURITY


“(a) SENSE OF CONGRESS REGARDING THE NEED TO EXPEDITE IMPLEMENTATION OF INTEGRATED ENTRY AND EXIT DATA SYSTEM.—

“(1) SENSE OF CONGRESS.—In light of the terrorist attacks perpetrated against the United States on September 11, 2001, it is the sense of the Congress that—

“(A) the Attorney General, in consultation with the Secretary of State, should fully implement the integrated entry and exit data system for airports, seaports, and land border ports of entry, as specified in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a), with all deliberate speed and as expeditiously as practicable; and

“(B) 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, should immediately begin establishing the Integrated Entry and Exit Data System Task Force, as described in section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106–215) [set out as a note below].

“(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to fully implement the system described in paragraph (1)(A).

“(b) DEVELOPMENT OF THE SYSTEM.—In the development of the Integrated Entry and Exit Data System under section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a), the Attorney General and the Secretary of State shall particularly focus on—

“(1) the utilization of biometric technology; and

“(2) the development of tamper-resistant documents readable at ports of entry.

“(c) INTERFACE WITH LAW ENFORCEMENT DATABASES.—The entry and exit data system described in this section shall be able to interface with law enforcement databases for use by Federal law enforcement to identify and detain individuals who pose a threat to the national security of the United States.”

TASK FORCE


“(a) 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 the Treasury, 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) trade;

“(v) law enforcement;

“(vi) national security; or

“(vii) 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 author-
§ 1365b TITLE 8—ALIENS AND NATIONALITY Page 410

ized 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—

(A) enhancing systems for data collection and data sharing, including the integrated entry and exit data system described in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1221 note [8 U.S.C. 1365a]), as amended by section 2 of this Act, by better use of technology, resources, and personnel;

(B) increasing cooperation between the public and private sectors;

(C) increasing cooperation among Federal agencies and among Federal and State agencies; and

(D) modifying information technology systems while taking into account the different data systems, infrastructure, and processing procedures of airports, seaports, and land border ports of entry.

(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 5316 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 General 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 privileges.

(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 services of such administrative support services necessary for the Task Force to carry out its responsibilities under this section.

``(e) 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.

``(f) 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.

``(g) 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.

``(h) 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 Naturalization Service, the responsibility for preparing and transmitting any such legislative recommendations.

(3) TERMINATION.—The Task Force shall terminate on a date designated by the Attorney General as the date on which the Task Force has been completed.

``(i) 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 2003.''

§ 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 Permanent 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).

\(^{1}\) So in original. Probably should be "(Public Law 106–215)".
(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 databases and data systems with which the entry and exit data system are interoperable;
   (iv) 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).

(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
   (iii) the United States Citizenship and Immigration Services;

(B) the Department of Justice, at the Executive Office for Immigration Review; and

(C) the Department of State, at the Bureau of Consular Affairs.

(2) Interoperable component

The fully integrated data system under paragraph (1) shall be an interoperable component of the entry and exit data system.

(3) Interoperable data system

Not later than 2 years after December 17, 2004, the Secretary shall fully implement an interoperable electronic data system, as required by section 202 of the Enhanced Border Security and Visa Entry Reform Act 2 of 2002 (8 U.S.C. 1722) to provide current and immediate access to information in the databases of Federal law enforcement agencies and the intelligence community that is relevant to determine—

(A) whether to issue a visa; or

(B) the admissibility or deportability of an alien.

(f) Maintaining accuracy and integrity of entry and exit data system

(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),

2So in original. Probably should be followed by “of 2002”.
§ 1365b

(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

Heads of agencies that have databases or data systems linked to the entry and exit data system shall establish rules, guidelines, policies, and operating and auditing procedures for collecting, removing, and updating data maintained in, and adding information to, such databases or data systems that ensure the accuracy and integrity of the data and for limiting access to the information in the databases or data systems to authorized personnel.

(4) Requirements

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 which government officer provided data 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;

(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), 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;
(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.

(4) Report
Not later than 1 year after December 17, 2004, the Secretary shall submit to Congress a report describing the Department’s progress on the development and implementation of the registered traveler program.

(f) Authorization of appropriations
There are authorized to be appropriated to the Secretary, for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out the provisions of this section.


REFERENCES IN TEXT
For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 1101 of this title and Tables.
§ 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.


§ 1367. Penalties for disclosure of information

(a) In general

Except as provided in subsection (b), 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, 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)—

(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.
(E) in the case of an alien applying for status under section 101(a)(15)(U) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(U)], the perpetrator of the substantial physical or mental abuse and the criminal activity;
(F) in the case of an alien applying for status under section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)), under section 7105(b)(1)(E)(ii)(II)(bb) of title 22, under section 244(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1254a(a)(3)), as in effect prior to March 31, 1996, or as a VAWA self-petitioner (as defined in section 101(a)(51) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(51)), the trafficker or perpetrator,

unless the alien has been convicted of a crime or crimes listed in section 237(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 oppor-
(b) Exceptions  
(1) The Secretary of Homeland Security or the Attorney General may provide, in the Secretary’s or 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 Secretary of Homeland Security or the Attorney General may provide in the discretion of the Secretary or the Attorney General for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose in a manner that protects the confidentiality of such information.  
(3) Subsection (a) 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) 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 Secretary of Homeland Security and the Attorney General are 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) 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 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 location information about individuals).  
(7) Government entities adjudicating applications for relief under subsection (a)(2), 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 nonprofit, nongovernmental victims’ service providers for the sole purpose of assisting victims in obtaining victim services from programs with expertise working with immigrant victims. Agencies receiving referrals are bound by the provisions of this section. Nothing in this paragraph shall be construed as affecting the ability of an applicant to designate a safe organization through whom governmental agencies may communicate with the applicant.  
(8) Notwithstanding subsection (a)(2), the Secretary of Homeland Security, the Secretary of State, or the Attorney General may provide in the discretion of either such Secretary or the Attorney General for the disclosure of information to national security officials to be used solely for a national security purpose in a manner that protects the confidentiality of such information.

(c) Penalties for violations  
Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act [8 U.S.C. 1229(e)] shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than $5,000 for each such violation.

(d) Guidance  
The Attorney General, Secretary of State, and the Secretary of Homeland Security shall provide guidance to officers and employees of the Department of Justice, Department of State, or the Department of Homeland Security regarding the provisions of this section, including the provisions to protect victims of domestic violence and severe forms of trafficking in persons or criminal activity listed in section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)) from harm that could result from the inappropriate disclosure of covered information.

References in Text
The Immigration and Nationality Act, referred to in subsec. (a)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, 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
2013—Subsec. (a)(1). Pub. L. 113-4, §810(d), which directed the substitution of “237(a)(2)” for “241(a)(2)” in concluding provisions of section 394(a)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, was executed to this section, which is section 394 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, to reflect the probable intent of Congress.

Subsec. (b)(1), Pub. L. 113-4, §810(a)(1), inserted “Secretary of Homeland Security” for “Secretary of Homeland Security or the Attorney General may” and “Secretary’s or the” before “Attorney General’s discretion”.

Subsec. (b)(2), Pub. L. 113-4, §810(a)(2), inserted “Secretary of Homeland Security” for “Attorney General” for”, and “in a manner that protects the confidentiality of such information” before period at end.

Subsec. (b)(5), Pub. L. 113-4, §810(a)(5), substituted “Secretary of Homeland Security and the Attorney General are” for “Attorney General is”.

Penalties for violations
Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act [8 U.S.C. 1229(e)] shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than $5,000 for each such violation.

Guidance
The Attorney General, Secretary of State, and the Secretary of Homeland Security shall provide guidance to officers and employees of the Department of Justice, Department of State, or the Department of Homeland Security.
Subsec. (d). Pub. L. 113–4, §810(b), inserted ‘‘, Secretary of State,’’ after ‘‘The Attorney General’’, ‘‘, Department of State,’’ after ‘‘Department of Justice’’, and ‘‘and severe forms of trafficking in persons or criminal activity listed in section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U))’’ after ‘‘domestic violence’’.

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. 109–271 substituted ‘‘paragraph (15)(F), (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 218(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 pars. (6) and (7).

Subsec. (c). Pub. L. 109–162, §817(3), inserted ‘‘or who knowingly makes a false certification under section 236(e) of the Immigration and Nationality Act’’ after ‘‘in violation of this section’’.


**Effective Date of 1997 Amendment**

Pub. L. 105–53, title V, §5582, Aug. 5, 1997, 111 Stat. 648, provided that: ‘‘Except as otherwise provided, the amendments made by this chapter [chapter 4 (§§5561–5582) of subtitle F of title V of Pub. L. 105–33, amending this section, sections 1611 to 1613, 1621, 1631, 1632, 1641 to 1645, and title 12 of this title, and sections 204, 205, and 209 of Title 14] shall be effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996’’.

**Effective Date of 1996 Amendment**

Amendment by section 308(g)(3)(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 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.

**Implementation**

Pub. L. 113–4, title VII, §810(c), Mar. 7, 2013, 127 Stat. 118, provided that: ‘‘Not later than 180 days after the date of the enactment of this Act [Mar. 7, 2013], the Attorney General, the Secretary of State, and Secretary of Homeland Security shall provide the guidance re-
tention (for example, a significant probability that the released alien would not appear, as agreed, at subsequent exclusion or deportation proceedings).

(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)) through a public hospital or other public facility (including a nonprofit hospital that is eligible for an additional payment adjustment under section 1395ww of title 42) 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) 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
§ 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) 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).

(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). 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) 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, or 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) to the extent that the Attorney General determines necessary to carry out the program under subsection (a).

(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) 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 (3), with respect to whom the institution or program is required by subsection (a) 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 1563(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 col-
§ 1372

TITLE 8—ALIENS AND NATIONALITY

Page 420

lected from, an alien under paragraph (1). Except as provided in subsection (g)(2), the fee imposed on any individual 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 $35.8 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).

(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 1258 of this title to a classification described in paragraph (3).

(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), the Attorney General, the Secretary of State, and the Secretary of Education shall jointly submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the operations of the program and the feasibility of expanding 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), 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) 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 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.

8So in original. See 2000 amendment notes below.
Subsec. (c)(1)(C). Pub. L. 107–56, §416(c)(2), inserted “‘other approved educational institution,’” after “‘higher education’.”

Subsec. (c)(4)(A). Pub. L. 107–56, §416(c)(1), inserted “‘other approved educational institutions,’” after “‘higher education’.”

Subsec. (d)(1). Pub. L. 107–56, §416(c)(1), inserted “‘other approved educational institutions,’” after “‘higher education’.”


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 commences activities in the United States with the institution or program.’”

Subsec. (e)(2). Pub. L. 106–396, §404(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “‘An approved institution of higher education and a designated exchange visitor program shall remit the fees collected under paragraph (1) to the Attorney General pursuant to a schedule established by the Attorney General.’”

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 “‘, 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 $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 “‘, 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”.

See amendment note above.

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).”


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 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.’”

“(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 entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(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 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.


Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.
§ 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) 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.

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.


§ 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) that international marriage brokers provide foreign national clients with background information gathered on United States clients from searches of the National Sex Offender Public Website 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).

(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 described in 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, for inclusion in the mailing described in clause (i), 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.

(iv) The Secretary of Homeland Security shall conduct a background check of the National Crime Information Center’s Protection Order Database on each petitioner for a visa under subsection (d) or (r) of section 1184 of this title. Any appropriate information obtained from such background check—

(I) shall accompany the criminal background information provided by the Secretary of Homeland Security to the Secretary of State and shared by the Secretary of State with a beneficiary of a petition referred to in clause (ii); and

(II) shall not be used or disclosed for any other purpose unless expressly authorized by law.

(v) The Secretary of Homeland Security shall create a cover sheet or other mechanism to accompany the information required to be provided to an applicant for a visa under subsection (d) or (r) of section 1184 of this title by clauses (i) through (iv) of this paragraph or by clauses (i) and (ii) of subsection (r)(4)(B) of such section 1184 of this title, that calls to the applicant’s attention—

(I) whether the petitioner disclosed a protection order, a restraining order, or criminal history information on the visa petition;

(II) the criminal background information and information about any protection order obtained by the Secretary of Homeland Security regarding the petitioner in the course of adjudicating the petition; and

(III) whether the information the petitioner disclosed on the visa petition regarding any previous petitions filed under subsection (d) or (r) of such section 1184 of this title is consistent with the information in the multiple visa tracking database of the Department of Homeland Security, as described in subsection (r)(4)(A) of such section 1184 of this title.

(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 (in-
§ 1375a

(a)(5)(A)(iii)

(b) Visa and adjustment interviews

(1) Fiance(e)s, spouses and their derivatives

During an interview with an applicant for a K nonimmigrant visa, a consular officers shall—

(A) provide information, in the primary language of the visa applicant, on protection orders and criminal convictions collected under subsection (a)(5)(A)(iii);

(B) provide a copy of the pamphlet developed under subsection (a)(1) 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).

(2) Family-based applicants

The pamphlet developed under subsection (a)(1) 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 of or to children

(A) In general

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.

(B) Compliance

To comply with the requirements of subparagraph (A), an international marriage broker shall—

(i) obtain a valid copy of each foreign national client’s birth certificate or other proof of age document issued by an appropriate government entity;

(ii) indicate on such certificate or document the date it was received by the international marriage broker;

(iii) retain the original of such certificate or document for 7 years after such date of receipt; and

(iv) produce such certificate or document upon request to an appropriate authority charged with the enforcement of this paragraph.

(2) Requirements of international marriage brokers with respect to mandatory collection of background information

(A) In general

(i) Search of sex offender public website

Each international marriage broker shall search the National Sex Offender Public Website, as required under paragraph (3)(A)(1).

(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, stalking, or an attempt to commit any such crime.

(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 Website 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 signed certification and accompanying documentation or attestation regarding the background information collected 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); 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.

(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

At the discretion of the Attorney General, a penalty may be imposed under clause (i) either by a Federal judge, or by the Attorney General 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 penalties

(i) Failure of international marriage brokers to comply with obligations

Except as provided in clause (ii), an international marriage broker that, in circumstances in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States—

(I) except as provided in subclause (II), 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 1 year, or both; or

(II) knowingly violates or attempts to violate paragraphs (1), (2), (3), or (4) shall be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

(ii) 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 a requirement under paragraph (2) or (3) for any purpose other than the disclosures required under paragraph (3) shall be fined in accordance with title 18 or imprisoned for not more than 1 year, or both.

(iii) Fraudulent failures of United States clients to make required self-disclosures

A person who knowingly and with intent to defraud another person outside the United States in order to recruit, solicit, entice, or induce that other person into entering a dating or matrimonial relationship, makes false or fraudulent representations regarding the disclosures described in clause (i), (ii), (iii), or (iv) of subsection (d)(2)(B), including by failing to make any such disclosures, shall be fined in accordance with title 18, imprisoned for not more than 1 year, or both.

1 So in original. Probably should be “paragraph”.
§1375a

(4) 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)(1) shall not apply until 30 days after the date of its development and initial distribution under subsection (a)(6).

(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.2

(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

(ii) 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—

(i) the name or residential, postal, electronic mail, or instant message address of an individual; or

(ii) the telephone, pager, cellphone, or fax number, or voice message mailbox of an individual; or

(iii) 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

2See References in Text note below.
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 studies and reports

(1) Study

The Comptroller General of the United States shall conduct a study—

(A) on the impact of this section and section 832 of 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) 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 fiancé(e) and spousal K nonimmigrant visa petitions or family-based immigration petitions filed by petitioners or applicants who have previously filed other fiancé(e) or spousal K nonimmigrant visa petitions or family-based immigration petitions;

(vii) the annual number of fiancé(e) and spousal K nonimmigrant visa petitions or family-based immigration petitions filed by petitioners or applicants who have concurrently filed other fiancé(e) 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;

(B) regarding the number of international marriage brokers doing business in the United States, the number of marriages resulting from the services provided, and the extent of compliance with the applicable requirements of this section;

(C) that assesses the accuracy and completeness of information gathered under section 832 and this section from clients and petitioners by international marriage brokers, the Department of State, or the Department of Homeland Security;

(D) that examines, based on the information gathered, the extent to which persons with a history of violence are using either the K nonimmigrant visa process or the services of international marriage brokers, or both, and the extent to which such persons are providing accurate and complete information to the Department of State or the Department of Homeland Security and to international marriage brokers in accordance with subsections (a) and (d)(2)(B); and

(E) that assesses the accuracy and completeness of the criminal background check performed by the Secretary of Homeland Security at identifying past instances of domestic violence.

(2) Report

Not later than 2 years after January 5, 2006, the Comptroller General shall submit to the 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).

(4) Continuing impact study and report

(A) Study

The Comptroller General shall conduct a study on the continuing impact of the implementation of this section and of section 832 of this title on the process for granting K nonimmigrant visas, including specifically a study of the items described in subparagraphs (A) through (E) of paragraph (1).

(B) Report

Not later than 2 years after March 7, 2013, the Comptroller General shall submit to the 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 subparagraph (A).

(C) Data collection

The Attorney General, the Secretary of Homeland Security, and the Secretary of
§ 1375b TITLE 8—ALIENS AND NATIONALITY Page 428

State shall collect and maintain the data necessary for the Comptroller General to conduct the study required by paragraph (1)(A).


REFERENCES IN TEXT

Section 3 of this Act, referred to in subsec. (e)(2), is section 331 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, 10420, 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 822, referred to in subsec. (f)(1)(A), (C), 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.


CODIFICATION

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.


AMENDMENTS

2013—Subsec. (a)(2)(H). Pub. L. 113–4, §808(b), substituted “the National Sex Offender Public Website” for “Federal and State sex offender public registries”.

Subsec. (a)(5)(A)(i). Pub. L. 113–4, §807(b)(1)(A), substituted “State, for inclusion in the mailing described in clause (1), any” for “State any” in the first sentence and struck out the last sentence which read as follows: “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.”


Subsec. (d)(1). Pub. L. 113–4, §808(c)(1), amended par. (1) generally. Prior to amendment, text read as follows: “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.”


Subsec. (d)(2)(B)(ii). Pub. L. 113–4, §808(c)(2)(B), substituted “stalking, or an attempt to commit any such crime,” for “or stalking.”

Subsec. (d)(3)(A). Pub. L. 113–4, §808(c)(3)(A)(i), which directed substitution of “Website” for “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,” was executed by making the substitution for “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,” to reflect the probable intent of Congress.

Subsec. (d)(3)(A)(ii). Pub. L. 113–4, §808(c)(3)(A)(ii), substituted “signed certification and accompanying documentation or attestation regarding the background information collected under paragraph (2)(B)” for “background information collected by the international marriage broker under paragraph (2)(B)”.

Subsec. (d)(3)(C). Pub. L. 113–4, §808(c)(3)(B), struck out subpar. (C). Text read as follows: “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.”

Subsec. (d)(5)(A)(i). Pub. L. 113–4, §808(c)(4)(A), substituted “At the discretion of the Attorney General, a penalty may be imposed under clause (1) either by a Federal judge, or by the Attorney General,” for “A penalty may be imposed under clause (1) by the Attorney General only”.

Subsec. (d)(5)(B). Pub. L. 113–4, §808(c)(4)(B), amended subpar. (B) generally. Prior to amendment, text read as follows: “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.”


Subsec. (d)(6) to (8). Pub. L. 113–4, §808(c)(5), (6), added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively.


§ 1375b. Protections for domestic workers and other nonimmigrants

(a) Information pamphlet and video for consular waiting rooms

(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 and video on legal rights and resources for aliens applying for employment- or education-based nonimmigrant visas. The video shall be distributed and shown in consular waiting rooms in embassies and consulates appropriate to the circumstances that are determined to have the greatest concentration of employment or education-based non-immigrant visa applicants, and where sufficient video facilities exist in waiting or other rooms where applicants wait or convene. The Secretary of State is authorized to augment video facilities in such consulates or embassies in order to fulfill the purposes of this section.
(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 and video 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 non-immigrant; 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 victims 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 and produce or dub the video 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 and the video produced or dubbed 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 and video 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 and video 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).

(4) Deadline for video development and distribution
Not later than 1 year after March 7, 2013, the Secretary of State shall make available the video developed under subsection (a) produced or dubbed 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,
§ 1375c  TITLE 8—ALIENS AND NATIONALITY  Page 430

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 non-immigrant visa
The term “employment- or education-based non-immigrant 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 employer.

(2) Severe forms of trafficking in persons
The term “severe forms of trafficking in persons” has the meaning given 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, or 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.

Amendments
2013—Subsec. (a). Pub. L. 113–4, § 1206(1)(A), inserted “and produce or dub the video” after “information pamphlet”.
Subsec. (c)(2). Pub. L. 113–4, § 1206(3)(B), inserted “and the video produced or dubbed” after “translated”.

§ 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 recoccur with respect to any alien employed by an employee of such mission or institution.

(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.

1 So in original. Probably should be “(b)(2),”.
(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 nonimmigrant 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)(D), (2)(E), (2)(F), (2)(I), (3)(A)(i), (3)(A)(ii), (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
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
§ 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 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 detained.

(c) Availability to public

Copies of the data collected under subsection (a) shall be made available to members of the public upon request pursuant to such regulations as the Attorney General shall prescribe.

§ 1377. COLLECTION OF DATA ON DETAINED ASYLUM SEEKERS

(a) In general

The Attorney General shall regularly collect data on a nation-wide 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) for the fiscal year ending September 30 of that year.

(c) Availability to public

Copies of the data collected under subsection (a) shall be made available to members of the public upon request pursuant to such regulations as the Attorney General shall prescribe.

§ 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 held in pre-removal detention at detention facilities established by the Attorney General.
tained 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 criminal aliens 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 dispositions

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) 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) shall be made available to members of the public upon request pursuant to such regulations as the Attorney General shall prescribe.


CODIFICATION

Section was enacted as part of the Haitian Refugee Immigration Fairness Act of 1998, and also as part of the Immigration and Nationality Act, 1999, and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the Immigration and Nationality Act which comprises this chapter.

§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
§ 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 offshore locations.

(b) Applicability

Subsection (a) shall apply to petitions filed on or after the effective date of this subtitle.


REFERENCES IN TEXT

a national, but not a citizen of the United States;

(e) a person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of such person;

(f) a person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States;

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years: Provided, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 288 of title 22 by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 288 of title 22 may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date; and

(h) a person born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.


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 who was a national or citizen of the United States under subsec. (a)(7) lose his nationality or citizenship unless he be continuously physically present in the United States for a period of not less than two years of age 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.


EFFECTIVE DATE OF 1986 AMENDMENT


EFFECTIVE DATE OF 1978 AMENDMENT


EFFECTIVE DATE

Chapter effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

WAIVER OF RETENTION REQUIREMENTS

Pub. L. 103–416, title I, §101(b), Oct. 25, 1994, 108 Stat. 4306, 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 19, 1978), and the proviso of section 301(g) of the Nationality Act of 1940 (former 8 U.S.C. 601(g)) that provided for a person’s loss of citizenship or nationality if the person
failed to come to, or reside or be physically present in, the United States shall not apply in the case of a person claiming United States citizenship based on such person’s descent from an individual described in section 301(h) of the Immigration and Nationality Act (as added by subsection (a)).”

**Retroactive Application of 1994 Amendment**


“(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 1953 of the Revised Statutes [former 8 U.S.C. 6] (as in effect before the enactment of the Act) out west 24, 1944 (48 Stat. 397).

“(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 de-naturalization, deportation, or exclusion action against, any person who is or was an alien ineligible for admission to the United States under section 212(a)(3)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(E)) 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 1953 [former 50 U.S.C. App. 1971].”

**Applicability of Transmission Requirements**

Pub. L. 103–416, title I, §101(d), Oct. 25, 1994, 108 Stat. 4306, 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 amendment shall not affect 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**

Alaska Statehood provisions as not conferring, terminating, or restoring United States nationality, see section 21 of Pub. L. 85–508, title I, §101(c), Oct. 25, 1994, 108 Stat. 4306, 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 amendment shall not affect 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.”

**§ 1401a. Birth abroad before 1952 to service parent**

Section 1401(g) of this title shall be considered to have been and to be applicable to a child born outside of the United States and its outlying possessions after January 12, 1941, and before December 24, 1952, of parents one of whom is a citizen of the United States who has served or shall serve honorably in the armed forces of the United States after December 7, 1941, and before the date of the termination of any applicable Act of Congress which was applicable to the child’s birth residing abroad solely or principally in the employment of the Government of the United States or a bona fide American, educational, scientific, philanthropic, religious, commercial, or financial organization, having its principal office or place of business in the United States, or an international agency of an official character in which the United States participates, for which he receives a substantial compensation.

“(i) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who has served or shall serve honorably in the armed forces of the United States after December 7, 1941, and before the date of the termination of any applicable Act of Congress which was applicable to the child’s birth residing abroad solely or principally in the employment of the Government of the United States or a bona fide American, educational, scientific, philanthropic, religious, commercial, or financial organization, having its principal office or place of business in the United States, or an international agency of an official character in which the United States participates, for which he receives a substantial compensation.

**Compensation**

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 absence from the United States of less
§ 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, 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 3662(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 a note preceding former section 21 of Title 48, Territories and Insular Possessions.

§ 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.

§ 1407. Persons living in and born in Guam

(a) The following persons, and their children born after April 11, 1899, are declared to be citizens of the United States as of August 1, 1950, if they were residing on August 1, 1950, on the island of Guam or other territory over which the United States exercises rights of sovereignty:

(1) All inhabitants of the island of Guam on April 11, 1899, including those temporarily absent from the island on that date, who were Spanish subjects, who after that date continued to reside in Guam or other territory over which the United States exercises sovereignty, and who have taken no affirmative steps to preserve or acquire foreign nationality; and

(2) All persons born in the island of Guam who resided in Guam on April 11, 1899, including those temporarily absent from the island on that date, who after that date continued to reside in Guam or other territory over which the United States exercises sovereignty, and who have taken no affirmative steps to preserve or acquire foreign nationality.

(b) All persons born in the island of Guam on or after April 11, 1899 (whether before or after August 1, 1950) subject to the jurisdiction of the United States, are declared to be citizens of the United States: Provided, That in the case of any person born before August 1, 1950, he has taken no affirmative steps to preserve or acquire foreign nationality.

(c) Any person hereinbefore described who is a citizen or national of a country other than the United States and desires to retain his present political status shall have made, prior to August 1, 1952, a declaration under oath of such desire, said declaration to be in form and executed in the manner prescribed by regulations. From and after the making of such a declaration any such person shall be held not to be a national of the United States by virtue of this chapter.

§ 1408. Nationals but not citizens of the United States at birth

Unless otherwise provided in section 1401 of this title, the following shall be nationals, but not citizens, of the United States at birth:

(1) A person born in an outlying possession of the United States on or after the date of formal acquisition of such possession;

(2) A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have had a residence in the United States, or one of its outlying possessions prior to the birth of such person;

(3) A person of unknown parentage found in an outlying possession of the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in such outlying possession; and

(4) A person born outside the United States and its outlying possessions of parents one of whom is an alien, and the other a national, but not a citizen, of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years—

(A) during which the national parent was not outside the United States or its outlying possessions for a continuous period of more than one year, and

(B) at least five years of which were after attaining the age of fourteen years.

The proviso of section 1401(g) of this title shall apply to the national parent under this paragraph in the same manner as it applies to the citizen parent under that section.

§ 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 legitimacy of the child 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

Subsec. (b). Pub. L. 100–525, §9(r)(1), substituted “before December 24, 1952” for “prior to the effective date of this chapter” and “at any time” for “before or after the effective date of this chapter”.

Subsec. (c). Pub. L. 100–525, §9(r)(2), substituted “after December 23, 1952” for “on or after the effective date of this chapter”.

1986—Subsec. (a). Pub. L. 99–653, as amended by Pub. L. 100–525, §8(k), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The provisions of paragraphs (c), (d), (e), and (g) of section 1401 of this title 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(i)(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(i)(2), substituted “section 1401(g)” for “section 1401(a)(7)”.

EFFECTIVE DATE OF 1988 AMENDMENT

EFFECTIVE DATE OF 1986 AMENDMENT
Pub. L. 99–653, §23(e), 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—NATIONALITY THROUGH NATURALIZATION

§1421. Naturalization authority
(a) Authority in Attorney General

The sole authority to naturalize persons as citizens of the United States is conferred upon the Attorney General.

(b) Court authority to administer oaths

(1) Jurisdiction

Subject to section 1448(c) of this title—

(A) General jurisdiction

Except as provided in subparagraph (B), each applicant for naturalization may choose to have the oath of allegiance under section 1448(a) of this title administered by the Attorney General or by an eligible court described in paragraph (5). Each such eligible court shall have authority to administer such oath of allegiance to persons residing within the jurisdiction of the court.

(B) Exclusive authority

An eligible court described in paragraph (5) that wishes to have exclusive authority to administer the oath of allegiance under section 1448(a) of this title to persons residing within the jurisdiction of the court during the period described in paragraph (3)(A)(i) shall notify the Attorney General of such wish and, subject to this subsection, shall have such exclusive authority with respect to such persons during such period.

(2) Information

(A) General information

In the case of a court exercising authority under paragraph (1), in accordance with procedures established by the Attorney General—
(i) the applicant for naturalization shall notify the Attorney General of the intent to be naturalized before the court, and
(ii) the Attorney General—
(I) shall forward to the court (not later than 10 days after the date of approval of an application for naturalization in the case of a court which has provided notice under paragraph (1)(B)) such information as may be necessary to administer the oath of allegiance under section 1448(a) of this title, and
(II) shall promptly forward to the court a certificate of naturalization (prepared by the Attorney General).

(B) Assignment of individuals in the case of exclusive authority

If an eligible court has provided notice under paragraph (1)(B), the Attorney General shall inform each person (residing within the jurisdiction of the court), at the time of the approval of the person’s application for naturalization, of—

(i) the court’s exclusive authority to administer the oath of allegiance under section 1448(a) of this title to such a person during the period specified in paragraph (3)(A)(i), and
(ii) the date or dates (if any) under paragraph (3)(B) on which the court has scheduled oath administration ceremonies.

If more than one eligible court in an area has provided notice under paragraph (1)(B), the Attorney General shall permit the person, at the time of the approval, to choose the court to which the information will be forwarded for administration of the oath of allegiance under this section.

(3) Scope of exclusive authority

(A) Limited period and advance notice required

The exclusive authority of a court to administer the oath of allegiance under paragraph (1)(B) shall apply with respect to a person—

(i) only during the 45-day period beginning on the date on which the Attorney General certifies to the court that an applicant is eligible for naturalization, and
(ii) only if the court has notified the Attorney General, prior to the date of certification of eligibility, of the day or days (during such 45-day period) on which the court has scheduled oath administration ceremonies.

(B) Authority of Attorney General

Subject to subparagraph (C), the Attorney General shall not administer the oath of allegiance to a person under subsection (a) 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.

AMENDMENTS


1991—Subsec. (b). Pub. L. 102–232, §102(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “An applicant for naturalization may choose to have the oath of allegiance under section 1448(a) of this title administered by the Attorney General or by any district court of the United States for any State or by any court of record in any State having a seal, a clerk, and jurisdiction in actions in law or equity, or law and equity, in which the amount in controversy is unlimited. The jurisdiction of all courts in this subsection specified to administer the oath of allegiance shall extend only to persons resident within the respective jurisdiction of such courts.”

1990—Pub. L. 101–649 amended section generally, substituting provisions authorizing Attorney General to...
naturalize persons as citizens, for provisions granting

certain courts exclusive jurisdiction to naturalize.


(e) which read as follows: "Notwithstanding the provi-

sions of section 404(a), any petition for naturalization

filed on or after September 26, 1961, shall be heard and de-

termined in accordance with the requirements of this sub-

section."


1959—Subsec. (a). Pub. L. 86–3 struck out provi-

sions which conferred jurisdiction on District Court for Ter-

ritory of Hawaii. See section 91 of Title 28, Judiciary

and Judicial Procedure, and notes thereunder.

1958—Subsec. (a). Pub. L. 85–508 struck out provi-

sions which conferred jurisdiction on District Court for Ter-


L. 101–649, see section 219(d)(1) of Pub. L. 105–416, set out

as a note under section 1101 of this title.

**Effective Date of 1994 Amendment**

Amendment by Pub. L. 103–416 effective as if included


L. 101–649, see section 219(d)(1) of Pub. L. 105–416, set out

as a note under section 1101 of this title.

**Effective Date of 1991 Amendment**

Amendment Pub. L. 102–232 effective as if included


L. 101–649, see section 310(1) of Pub. L. 102–232, set out as

a note under section 1101 of this title.

**Effective Date of 1990 Amendment; Savings Provision**


5097, as amended by Pub. L. 102–232, title III, §308(n),

Dec. 12, 1991, 105 Stat. 1759, provided that:

"(a) Effective Date.—

"(1) No new court petitions after effective date.—No court shall have jurisdiction, under section 310(a) of the Immigration and Nationality Act [8 U.S.C. 1421(a)], to naturalize a person unless a petition for naturalization with respect to that person has been filed with the court before October 1, 1991.

"(2) Treatment of current court petitions.—

"(A) Continuation of current rules.—Except as provided in subparagraph (B), any petition for naturalization which may be pending in a court on October 1, 1991, shall be heard and determined in accordance with the requirements of law in effect when the petition was filed.

"(B) Permitting withdrawal and consideration of application under sections 1429 and 1455 of this title, unless otherwise specifically provided, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certification of citizenship, or other document or proceeding which is valid as of the effective date; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, as of the effective date.

"(2) As to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters, the provisions of law repealed by this title are, unless otherwise specifically provided, hereby continued in force and effect.

"(e) Treatment of Service in Armed Forces of Foreign Country.—The amendments made by section 404 [amending section 1426 of this title] (relating to treatment of service in armed forces of a foreign country) shall take effect on the date of the enactment of this Act [Nov. 29, 1990] and shall apply to exemptions from training or service obtained before, on, or after such date.

"(f) Filipino War Veterans.—Section 405 [enacting provisions 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**


### §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**

1988—Pub. L. 100–525 struck out at end "Notwithstanding section 405(b) of this Act, this section shall apply to any person whose petition for naturalization shall hereafter be filed, or shall have been pending on the effective date of this chapter."
§ 1423. Requirements as to understanding the English language, history, principles and form of government of the United States

(a) No person except as otherwise provided in this subchapter shall hereafter be naturalized as a citizen of the United States upon his own application who cannot demonstrate—

(1) an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language: Provided, That the requirements of this paragraph relating to ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable condition shall be imposed upon the applicant; and

(2) a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States.

(b)(1) The requirements of subsection (a) shall not apply to any person who is unable because of physical or developmental disability or mental impairment to comply therewith.

(2) The requirement of subsection (a)(1) shall not apply to any person who, on the date of the filing of the person’s application for naturalization as provided in section 1445 of this title, either—

(A) is over fifty years of age and has been living in the United States for periods totaling at least twenty years subsequent to a lawful admission for permanent residence, or

(B) is over fifty-five years of age and has been living in the United States for periods totaling at least fifteen years subsequent to a lawful admission for permanent residence.

(3) The Attorney General, pursuant to regulations, shall provide for special consideration, as determined by the Attorney General, concerning the requirement of subsection (a)(2) with respect to any person who, on the date of the filing of the person’s application for naturalization as provided in section 1445 of this title, is over sixty-five years of age and has been living in the United States for periods totaling at least twenty years subsequent to a lawful admission for permanent residence.


Effective Date of 1994 Amendment

Pub. L. 103–416, title I, §108(d), Oct. 25, 1994, 108 Stat. 4310, 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 references, see note set out under section 1551 of this title.

Hmong Veterans’ Naturalization


"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Hmong Veterans' Naturalization Act of 2000'."

"SEC. 2. EXEMPTION FROM ENGLISH LANGUAGE REQUIREMENT FOR CERTAIN ALIENS WHO SERVED WITH SPECIAL GUERRILLA UNITS OR IRREGULAR FORCES IN LAOS.

"The requirement of paragraph (1) of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)(1)) shall not apply to the naturalization of any person—

(1) who—

(A) was admitted into the United States as a refugee from Laos pursuant to section 207 of the Immigration and Nationality Act (8 U.S.C. 1157); and
"(B) served with a special guerrilla unit, or irregular forces, operating from a base in Laos in support of the United States military at any time during the period beginning February 26, 1961, and ending September 18, 1978;

"(2) who—

"(A) satisfies the requirement of paragraph (1)(A); and

"(B) was the spouse of a person described in paragraph (1) on the day on which such described person applied for admission into the United States as a refugee; or

"(3) who—

"(A) satisfies the requirement of paragraph (1)(A); and

"(B) is the surviving spouse of a person described in paragraph (1)(B) which described person was killed or died in Laos, Thailand, or Vietnam.

"SEC. 3. SPECIAL CONSIDERATION CONCERNING CIVICS REQUIREMENT FOR CERTAIN ALIENS WHO SERVED WITH SPECIAL GUERRILLA UNITS OR IRREGULAR FORCES IN LAOS.

"The Attorney General shall provide for special consideration, as determined by the Attorney General, concerning the requirement of paragraph (2) of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)(2)) with respect to the naturalization of any person described in paragraph (1), (2), or (3) of section 2 of this Act.

"SEC. 4. DOCUMENTATION OF QUALIFYING SERVICE.

"A person seeking an exemption under section 2 or special consideration under section 3 shall submit to the Attorney General documentation of their, or their spouse’s, service with a special guerrilla unit, or irregular forces, described in section 2(1)(B), in the form of—

"(1) original documents;

"(2) an affidavit of the serving person’s superior officer;

"(3) two affidavits from other individuals who also were serving with such a special guerrilla unit, or irregular forces, and who personally knew of the person’s service; or

"(4) other appropriate proof.

"SEC. 5. DETERMINATION OF ELIGIBILITY FOR EXEMPTION AND SPECIAL CONSIDERATION.

"(a) In determining a person’s eligibility for an exemption under section 2 or special consideration under section 3, the Attorney General—

"(1) shall review the refugee processing documentation for the person, or, in an appropriate case, for the person and the person’s spouse, to verify that the requirements of section 2 relating to refugee applications and admissions have been satisfied;

"(2) shall consider the documentation submitted by the person under section 4;

"(3) may request an advisory opinion from the Secretary of Defense regarding the person’s, or their spouse’s, service in a special guerrilla unit, or irregular forces, described in section 2(1)(B); and

"(4) may consider any documentation provided by organizations maintaining records with respect to Hmong veterans or their families.

"(B) The Secretary of Defense shall provide any opinion requested under paragraph (3) to the extent practicable, and the Attorney General shall take into account any opinion that the Secretary of Defense is able to provide.

"SEC. 6. DEADLINE FOR APPLICATION AND PAYMENT OF FEES.

"This Act shall apply to a person only if the person’s application for naturalization is filed, as provided in section 334 of the Immigration and Nationality Act (8 U.S.C. 1445), with appropriate fees not later than 36 months after the date of the enactment of this Act [May 26, 2000]. In the case of a person described in section 2(3), the application referred to in the preceding sentence, and appropriate fees, shall be filed not later than 36 months after the date of the enactment of this Act [Nov. 1, 2000].

"SEC. 7. LIMITATION ON NUMBER OF BENEFICIARIES.

"Notwithstanding any other provision of this Act, the total number of aliens who may be granted an exemption under section 2 or special consideration under section 3, or both, may not exceed 45,000."

§1424. Prohibition upon the naturalization of persons opposed to government or law, or who favor totalitarian forms of government

(a) Notwithstanding the provisions of section 405(b) of this Act, no person shall hereafter be naturalized as a citizen of the United States—

(1) who advocates or teaches, or who is a member of or affiliated with any organization that advocates or teaches, opposition to all organized government; or

(2) is a member of or affiliated with (A) the Communist Party of the United States; (B) any other totalitarian party of the United States; (C) the Communist Political Association; (D) the Communist or other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (E) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; or (F) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt, unless such alien establishes that he did not have knowledge or reason to believe at the time he became a member of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered) 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, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under authority of such organization or paid for by the funds of such organization; or

(4) who advocates or teaches or who is a member of or affiliated with any organization that advocates or teaches (A) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government because of his or their official character; or (C) the unlawful
damage, injury, or destruction of property; or
(D) sabotage; or
(5) who writes or publishes or causes to be written or published, or who knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or who know-
ingly has in his possession for the purpose of circulation, publication, distribution, or dis-
play, 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.

(6) who is a member of or affiliated with any organization that writes, circulates, distrib-
utes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its pos-
session for the purpose of circulation, distribu-
tion, publication, issue, or display, any writ-
ten or printed matter of the character de-
scribed in subparagraph (5) of this subsection.

(b) The provisions of this section or of any other section of this chapter shall not be con-
strued as declaring that any of the organizations referred to in this section or in any other sec-
tion of this chapter do not advocate the over-
throw of the Government of the United States
by force, violence, or other unconstitutional means.

(c) The provisions of this section shall be ap-
plicable to any applicant for naturalization who at any time within a period of ten years imme-
diately preceding the filing of the application for naturalization or after such filing and before taking the final oath of citizenship, or has been found to be within any of the classes enu-
merated 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) solely because of past membership in, or past affiliation with, a party or organization may be naturalized without re-
gard to the provisions of subsection (c) if such person establishes that such membership or af-
filiation 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 employ-
ment, 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) solely because of past membership in, or past affiliation with, a party or organization described in that subsection;
(3) does not fall within any other of the classes described in that subsection; and
(4) is determined by the Director of Central Intelligence, in consultation with the Sec-
retary of Defense when Department of Defense activities are relevant to the determination, and with the concurrence of the Attorney Gen-
eral and the Secretary of Homeland Security, to have made a contribution to the national security or to the national intelligence mis-
ion of the United States.

(6) who is a member of or affiliated with any Com-
munist-front organization during the time it is reg-
istered or required to be registered under the provisions
of section 786 of title 50; or
(7) who published, or displayed, or who know-

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. 200, which is set out as a Savings Clause note under section 1101 of this title.

References in this chapter to the Director of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence com-
munity deemed to be a reference to the Director of Na-

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 Com-
munist-action organization during the time it is reg-
istered or required to be registered under the provisions
of section 786 of title 50; or (H) who, regardless of
whether he is within any of the other provisions of this section, is a member of or affiliated with any Com-
munist-front organization during the time it is reg-
istered or required to be registered under section 786 of
title 50” after “may hereafter adopt adopt.”
1988—Subsec. (a)(2)(D). Pub. L. 100–525 substituted “party” 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 com-
munity deemed to be a reference to the Director of Na-

Section 1081(a), (b) of Pub. L. 106–120, set out as a note under section 3001 of Title 50, War and National Defense.
§ 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 of the United States, shall be forever incapable of holding any office of trust or of profit under the United States, and such deserters and evaders shall be forever incapable of holding any office of trust or of profit under the United States, or of exercising any rights of citizens thereof.


§ 1426. Citizenship denied alien relieved of service in Armed Forces because of alienage

(a) Permanent ineligibility

Notwithstanding the provisions of section 405(b) 
but subject to subsection (c), any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on the ground that he is an alien, and is or was relieved or discharged from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States; and such deserters and evaders shall be forever incapable of holding any office of trust or of profit under the United States, or of exercising any rights of citizens thereof.


(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 See References in Text note below.
ing 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 corporation engaged in the development of foreign trade and commerce of the United States, 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 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 residency 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)(E) 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.

1996—Subsec. (a). Pub. L. 104–208 substituted ‘‘clauses (i) through (v) of section 1158(h)(2)(A) of this title’’ for ‘‘subparagraphs (A) through (D) of section 1223(h)(2) of this title’’.


Pub. L. 101–649, § 402, substituted ‘‘the Attorney General’’ for ‘‘the court’’ in first par. and subpar. (2) of second par., and ‘‘date of any hearing under section 1447(a) of this title’’ for ‘‘date of final hearing’’ in first par.

Pub. L. 101–649, § 407(c)(2), substituted references to applicant and application for references to petitioner and petition wherever appearing.

Subsec. (b). Pub. L. 101–649, § 407(d)(1)(A), (B), substituted ‘‘the Attorney General’’ for ‘‘the court’’ in first par. and subpar. (2) of second par., and ‘‘date of any hearing under section 1447(a) of this title’’ for ‘‘date of final hearing’’ in first par.

Pub. L. 101–649, § 407(d)(1)(C), substituted references to applicant, applicant’s, and application for references to petitioner, petitioner’s, and petition wherever appearing.

Subsec. (c). Pub. L. 101–649, § 407(c)(2), substituted references to applicant and application for references to petitioner and petition wherever appearing.


Pub. L. 101–649, § 407(c)(2), substituted references to applicant, applicant’s, and application for references to petitioner, petitioner’s, and petition wherever appearing.

Subsec. (f). Pub. L. 101–649, § 407(e)(1), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: ‘‘Naturalization shall not be granted to a petitioner by a naturalization court while registration proceedings or proceedings to require registration against an organization of which the petitioner is a member or affiliate are pending under section 792 or 793 of title 50.’’

Subsec. (g)(1). Pub. L. 101–649, § 407(d)(1)(D), substituted ‘‘within a particular State or district of the Service in the United States’’ for ‘‘within the jurisdiction of the court’’.

Pub. L. 101–649, § 407(c)(2), substituted references to applicant for references to petitioner wherever appearing.

Subsec. (h). Pub. L. 101–649, § 407(d)(1)(E), amended first sentence generally. Prior to amendment, first sentence read as follows: ‘‘A petition for naturalization may be filed pursuant to this subsection in any district court of the United States, without regard to the residence of the petitioner.’’


1981—Subsec. (b). Pub. L. 97–116 inserted provision that the spouse and dependent unmarried sons and daughters who are members of the household of a person who qualifies for the benefits of this subsection also be entitled to such benefits during the period for which they were residing abroad as dependent members of the household of the person.

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 sections 1081(a), (b) of Pub. L. 101–656, set out as a note under section 3001 of Title 50, War and National Defense.

TERMINATION DATE OF 2005 AMENDMENT

Pub. L. 109–149, title V, § 518(b), Dec. 30, 2005, 119 Stat. 2882, provided that: ‘‘The amendment made by subsection (a) [amending this section] is repealed on January 1, 2006.’’

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 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.

EXPEDITED NATURALIZATION


“(a) IN GENERAL.—With the approval of the Director of Central Intelligence, the Attorney General, and the Commissioner of Immigration and Naturalization, an applicant described in subsection (b) and otherwise eligible for naturalization may be naturalized without regard to the residence and physical presence requirements of section 316(a) of the Immigration and Nationality Act [8 U.S.C. 1252(a)], or to the prohibitions of section 313 of such Act [8 U.S.C. 1241], and no residence within a particular State or district of the Immigration and Naturalization Service in the United States shall be required.

“(b) ELIGIBLE APPLICANT.—An applicant eligible for naturalization under this section is the spouse or child of a deceased alien whose death resulted from the intentional and unauthorized disclosure of classified information regarding the alien’s participation 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 a period of 3 years immediately preceding the date of filing the application for naturalization; and

“(2) has resided continuously within the same State as the deceased alien during such period; and

“(3) is a citizen of the Commonwealth of Puerto Rico, the Virgin Islands, or a territory of the United States to which section 1971 of title 48, applies; and

“(4) on the date of filing the application for naturalization, is less than 21 years of age; but, if the applicant is 18 or older, is 1 year of age nearer the date of filing the application for naturalization than the date of death of the alien to whom the application relates; and

“(5) is not otherwise inadmissible for criminal grounds or for reasons of public policy.

“(c) EXCLUSION.—Notwithstanding subsection (b), an applicant described in subsection (b) shall not be treated as an eligible applicant under this section if the applicant is—

“(1) the spouse of a deceased alien whose death resulted from the intentional and unauthorized disclosure of classified information regarding the alien’s participation in the conduct of United States intelligence activities; or

“(2) the child of a deceased alien whose death resulted from the intentional and unauthorized disclosure of classified information regarding the alien’s participation in the conduct of United States intelligence activities; or

“(3) the child of a deceased alien whose death resulted from the intentional and unauthorized disclosure of classified information regarding the alien’s participation in the conduct of United States intelligence activities, unless the child is a citizen of the Commonwealth of Puerto Rico, the Virgin Islands, or a territory of the United States to which section 1971 of title 48, applies; or

“(4) otherwise inadmissible under this title; and

“(d) EFFECTIVE DATE.—This section shall take effect not later than 180 days after the date of the enactment of this section.”
§ 1428 Temporary absence of persons performing religious duties

Any person who is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or any person who is engaged solely by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States as a missionary, brother, nun, or sister, who (1) has been lawfully admitted to the United States for permanent residence, (2) has at any time thereafter and before filing an application for naturalization been physically present and residing within the United States for an uninterrupted period of at least one year, and (3) has heretofore been or may hereafter be absent temporarily from the United States in connection with or for the purpose of performing the ministerial or priestly functions of such religious denomination, or serving as a missionary, brother, nun, or sister, shall be considered as being physically present and residing in the United States for the purpose of naturalization within the meaning of section 1427(a) of this title, notwithstanding any such absence from the United States, if he shall in all other respects comply with the requirements of the naturalization law. Such person shall prove to the satisfaction of the Attorney General that his absence from the United States has been solely for the purpose of performing the ministerial or priestly functions of such religious denomination, or of serving as a missionary, brother, nun, or sister.


AMENDMENTS


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.

§ 1429. Prerequisite to naturalization; burden of proof

Except as otherwise provided in this subchapter, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this chapter. The burden of proof shall be upon such person to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigrant visa, if any, or of other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry, in the custody of the Service. Notwithstanding the provisions of section 405(b), and except as provided in sections 1439 and 1440 of this title no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act; and no application for naturalization shall be considered by the Attorney General if there is pending against the applicant a removal proceeding pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act: Provided, That the findings of the Attorney General in terminating removal proceedings or in canceling the removal of an alien pursuant to the provisions of this chapter, shall not be deemed binding in any way upon the Attorney General with respect to the question of whether such person has established his eligibility for naturalization as required by this subchapter.


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.

Section 405(b), referred to in text, is section 405(b) of act June 27, 1952, ch. 477, title IV, § 407, 66 Stat. 290, 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

1 See References in Text note below.
Attorney General” for “upon the naturalization court”.


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), who has been a United States citizen during all of such period, and has been physically present in the United States for periods totaling at least half of that time and has resided within the State or the district of the Service in the United States in which the applicant filed his application for at least three months.

(b) Any person, (1) whose spouse is (A) a citizen of the United States, (B) in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or of an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, or of a public international organization in which the United States participates by treaty or statute, or is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or is engaged solely as a missionary by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States, and (C) regularly stationed abroad in such employment, and (2) who is in the United States at the time of naturalization, and (3) who declares before the Attorney General in good faith an intention to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse, may be naturalized upon compliance with all the requirements of the naturalization laws, except that no prior residence or specified period of physical presence within the United States or within a State or a district of the Service in the United States or proof thereof shall be required.

(c) Any person who (1) is employed by a bona fide United States incorporated nonprofit organization which is principally engaged in conducting abroad through communications media the dissemination of information which significantly promotes United States interests abroad and which is recognized as such by the Attorney General, and (2) has been so employed continuously for a period of not less than five years after a lawful admission for permanent residence, and (3) who files his application for naturalization while so employed or within six months following the termination thereof, and (4) who is in the United States at the time of naturalization, and (5) who declares before the Attorney General in good faith an intention to take up residence within the United States immediately upon termination of such employment, may be naturalized upon compliance with all the requirements of this subchapter except that no prior residence or specified period of physical presence within the United States or any State or district of the Service in the United States, or proof thereof, shall be required.

(d) Any person who is the surviving spouse, 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 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, or proof thereof, 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.
§ 1431

TITLE 8—ALIENS AND NATIONALITY

Page 450

made by paragraph (1) [amending this section] shall apply with respect to persons granted posthumous citizenship under section 329A of the Immigration and Nationality Act (8 U.S.C. 1440-1) due to death on or after September 11, 2001.''


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.

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 Committee on the Judiciary of the Senate and House of Representatives, the Permanent 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; determinations of name and birth date

(a) In general

A child born outside of the United States automatically becomes a citizen of the United 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) Adoption

Subsection (a) 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.

(c) Name and birth date

A Certificate of Citizenship or other Federal document issued or requested to be amended under this section shall reflect the child's name and date of birth as indicated on a State court order, birth certificate, certificate of foreign birth, and other official paper.
birth, certificate of birth abroad, or similar State vital records document issued by the child’s State of residence in the United States after the child has been adopted or readopted in that State.


**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 then was and never thereafter ceased to be a citizen of the United States, shall, if such alien parent is naturalized, become a citizen of the United States when—

(1) such naturalization takes place while such child is unmarried and under the age of eighteen years; and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of eighteen years.

“(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.”


Subsec. (b). Pub. L. 100–525, § 9(w), substituted “Subsection (a)” for “Subsection (a)(1)”.

1986—Subsec. (a)(1). Pub. L. 99–553, § 14, which inserted “unmarried and” after “such child is”, was repealed by Pub. L. 100–525, § 8(I).

1981—Subsec. (b). Pub. L. 97–116 substituted “an adopted child only if the child” for “a child adopted under this section”.

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 1 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

1 So in original. The word “is” probably should appear after “parent”.
furnished by the Attorney General with a certificate of citizenship.

(c) Adopted children

Subsections (a) and (b) 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 (a)(5) shall not apply.

The oath taken will be treated, for purposes of subsection (a)(2)(A), as physical presence in the United States.

(1) any period of time during which the child is described in clause (ii) of subparagraph (E) or (F) of section 1101(b)(1) of this title shall be treated as physical presence in the United States.

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 of 2000 Amendment


Effective Date of 1994 Amendment

Amendment by Pub. L. 103–222 effective 90 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 104 of Pub. L. 106–395, set out as a note under section 1431 of this title.

Effective Date of 1991 Amendment


Effective Date of 1988 Amendment

Amendment by Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–553, see section 3901(b) of Pub. L. 100–525, set out as a note under section 1431 of this title.

References in Text

This chapter, referred to in subsec. (b), was in the original, “this Act”, meaning Act June 27, 1922, 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 Tables.

Amendments


2002—Subsec. (a). Pub. L. 107–273, §11030B(1), in introductory provisions, inserted “(or, if the citizen parent has died during the preceding 5 years, a citizen grandparent or citizen legal guardian)” after “citizen of the United States” and substituted “such citizen parent” for “such parent”.

Subsec. (a)(1), Pub. L. 107–273, §11030B(2), inserted “(or, at the time of his or her death, was)” after “parent”.

Subsec. (a)(2)(A), Pub. L. 107–273, §11030B(3), inserted “(or, at the time of his or her death, had)” after “(A)” has.

Subsec. (a)(2)(B), Pub. L. 107–273, §11030B(3), inserted “(or, at the time of his or her death, had)” after “(B)” has.

Subsec. (a)(4), Pub. L. 107–273, §11030B(4), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The child is residing outside of the United States in the legal and physical custody of the citizen parent temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.”
related to citizenship of children adopted by citizens.

§ 1435. Former citizens regaining citizenship

(a) Requirements

Any person formerly a citizen of the United States who (1) prior to September 22, 1922, lost United States citizenship by marriage to an alien, or by the loss of United States citizenship of such person’s spouse, or (2) on or after September 22, 1922, lost United States citizenship by marriage to an alien ineligible to citizenship, may if no other nationality was acquired by an affirmative act other than by marriage any other nationality, shall, from and after the date of filing an application for naturalization, and notwithstanding any of the other provisions of this subchapter except the provisions of section 1424 of this title: Provided, That nothing contained herein or in any other provision of law shall be construed as conferring United States citizenship retroactively upon such person, or upon any person who was naturalized in accordance with the provisions of section 317(b) of the Nationality Act of 1940, during any period in which such person was not a citizen.

(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 the date of filing an application for naturalization, and notwithstanding any of the other provisions of this subchapter except the provisions of section 1424 of this title: Provided, That nothing contained herein or in any other provision of law shall be construed as conferring United States citizenship retroactively upon such person, or upon any person who was naturalized in accordance with the provisions of section 317(b) of the Nationality Act of 1940, during any period in which such person was not a citizen.

(2) Such oath of allegiance may be taken abroad before a diplomatic or consular officer of the United States, or in the United States before the Attorney General or the judge or clerk of a court described in section 1421(b) of this title.

(3) Such oath of allegiance shall be entered in the records of the appropriate embassy, legation, consulate, court, or the Attorney General, and, upon demand, a certified copy of the proceedings, including a copy of the oath administered, under the seal of the embassy, legation, consulate, court, or the Attorney General, shall be delivered to such woman at a cost not exceeding $5, which certified copy shall be evidence of the facts stated therein before any court of record or judicial tribunal and in any department or agency of the Government of the United States.

(d) Persons losing citizenship for failure to meet physical presence retention requirement

(1) A person who was a citizen of the United States at birth and lost such citizenship for failure to meet the physical presence retention requirements under section 1401(b) of this title (as in effect before October 10, 1978), shall, from and after taking the oath of allegiance required by section 1448 of this title be a citizen of the United States and have the status of a citizen of the United States by birth, without filing an application for naturalization, and notwithstanding any of the other provisions of this subchapter except the provisions of section 1424 of this title: Provided, That nothing contained herein or in any other provision of law shall be construed as conferring United States citizenship retroactively upon such person, or upon any person who was naturalized in accordance with the provisions of section 317(b) of the Nationality Act of 1940, during any period in which such person was not a citizen.

(2) Such oath of allegiance may be taken abroad before a diplomatic or consular officer of the United States, or in the United States before the Attorney General or the judge or clerk of a court described in section 1421(b) of this title.

(3) Such oath of allegiance shall be entered in the records of the appropriate embassy, legation, consulate, court, or the Attorney General, and, upon demand, a certified copy of the proceedings, including a copy of the oath administered, under the seal of the embassy, legation, consulate, court, or the Attorney General, shall be delivered to such woman at a cost not exceeding $5, which certified copy shall be evidence of the facts stated therein before any court of record or judicial tribunal and in any department or agency of the Government of the United States.

(4) Persons losing citizenship for failure to meet physical presence retention requirement

(1) A person who was a citizen of the United States at birth and lost such citizenship for failure to meet the physical presence retention requirements under section 1401(b) of this title (as in effect before October 10, 1978), shall, from and after taking the oath of allegiance required by section 1448 of this title be a citizen of the United States and have the status of a citizen of the United States by birth, without filing an application for naturalization, and notwithstanding any of the other provisions of this subchapter except the provisions of section 1424 of this title: Provided, That nothing contained herein or in any other provision of law shall be construed as conferring United States citizenship retroactively upon such person, or upon any person who was naturalized in accordance with the provisions of section 317(b) of the Nationality Act of 1940, during any period in which such person was not a citizen.

(2) Such oath of allegiance may be taken abroad before a diplomatic or consular officer of the United States, or in the United States before the Attorney General or the judge or clerk of a court described in section 1421(b) of this title.

(3) Such oath of allegiance shall be entered in the records of the appropriate embassy, legation, consulate, court, or the Attorney General, and, upon demand, a certified copy of the proceedings, including a copy of the oath administered, under the seal of the embassy, legation, consulate, court, or the Attorney General, shall be delivered to such woman at a cost not exceeding $5, which certified copy shall be evidence of the facts stated therein before any court of record or judicial tribunal and in any department or agency of the Government of the United States.
ing 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) shall apply to a person regaining citizenship under paragraph (1) in the same manner as they apply under subsection (c)(1).


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 403(a)(2) of act June 27, 1952. See subsecs. (a) and (c) of this section.

AMENDMENTS


Subsec. (b). Pub. L. 101–649, §407(c)(7), (d)(6)(A)(i), substituted references to application for petitioner and petition, and substituted period for semicolon at end.

Subsec. (c)(1). Pub. L. 101–649, §§407(c)(7), (d)(6)(B), substituted references to application for references to petition to the Attorney General for “naturalization court”.

Subsec. (c)(1), (2), Pub. L. 101–649, §§407(d)(6)(A)(ii), (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”.


1986—Subsec. (a)(4). Pub. L. 100–525 substituted “has” for “and the witnesses have”.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–416, title I, §103(b), Oct. 25, 1994, 108 Stat. 4306, 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

Act Aug. 16, 1931, ch. 321, §1, 45 Stat. 65, provided that: “That no person, while a citizen of the United States, has lost citizenship of the United States solely by reason of having voted in a political election or plebiscite held in Italy between January 1, 1946, and April 18, 1948, inclusive, and who has not 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 310 of the Immigration and Nationality Act [section 1421(a) of this title], or before any diplomatic or consular officer of the United States abroad, the oath required by section 337 of the Immigration and Nationality Act [section 1446 of this title]. Certified copies of such oath shall be sent by such diplomatic or consular officer or such court to the Department of State and to the Department of Justice. Such person shall have, from and after naturalization under this section, the same citizenship status as that which existed immediately prior to its loss: Provided. That no such person shall be eligible to take the oath required by section 337 of the Immigration and Nationality Act [section 1446 of this title] unless he shall first take an oath before any naturalization court specified in subsection (a) of section 310 of the Immigration and Nationality Act [section 1421(a) of this title], or before any diplomatic or consular officer of the United States abroad, that he has done nothing to promote the cause of communism. The illegal or fraudulent procurement of naturalization under this amendment shall be subject to cancellation in the same manner as provided in section 310 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. 486, provided that: “That a person who has lost United States citizenship solely by reason of having voted in any political election or plebiscite held in Japan between September 2, 1945, and April 27, 1952, inclusive, and who has not, subsequent to such voting, committed any act which, had he remained a citizen, would have operated to expatriate him, and is not otherwise disqualified from becoming a citizen by reason of sections 310 and 311 of the Immigration and Nationality Act [sections 1424, 1425, 1430 of this title], may be naturalized by taking, prior to two years after the date of the enactment of this Act [July 20, 1954], before any naturalization court specified in subsection (a) of section 310 of the Immigration and Nationality Act [section 1421(a) of this title] or before any diplomatic or consular officer of the United States abroad, the applicable oath prescribed by section 337 of such Act [section 1448 of this title]. Certified copies of such oath shall be sent by such court or such diplomatic or consular officer to the Department of State and to the Department of Justice. Such oath of allegiance shall be entered in the records of the appropriate naturalization court, embassy, legation, or consulate, and upon demand, a certified copy of the proceedings, including a copy of the oath administered, under the seal of the naturalization court, embassy, legation or consulate, shall be delivered to such person at a cost not exceeding $5, which certified copy shall be evidence of the facts stated therein before any court of record or judicial tribunal and in any department or agency of the Government of the United States. Any such person shall have, from and after naturalization under this Act, the same citizenship status as that which existed immediately prior to its loss: Provided. That no such person shall be eligible to take the oath prescribed by section 337 of the Immigration and Nationality Act [section 1448 of this title] unless he shall first take an oath before any naturalization court specified in subsection (a) of section 310 of the Immigration and Nationality Act [section 1421(a) of this title], or before any diplomatic or consular officer of the United States abroad, that he has done nothing to promote the cause of communism. Naturalization procured under this Act shall be subject to revocation by the President, in his discretion, as provided in subsection (f) of that section [section
§ 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 “applying” for “petitioning”.

§ 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), be naturalized by taking before the Attorney General or before a court described in section 1421(b) of this title the oath required by section 1448 of this title. Certified copies of such oath shall be sent by such court to the Department of State and to the Department of Justice and by the Attorney General to the Secretary of State.

(b) Exceptions

No person shall be naturalized under subsection (a) of this section unless he—

(1) is, and has been for a period of at least five years immediately preceding taking the oath required in subsection (a), 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. (e), 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 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 certification from 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.


§ 1439 TITe 8—ALIENS AND NATIONALITY Page 456

AMENDMENTS

2008—Subsecs. (g), (h), Pub. L. 110–382, §§ 3(a), 4, temporarily added subsecs. (g) and (h) which related to processing and adjudication of applications for naturalization and required annual reports to Congress on failures to process and adjudicate certain applications within 1 year of filing due to delays in conducting required background checks. See Termination Date of 2008 Amendment note below.

2003—Subsec. (a), Pub. L. 108–136, § 1701(a), substituted “one year,” for “three years.”


Pub. L. 108–136, § 1701(b)(1)(A), substituted “honorable (the” for “honoroble. The” and “discharge); and” for “discharge,”

§ 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 honorably as a member of the Selected 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 of the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and who, if separated from such service, was separated under honorable conditions, may be naturalized as provided in this section if (1) at the time of enlistment, reenlistment, extension of enlistment, or induction such person shall have been lawfully admitted to the United States for permanent residence, or (2) at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence. The executive department under which such person served shall determine whether persons have served honorably in an active-duty status, and whether separation from such service was under honorable conditions: Provided, however, That no person who is or has been separated from such service on account of alienage, or who was a conscientious objector who performed no military, air, or naval duty whatever or refused to wear the uniform, shall be regarded as having served honorably or having been separated under honorable conditions for the purposes of this section. No period of service in the Armed Forces shall be made the basis of an application for naturalization under this section if the applicant has previously been naturalized on the basis of the same period of service.

(b) Exceptions

A person filing an application under subsection (a) of this section shall comply in all other respects with the requirements of this subchapter, except that—

(1) he may be naturalized regardless of age, and notwithstanding the provisions of section 1429 of this title as they relate to deportability and the provisions of section 1442 of this title;
(2) no period of residence or specified period of physical presence within the United States or any State or district of the Service in the United States shall be required;

(3) service in the military, air or naval forces of the United States shall be proved by a duly authenticated certification from the executive department under which the applicant served or is serving, which shall state whether the applicant served honorably in an active-duty status during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955, or during a period beginning February 28, 1961, and ending on a date designated by the President by Executive order as the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and was separated from such service under honorable conditions; 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 at any time subsequent to naturalization the person is separated from the military, air, or naval forces under other than honorable conditions, and such ground for revocation shall be in addition to any other provided by law. The fact that the naturalized person was separated from the service under other than honorable conditions shall be proved by a duly authenticated certification from the executive department under which the person was serving at the time of separation.

1997—Subsec. (a)(1). Pub. L. 105–85 inserted "as a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955".

1996—Subsec. (b)(1). Pub. L. 104–199, § 407(c)(11)(C)(i), substituted "as a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955", for "as 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

1995—Subsec. (b)(1). Pub. L. 104–64 struck out former par. (4) 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 1946, as amended (56 Stat. 886, 59 Stat. 658), and which is still pending on the effective date of this chapter, shall be determined in accordance with the provisions of this section.

1981—Subsec. (a)(4). Pub. L. 97–116 struck out par. (5) 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 1946, as amended (56 Stat. 886, 59 Stat. 658), and which is still pending on the effective date of this chapter, shall be determined in accordance with the provisions of this section.

1980—Subsec. (a)(4). Pub. L. 96–252 struck out par. (3) 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 1946, as amended (56 Stat. 886, 59 Stat. 658), and which is still pending on the effective date of this chapter, shall be determined in accordance with the provisions of this section.

1968—Subsec. (a)(3). Pub. L. 90–633, § 1, added the Vietnam hostilities and any subsequent period of military operations involving armed conflict with a hostile foreign force as periods during which a person may be naturalized through service in active duty status.

1967—Subsec. (a). Pub. L. 90–633, § 1, added the Vietnam hostilities and any subsequent period of military operations involving armed conflict with a hostile foreign force as periods during which a person may be naturalized through service in active duty status.

1966—Subsec. (b)(4). Pub. L. 90–633, § 2, inserted reference to the period of the Vietnam hostilities and to any other subsequent period which the President by Executive order designates as a period in which the Armed Forces of the United States were engaged in military operations involving armed conflict with a hostile foreign force.

1961—Subsecs. (a), (b)(4). Pub. L. 87–301 inserted ‘‘or during a period beginning June 25, 1950, and ending July 1, 1955’’.

For definition of Canal Zone, referred to in subsec. (a), see section 3602(a) of Title 22, Foreign Relations and Intercourse.
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 2004 Amendment

Effective Date of 1997 Amendment
Pub. L. 105–85, div. A, title X, §108(b)(b), Nov. 18, 1997, 111 Stat. 1916, 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. 106–119, 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. 25, 1994, 108 Stat. 4398; Pub. L. 105–119, 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 guerrilla 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. 483, §4, 64 Stat. 316, as amended June 27, 1952, ch. 477, title IV, §402(e), 66 Stat. 276, provided that: "Notwithstanding the dates or periods of service specified and designated in section 329 of the Immigration and Nationality Act (this section), the provisions of that section are applicable to aliens enlisted or reenlisted pursuant to the provisions of this Act and who have completed five or more years of military service, if honorably discharged therefrom. Any alien enlisted or reenlisted pursuant to the provisions of this Act who subsequently enters the United States, American Samoa, Swains Island, or the Canal Zone, pursuant to military orders shall, if otherwise qualified for citizenship, and after completion of five or more years of military service, if honorably discharged therefrom, be deemed to have been lawfully admitted to the United States within the meaning of such section 329(a) [subsection (a) of this section]."

Ex. Ord. No. 12831, Termination of Expedited Naturalization Based on Military Service
Ex. Ord. No. 12831, 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. 1344; 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. 1440(c)), it is hereby ordered that the statutory period of Vietnam hostilities which began on February 28, 1961, shall be deemed to have terminated on October 15, 1978, for the purpose of ending the period in which active-duty service in the Armed Forces qualifies for certain exemptions from the usual requirements for naturalization, including length of residence and fees.

JIMMY CARTER.
EXECUTIVE ORDER NO. 12832
Ex. Ord. No. 12832, Feb. 2, 1987, 52 F.R. 3395, which provided for expedited naturalization for aliens and noncitizen nationals who served in an active-duty status in the Armed Forces in the Grenada campaign by making them eligible in accordance with statutory exceptions in section 1440(b) of this title, was revoked, effective Feb. 2, 1987, by Ex. Ord. No. 12913, May 2, 1994, 59 F.R. 21115, such revocation not intended to affect status of anyone who was naturalized pursuant to terms of that order prior to the date of publication of Ex. Ord. No. 12832 in the Federal Register (May 4, 1994).

Ex. Ord. No. 12839, Expedited Naturalization of Aliens and Noncitizen Nationals Who Served in Active-Duty Status During Persian Gulf Conflict
Ex. Ord. No. 12839, 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 1446 of title 8, United States Code, and in order to provide expedited naturalization for aliens and noncitizen nationals who served in an active-duty status in the Armed Forces of the United States during the period of the Persian Gulf Conflict, it is hereby ordered as follows:
For the purpose of determining qualification for the exception from the usual requirements for naturalization, the period of Persian Gulf Conflict military operations in which the Armed Forces of the United States were engaged in armed conflict with a hostile force commenced on August 2, 1990, and terminated on April 11, 1991. Those persons serving honorably in active-duty status in the Armed Forces of the United States during this period are eligible for naturalization in accordance with the statutory exception to the naturalization requirements, as provided in section 1440(b) of title 8, United States Code.

WILLIAM J. CLINTON.
Ex. Ord. No. 13269, Expedited Naturalization of Aliens and Noncitizen Nationals Serving in an Active-Duty Status During the War on Terrorism
Ex. Ord. No. 13269, July 3, 2002, 67 F.R. 45287, provided:
§ 1440–1. Posthumous citizenship through death

(a) Permitting granting of posthumous citizenship—

the time of death to a person described in subsection (b) shall provide, in accordance with this section, noncitizens eligible for posthumous citizenship under subsection (c). If the Director of the Bureau of Citizenship and Immigration Services approves an application for that posthumous citizenship under subsection (c), 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.

(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); and

(C) the Director finds that the person satisfied the requirement of subsection (b)(3).

(d) Documentation of posthumous citizenship

If the Director of the Bureau of Citizenship and Immigration Services approves the request referred to in subsection (c), 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.

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) if the Secretary of Homeland Security approves an application for that posthumous citizenship under subsection (c).

(b) Noncitizens eligible for posthumous citizenship—

A person referred to in subsection (a) 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) 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); and

(C) the Director finds that the person satisfied the requirement of subsection (b)(3).

(d) Documentation of posthumous citizenship

If the Director of the Bureau of Citizenship and Immigration Services approves the request referred to in subsection (c), 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.

GEORGE W. BUSH.

Chapter 17, Title XII, United States Code

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(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(2), added heading and text of subsec. (d) and struck out former subsec. (d) which read as follows: “If the Attorney General approves such a request to grant a person posthumous citizenship, the Attorney General shall send to the individual who filed the request a suitable document which states that the United States considers the person to have been a citizen of the United States at the time of the person’s death.”

Subsec. (e). Pub. L. 108–136, §1704(3), 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.”
§ 1440a to 1440d. Omitted

Codification

Sections, act June 30, 1953, ch. 162, §§1-4, 67 Stat. 161-164, 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 et seq.], 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. 183, 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 notes set out under section 1401 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. Fingerprints 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; and

(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—
§ 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.

§ 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.


§ 1440g Provision of information on military naturalization

(a) In general
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 applications.


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. (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 paragraph (2) of this title, if such person at any time prior to filing his petition for naturalization shall have been lawfully admit-
tected to the United States for permanent residence, and if such petition is filed on or before September 23, 1955. “(b) Any person who was excepted from certain requirements of the naturalization laws under section 325 of the Nationality Act of 1940 prior to its amendment by the Act of September 23, 1950, and had filed a petition for naturalization under section 325 of the Nationality Act of 1940, may, if such petition was pending on September 23, 1950, and is still pending on the effective date of this chapter, be naturalized upon compliance with the applicable provisions of the naturalization laws in effect upon the date such petition was filed: Provided, That any such person shall be subject to the provisions of section 1424 of this title and to those provisions of section 1429 of this title which relate to the prohibition against the naturalization of a person against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act, or which relate to the prohibition against the final hearing on a petition for naturalization if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act.”

§ 1442. Alien enemies

(a) Naturalization under specified conditions

An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war may, after his loyalty has been fully established upon investigation by the Attorney General, be naturalized as a citizen of the United States if such alien’s application for naturalization shall be pending at the beginning of the state of war and the applicant is otherwise entitled to admission to citizenship.

(b) Procedure

An alien embraced within this section shall not have his application for naturalization considered or heard except after 90 days’ notice to the Attorney General to be considered at the examination or hearing, and the Attorney General’s objection to such consideration shall cause the application to be continued for “called for a hearing, or heard, except after ninety days’ notice given by the clerk of the court to the Attorney General to be represented at the hearing, and the Attorney General’s objection to such final hearing shall cause the petition to be continued”.

(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.


Amendments

1990—Subsec. (a). Pub. L. 101–649, § 407(c)(13), substituted references to applicant and application for references to petitioner and petition wherever appearing. Subsec. (b). Pub. L. 101–649, § 407(d)(9), substituted “considered or heard except after 90 days’ notice to the Attorney General to be considered at the examination or hearing, and the Attorney General’s objection to such consideration shall cause the application to be continued” for “called for a hearing, or heard, except after ninety days’ notice given by the clerk of the court to the Attorney General to be represented at the hearing, and the Attorney General’s objection to such final hearing shall cause the petition to be continued”.

Pub. L. 101–649, § 407(c)(13), substituted “application” for “petition” after “have his”.

Subsec. (c). Pub. L. 101–649, § 407(c)(13), substituted “an application” for “a petition” wherever appearing. Subsec. (d). Pub. L. 101–649, § 407(c)(2), struck out at end “Notwithstanding the provisions of section 405(b) of this Act, this subsection shall also apply to the case of any such alien whose petition for naturalization was filed prior to the effective date of this chapter and which is still pending on that date.”

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.

§ 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 super-
vision of the public schools, preparing and distributing monthly an immigration and naturalization bulletin and securing the aid of and cooperating with official State and national organizations, including those concerned with vocational education.

(c) Prescription of forms

The Attorney General shall prescribe and furnish such forms as may be required to give effect to the provisions of this part, and only such forms as may be so provided shall be legal. All certificates of naturalization and of citizenship shall be printed on safety paper and shall be consecutively numbered in separate series.

(d) Administration of oaths and depositions

Employees of the Service may be designated by the Attorney General to administer oaths and to take depositions without charge in matters relating to the administration of the naturalization and citizenship laws. In cases where there is a likelihood of unusual delay or of hardship, the Attorney General may, in his 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 admissible 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 1101 of this title and Tables.

AMENDMENTS


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

Pub. L. 102-222, title III, §305(m), Dec. 12, 1991, 105 Stat. 1755, provided that the amendment made by section 305(m) is effective as if included in section 407(d) of the Immigration Act of 1990, Pub. L. 101-649.

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.

§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 27, 1952, ch. 477, 66 Stat. 163, as amend-
ed. "Title III of the Act is classified principally to sub-
chapter 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 enacted as part of the National Defense
Authorization Act for Fiscal Year 2004, and not as part
of the Immigration and Nationality Act which com-
prises this chapter.

AMENDMENTS

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 318(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 1430(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. 1192, 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 pol-
icy 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 transportation on aircraft

of, or chartered by, the Armed Forces.’’

§ 1444. Photographs; number

(a) Three identical photographs of the appli-
cant shall be signed by and furnished by each appli-
cant for naturalization or citizenship. One of
such photographs shall be affixed by the At-
torney General to the original certificate of nat-
uralization 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 appli-
cant shall be furnished by each applicant for—
(1) a record of lawful admission for per-
manent residence to be made under section 1259
of this title;
(2) a certificate of derivative citizenship;
(3) a certificate of naturalization or of citi-
zenship;
(4) a special certificate of naturalization;
(5) a certificate of naturalization or of citi-
zenship, in lieu of one lost, mutilated, or de-
stroyed;
(6) a new certificate of citizenship in the new
name of any naturalized citizen who, subse-
quent to naturalization, has had his name
changed by order of a court of competent ju-
risdiction 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 cer-
tificate retained by the Service.

AMIENDMENTS

for “1259(a)’’.

1990—Subsec. (a). Pub. L. 101–649 substituted “applic-
ant” for “petitioner” after “by each”, and “Attorney
General” for “clerk of the court”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–416 effective as if included
L. 101–649, see section 219(dd) of Pub. L. 103–416, 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

§ 1445. Application for naturalization; declara-
tion of intention

(a) Evidence and form

An applicant for naturalization shall make and
file with the Attorney General a sworn ap-
lication 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 mate-
rial to the applicant’s naturalization, and re-
quired 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 natu-
ralization 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 natu-
ralization unless he shall have attained the age
of eighteen years. An application for naturaliza-
tion 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 Gen-
eral.

(d) Filing of application

Except as provided in subsection (e), an appli-
cation for naturalization shall be filed in the of-
cice of the Attorney General.

(e) Substitute filing place and administering
oath other than before Attorney General

A person may file an application for natu-
ralization other than in the office of the Attor-
ney General, and an oath of allegiance adminis-
tered other than in a public ceremony before the
Attorney General or a court, if the Attorney
General determines that the person has an ill-
ness or other disability which—
(1) is of a permanent nature and is sufficiently serious to prevent the person's personal appearance, or
(2) is of a nature which so incapacitates the person as to prevent him from personally appearing.

(f) Declaration of intention

An alien over 18 years of age who is residing in the United States pursuant to a lawful admission for permanent residence may file with the Attorney General a declaration of intention to become a citizen of the United States. Such a declaration shall be filed in duplicate and in a form prescribed by the Attorney General and shall be accompanied by an application prescribed and approved by the Attorney General. Nothing in this subsection shall be construed as requiring any such alien to make and file a declaration of intention as a condition precedent to filing an application for naturalization nor shall any such declaration of intention be regarded as conferring or having conferred upon any such alien United States citizenship or nationality or the right to United States citizenship or nationality, nor shall such declaration be regarded as evidence of such alien's lawful admission for permanent residence in any proceeding, action, or matter arising under this chapter or any other Act.


REFERENCES IN TEXT

This chapter, referred to in subsec. (f), 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

Subsecs. (f), (g), Pub. L. 102–232, § 305(d), redesignated subsec. (g) as (f).
Subsec. (a). Pub. L. 101–649, § 407(c)(15), (d)(12)(B), as amended by Pub. L. 102–232, § 305(c), substituted “with the Attorney General” for “in the office of the clerk of a naturalization court”, “under this subchapter” for “upon the hearing of such petition”, and “application” for “petition” wherever appearing.
Pub. L. 101–649, § 401(b), inserted at end “in the case of an applicant subject to a requirement of continuous residence under section 1427(a) or 1430(a) of this title, the application for naturalization may be filed up to 3 months before the date the applicant would first otherwise meet such continuous residence requirement.”
Subsec. (b). Pub. L. 101–649, § 407(c)(15), (d)(12)(C), substituted “application” for “petition” in first sentence, and struck out “(1)” before “he shall have attained”, “and (2)” before “he shall have first filed an application therefor at an office of the Service in the form and manner prescribed by the Attorney General” after “eighteen years”, and “petition for” after “An application for”.
Subsecs. (c) to (e). Pub. L. 101–649, § 407(d)(12)(F), added subsec. (c) to (e) and struck out former subsecs. (c) to (e) which related to time to file, substitute filing place, and investigation into reasons for substitute filing place, respectively.
Subsecs. (f), (g). Pub. L. 101–649, § 407(c)(15), (d)(12)(D), (E), redesignated subsec. (f) as (g), substituted “An alien over 18 years of age who is residing in the United States pursuant to a lawful admission for permanent residence may file with the Attorney General a declaration of intention to become a citizen of the United States. Such a declaration shall be filed in duplicate and in a form prescribed by the Attorney General and shall be accompanied by an application prescribed and approved by the Attorney General.” for “Any alien over eighteen years of age who is residing in the United States pursuant to a lawful admission for permanent residence may, upon an application prescribed, filed with, and approved by the Service, make and file in duplicate in the office of the clerk of court, regardless of the alien's place of residence in the United States, a signed declaration of intention to become a citizen of the United States, in such form as the Attorney General shall prescribe.”, and substituted “an application” for “a petition” in last sentence.

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.

§ 1446. Investigation of applicants; examination of applications

(a) Waiver

Before a person may be naturalized, an employee of the Service, or of the United States designated by the Attorney General, shall conduct a personal investigation of the person applying for naturalization in the vicinity or vicinities in which such person has maintained his actual place of abode and in the vicinity or vicinities in which such person has been employed or has engaged in business or work for at least five years immediately preceding the filing of his application for naturalization. The Attorney General may, in his discretion, waive a personal investigation in an individual case or in such cases or classes of cases as may be designated by him.

(b) Conduct of examinations; authority of designees; record

The Attorney General shall designate employees of the Service to conduct examinations upon
applications for naturalization. For such purposes any such employee so designated is authorized to take testimony concerning any matter touching or in any way affecting the admissibility of any applicant for naturalization, to administer oaths, including the oath of the applicant for naturalization, and to require by subpoena 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 relevant books, papers, and documents if demanded, and testify; and any failure to obey such order of the court may be punished by the court as a contempt thereof. The record of the examination authorized by this subsection shall be admissible as evidence in any hearing conducted by an immigration officer under section 1447(a) of this title. Any such employee shall, at the examination, inform the applicant of the remedies available to the applicant under section 1447 of this title.

(c) Transmittal of record of examination

The record of the examination upon any application for naturalization may, in the discretion of the Attorney General be transmitted to the Attorney General and the determination with respect thereto of the employee so designated to conduct any such examination shall when made also be transmitted to the Attorney General.

(d) Determination to grant or deny application

The employee designated to conduct any such examination shall make a determination as to whether the application should be granted or denied, with reasons therefor.

(e) Withdrawal of application

After an application for naturalization has been filed with the Attorney General, the applicant shall not be permitted to withdraw his application, except with the consent of the Attorney General where the Attorney General does not consent to the withdrawal of the application, the application shall be determined on its merits and a final order determination made accordingly. In cases where the applicant fails to prosecute his application, the application shall be decided on the merits unless the Attorney General dismisses it for lack of prosecution.

(f) Transfer of application

An applicant for naturalization who moves from the district of the Service in the United States in which the application is pending may, at any time thereafter, request the Service to transfer the application to any district of the Service in the United States which may act on the application. The transfer shall not be made without the consent of the Attorney General. In the case of such a transfer, the proceedings on the application shall continue as though the application had originally been filed in the district of the Service to which the application is transferred.


amendments

1991—subsec. (b), pub. l. 102–222 substituted “district court” for “District Court”.


subsec. (a), pub. l. 101–649, § 407(c)(16), (d)(13)(b), substituted “Before a person may be naturalized” for “At any time prior to the holding of the final hearing on a petition for naturalization provided for by section 1447(a) of this title”, “applies” for “petitioning”, and “application” for “petition”.

subsec. (b), pub. l. 101–649, § 407(c)(16), (d)(13)(c), substituted “applications” for “petitions” and “applicant” for “petitioner” wherever appearing, struck out “preliminary” before “examinations” and before “examination”, struck out “to any naturalization court and to make recommendations thereon to such court” before period at end of first sentence, substituted “any District Court of the United States” for “any court exercising naturalization jurisdiction as specified in section 1221 of this title”, and substituted “hearing conducted by an immigration officer under section 1447(a) of this title” for “final hearing conducted by a naturalization court designated in section 1221 of this title”.

pub. l. 101–649, § 401(c), inserted at end “Any such employee shall, at the examination, inform the petitioner of the remedies available to the petitioner under section 1447 of this title.”

subsec. (c), pub. l. 101–649, § 407(c)(16), (d)(13)(d), struck out “preliminary” before “examination” wherever appearing, and substituted “determination” for “recommendation” and “application” for “petition”.

subsecs. (d) to (f), pub. l. 101–649, § 407(d)(13)(e), amended subsecs. (d) to (f) generally, substituting provisions relating to determinations, withdrawal of application, and transfer of application, for provisions relating to recommendations, withdrawal of petition, and transfer of petition, respectively.

1989—subsec. (d), pub. l. 100–525, § 9(aa), substituted “approves” for “approve” in fourth sentence.

subsec. (f)(2), pub. l. 100–525, § 9(bb), struck out before period at end “, except that the court to which the petition is transferred may in its discretion, require the production of two credible United States citizen witnesses to testify as to the petitioner’s qualifications for naturalization since the date of such transfer.”.

1981—subsec. (b), pub. l. 97–116, § 15(c)(1), struck out “and the oaths of petitioner’s witnesses to testify as to the petitioner’s qualifications for naturalization since the date of such transfer”.

amendment to section 1221.

subsec. (f), pub. l. 97–116, § 15(c)(2), (3), redesignated subsec. (i) as (f) and struck out former subsec. (f) which required affidavits of at least two credible witnesses, citizens of the United States, concerning the residency and the good moral character, etc., of the petitioner.

subsec. (g), pub. l. 97–116, § 15(c)(2), struck out subsec. (g) which related to proof of residence at the hearing on the petition.

subsec. (h), pub. l. 97–116, § 15(c)(2), struck out subsec. (h) which related to satisfactory evidence as to good moral character, etc., at the hearing on the petition.

subsec. (i), pub. l. 97–116, § 15(c)(3), redesignated subsec. (i) as (f).

effective date of 1991 amendment

amendment by pub. l. 102–222 effective as if included in the enactment of the immigration act of 1990, pub.
§ 1447. Hearings on denials of applications for naturalization

(a) Request for hearing before immigration officer

If, after an examination under section 1446 of this title, an application for naturalization is denied, the applicant may request a hearing before an immigration officer.

(b) Request for hearing before district court

If there is a failure to make a determination under section 1446 of this title before the end of the 120-day period after the date on which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.

(c) Appearance of Attorney General

The Attorney General shall have the right to appear before any immigration officer in any naturalization proceedings for the purpose of cross-examining the applicant and the witnesses produced in support of the application concerning any matter touching or in any way affecting the applicant’s right to admission to citizenship, and shall have the right to call witnesses, including the applicant, produce evidence, and be heard in opposition to, or in favor of the granting of any application in naturalization proceedings.

(d) 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.


AMENDMENTS


Subsecs. (a), (b). Pub. L. 101–649, § 407(d)(14)(B), amended subsections (a) and (b) generally, substituting provisions relating to requests for hearing upon denial of application and failure to make determination, for provisions relating to holding of hearing in open court and exceptions to same, respectively.

Subsec. (c). Pub. L. 101–649, § 407(c)(17), (d)(14)(C), substituted “immigration officer” for “court” and references to applicant, applicant’s, and application for references to petitioner, petitioner’s, and petition wherever appearing.

Subsec. (d). Pub. L. 101–649, § 407(d)(14)(D)(i), as amended by Pub. L. 102–232, § 305(g), substituted “immigration officer shall, if the applicant requests it at the time of filing the request for the hearing” for “clerk of court shall, if the petitioner requests it at the time for filing the petition for naturalization”.

Pub. L. 101–649, § 407(c)(17), (d)(14)(D)(ii), (iii), substituted “applicant” for “petitioner”, struck out “final” before “hearing” wherever appearing, and inserted at end “Such subpoenas may be enforced in the same manner as subpoenas under section 1446(b) of this title may be enforced.”


Pub. L. 101–649, § 407(d)(14)(E)(iii), as amended by Pub. L. 102–232, § 305(h), substituted “including in an appropriate petition to the court” for “included in the petition for naturalization of such person”.

Pub. L. 101–649, § 407(c)(17), substituted “applicant” for “petitioner”.


Subsec. (c). Pub. L. 97–116, § 15(d)(2), (3), redesignated subsec. (d) as (c) and struck out former subsec. (c) which prescribed a waiting period of thirty days after the filing of a petition for naturalization for the holding of a final hearing and permitted waiver of such period by the Attorney General if he determined that a waiver was in the public interest.

Subsec. (d). Pub. L. 97–116, § 1563(a), redesignated subsec. (e) as (d) and struck out provision permitting
the substitution of witnesses if after the petition is filed any of the verifying witnesses appear to be not competent, provided the petitioner acted in good faith in producing such witness. Former subsec. (d) redesignated (c).


1969—Subsec. (c). Pub. L. 91–136 struck out requirement that Attorney General, as a prerequisite to waiver of the waiting period, make an affirmative finding to that such waiver will promote the security of the United States, and further struck out the provision prohibiting the acquisition of citizenship by final oath within 60 days preceding a general election and prior to the tenth day following such election.

Effective Date of 1991 Amendment

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.

§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 said 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 said clauses (1) to (4) and clause (5)(C). The term “religious training and belief” as used in this section shall mean an individual’s belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. In the case of the naturalization of a child under the provisions of section 1433 of this title the Attorney General may waive the taking of the oath if in the opinion of the Attorney General the child is unable to understand its meaning. 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 developmental disability 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) Expedit ed 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 extenuating 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.


AMENDMENTS

2000—Subsec. (a). Pub. L. 106–448 inserted at end “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 developmental disability 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 1227(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.”

1991—Subsec. (c). Pub. L. 102–232, §102(b)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “If the applicant is prevented by sickness or other disability from attending a public ceremony, the oath required to be taken by subsection (a) of this section may be taken at such place as the Attorney General may designate under section 1445(e) of this title.”

Pub. L. 102–232, §305(i), struck out “before” after “may be taken”.

1990—Subsec. (a). Pub. L. 101–649, §407(c)(18), (d)(15)(A), substituted “applied” for “petitioned” and “applicant” for “petitioner” in first sentence, “in a public ceremony before the Attorney General or a court with jurisdiction under section 1421(b) of this title” for “in open court in the court in which 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.”

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 “at 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. 102–232 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.

Demonstration Projects To Provide for Administration of Oath of Allegiance

Pub. L. 104–208, div. C, title VI, §647, Sept. 30, 1996, 110 Stat. 3009–710, provided that: “(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 application 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 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.

“(c) AMOUNTS AVAILABLE; USE OF FUNDS.—

“(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.

“(d) 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.

“(e) APPLICATION.—In the case of an entity other than the Immigration and Naturalization Service seeking to conduct a demonstration project under this section, no 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.”

§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 not enacted as part of the Immigration and Nationality Act which comprises this chapter.
§ 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.


AMENDMENTS


1990—Pub. L. 101–649 substituted “application” for “petition” and “applicant” for “petitioner” in two places, struck out “by a naturalization court” after “citizenship”, and substituted “the Attorney General” for “the clerk of such court”, “the clerk of the district court of such court” for “title, venue, and location of the naturalization court”, “the Attorney General” for “the court”, and “of an immigration officer” for “of the clerk of the naturalization court; and seal of the court”.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 103–416, title II, § 219(z)(3), Oct. 25, 1994, 108 Stat. 4318, provided that “the amendment made by section (a) [amending this section] shall apply to persons admitted to citizenship on or after the date of enactment of this Act [Oct. 25, 1994].


EFFECTIVE DATE OF 1991 AMENDMENT


CONSTRUCTION OF 1994 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.

§ 1450. Functions and duties of clerks and records of declarations of intention and applications for naturalization

(a) The clerk of each court that administers oaths of allegiance under section 1448 of this title shall—

(1) deliver to each person administered the oath of allegiance by the court pursuant to section 1448(a) of this title the certificate of naturalization prepared by the Attorney General pursuant to section 1421(b)(2)(A)(i) 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 the naturalization of persons as may be required from time to time by the Attorney General, and

(4) be responsible for all blank certificates of naturalization received by them from time to time from the Attorney General and shall account to the Attorney General for them whenever required to do so.

No certificate of naturalization received by any clerk of court which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificates shall be returned to the Attorney General.

(b) Each district office of the Service in the United States shall maintain, in chronological order, indexed, and consecutively numbered, as part of its permanent records, all declarations of intention and applications for naturalization filed with the office.
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 under the provisions 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 on the ground that the order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation shall be deemed to have lost and to lose his citizenship and any right or privilege of citizenship which he may have, now has, or may hereafter acquire under...
and by virtue of such naturalization of such parent or spouse, regardless of whether such person is residing within or without the United States at the time of the revocation and setting aside of the order admitting such parent or spouse to citizenship. Any person who claims United States citizenship through the naturalization of a parent or spouse in whose case there is a revocation and setting aside of the order admitting such parent or spouse to citizenship and the cancellation of the certificate of naturalization under the provisions of subsection (c) of this section, or under the provisions of section 1440(c) of this title on any ground other than that the order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, shall be deemed to have lost and to lose his citizenship and any right or privilege of citizenship which would have been enjoyed by such person had there not been a revocation and setting aside of the order admitting such parent or spouse to citizenship and the cancellation of the certificate of naturalization.

(e) Citizenship unlawfully procured

When a person shall be convicted under section 1425 of title 18 of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled. Jurisdiction is conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

(f) Cancellation of certificate of naturalization

Whenever an order admitting an alien to citizenship shall be revoked and set aside or a certificate of naturalization shall be canceled, or both, as provided in this section, the court in which such judgment or decree is rendered shall make an order canceling such certificate and shall send a certified copy of such order to the Attorney General. The clerk of court shall transmit a copy of such order and judgment of the court out of which such certificate of naturalization was 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.

(g) Applicability to certificates of naturalization and citizenship

The provisions of this section shall apply not only to any naturalization granted to and certificates of naturalization and citizenship issued under the provisions of this subchapter, but to any naturalization herebefore 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 such designated representative under any other act.

(h) Power to correct, reopen, alter, modify, or vacate order

Nothing contained in this section shall be regarded as limiting, denying, or restricting the power of the Attorney General to correct, reopen, alter, modify, or vacate an order naturalizing the person.

(2) References in Text

Section 702 of the Nationality Act of 1940, as amended, referred to in subsec. (g), which was classified to section 1062 of this title, was repealed by section 499(a)(42) of act June 27, 1982. See section 1440 of this title.

Amendments

1994—Subsec. (d). Pub. L. 103–416 redesignated subsec. (e) as (d) and substituted “subsection (c)” for “subsections (c) or (d)”, and struck out former subsec. (d) which related to revocation of naturalization of persons who, within one year of naturalization, have taken permanent residence in country of their nativity or in any other foreign country.

Subsecs. (e) to (i). Pub. L. 103–416, § 104(c)(1), redesignated subsecs. (f) to (i) as (e) to (h), respectively. Former subsec. (e) redesignated (d).


Subsec. (g). Pub. L. 101–649, § 407(d)(18)(B), (C), amended second sentence generally and struck out third sentence. Prior to amendment, second and third sentences read as follows: “In case such certificate was not originally issued by the court making such order, it shall direct the clerk of court in which the order is revoked and set aside to transmit a copy of such order and judgment to the court out of which such certificate of naturalization shall have been originally issued. It shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of naturalization. If there be any, upon the records and to notify the Attorney General of the entry of such order and of such cancellation.”

Subsec. (i). Pub. L. 101–649, § 407(d)(18)(D), substituted “the Attorney General to correct, reopen, alter, modify, or vacate an order naturalizing the person” for “any naturalization court, by or in which a person has been naturalized, to correct, reopen, alter, modify, or vacate its judgment or decree naturalizing such person, during the term of such court or within the time prescribed by the rules of procedure or statutes governing the jurisdiction of the court to take such action”.

1988—Subsec. (c). Pub. L. 100–525, § 407(d)(4), substituted “December 24, 1952” for “the effective date of this chapter”.

Statutory Note

Section 1425 of title 18, referred to in subsec. (g), was classified to section 1440 of this title.
Subsecs. (e) to (j). Pub. L. 100–525, §9(dd)(2), (3), redesignated former subsecs. (f) to (j) as (e) to (i), respectively, and struck out former subsec. (e) which read as follows: "The revocation and setting aside of the order admitting any person to citizenship and canceling his certificate of naturalization under the provisions of subsection (a) of section 338 of the Nationality Act of 1940 shall not, where such action takes place after the effective date of this chapter, result in the loss of citizenship or any right or privilege of citizenship which would have been derived by or been available to a wife or minor child of the naturalized person had such naturalization not been revoked: Provided, That this subsection shall not apply in any case in which the revocation and setting aside of the order was the result of actual fraud." 1986—Subsec. (d). Pub. L. 99–653 substituted "one year" for "five years".

1961—Subsec. (a). Pub. L. 87–301, §18(a), inserted "were illegally procured or" after "that such order and certificate of naturalization".

Subsec. (b). Pub. L. 87–301, §18(b), inserted "illegally procured or" before "procured by concealment".


**Effective Date of 1966 Amendment** Pub. L. 99–653, §23(f), as added by Pub. L. 100–525, §8(r), Oct. 24, 1988, 102 Stat. 2619, provided that: "The amendment made by section 17 [amending this section] shall not apply to individuals who have taken up permanent residence outside the United States before November 14, 1986."

**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.

### §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 1933 of the United States Revised Statutes, or of section 1993 of the United States Revised Statutes, as amended by section 1 of the Act of May 24, 1934 (48 Stat. 797), or who is a citizen of the United States by virtue of the provisions of subsection (c), (d), (e), (g), or (i) of section 201 of the Nationality Act of 1940, as amended (54 Stat. 1138), or of the Act of May 7, 1934 (48 Stat. 667), or of paragraph (c), (d), (e), or (g) of section 1401 of this title, or under the provisions of the Act of August 4, 1937 (50 Stat. 538), or under the provisions of sections 203 or 205 of the Nationality Act of 1940 (54 Stat. 1139), or under the provisions of section 1403 of this title, may apply to the Attorney General for a certificate of citizenship. Upon proof to the satisfaction of the Attorney General that the applicant is a citizen, and that the applicant’s alleged citizenship was derived as claimed, or acquired, as the case may be, and upon taking and subscribing before a member of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, such individual shall be furnished by the Attorney General with a certificate of citizenship, but only if such individual is at the time within the United States.

#### (b) Application to Secretary of State for certificate of non-citizen national status; proof; oath of allegiance

A person who claims to be a national, but not a citizen, of the United States may apply to the Secretary of State for a certificate of non-citizen national status. Upon—

(1) proof to the satisfaction of the Secretary of State that the applicant is a national, but not a citizen, of the United States, and

(2) in the case of such a person born outside of the United States or its outlying possessions, taking and subscribing, before an immigration officer within the United States or its outlying possessions, to the oath of allegiance required by this chapter of a petitioner for naturalization, the individual shall be furnished by the Secretary of State with a certificate of non-citizen national status, but only if the individual is at the time within the United States or its outlying possessions.


**References in Text**

Section 938 of the Revised Statutes, referred to in subsec. (a), which was classified to section 6 of this title, was repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, §504, 54 Stat. 1172.

The Nationality Act of 1940, referred to in subsec. (a), is act Oct. 14, 1940, ch. 876, 54 Stat. 1137, as amended. Sections 201, 203, and 205 of the Nationality Act of 1940, which were classified to sections 601, 603, and 605, respectively, of this title, were repealed by section 403(a)(42) of act June 27, 1952.

Act May 7, 1904 (38 Stat. 667), referred to in subsec. (a), which was classified to sections 3b and 3c of this title, was omitted from the Code.

Act Aug. 4, 1937, referred to in subsec. (a), which was classified to sections 5d and 5e of this title, was repealed by act Oct. 14, 1940, ch. 876, title I, subch. V, §504, 54 Stat. 1172.

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. 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.

**Amendments**


§ 1454. Documents and copies issued by Attorney General

(a) If any certificate of naturalization or citizenship issued to any citizen or any declaration of intention furnished to any declarant is lost, mutilated, or destroyed, the citizen or declarant may make application to the Attorney General for a new certificate or declaration. If the Attorney General finds that the certificate or declaration is lost, mutilated, or destroyed, he shall issue to the applicant a new certificate or declaration. If the certificate or declaration has been mutilated, it shall be surrendered to the Attorney General before the applicant may receive such new certificate or declaration. If the certificate or declaration has been lost, the applicant or any other person who shall have, or may come into possession of it is required to surrender it to the Attorney General.

(b) The Attorney General shall issue for any naturalized citizen, on such citizen's application therefor, a special certificate of naturalization for use by such citizen only for the purpose of obtaining recognition as a citizen of the United States by a foreign state. Such certificate when issued shall be furnished to the Secretary of State for transmission to the proper authority in such foreign state.

§ 1453. Cancellation of certificates issued by Attorney General, the Commissioner or a Deputy Commissioner; action not to affect citizenship status

The Attorney General is authorized to cancel any certificate of citizenship, certificate of naturalization, copy of a declaration of intention, or other certificate, document or record here-tofore 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 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.

§ 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, 1988, 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 any 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 shall be deposited by the Attorney General in the Treasury of the United States except that all such fees collected or paid over on or after October 1, 1988, shall be deposited in the Immigration Examinations Fee Account established under section 1356(m) of this title: Provided, however, That all fees received by the Attorney General from applicants residing in the Virgin Islands of the United States, and in Guam, under this subchapter, shall be paid over to the treasury of the Virgin Islands and to the treasury of Guam, respectively.

(d) During the time when the United States is at war the Attorney General may not charge or collect a naturalization fee from an alien in the military, air, or naval service of the United States for filing an application for naturalization or issuing a certificate of naturalization upon admission to citizenship.

(e) In addition to the other fees required by this subchapter, the applicant for naturalization shall, upon the filing of an application for naturalization, deposit with and pay to the Attorney General a sum of money sufficient to cover the expenses of subpenaing and paying the legal fees of any witnesses for whom such applicant may request a subpena, and upon the final discharge of such witnesses, they shall receive, if they demand the same from the Attorney General, the customary and usual witness fees from the monies which the applicant shall have paid to the Attorney General for such purpose, and the residue, if any, shall be returned by the Attorney General to the applicant.

(f)(1) The Attorney General shall pay over to courts administering oaths of allegiance to persons under this subchapter a specified percentage of all fees described in subsection (a)(1) collected by the Attorney General with respect to persons administered the oath of allegiance by the respective courts. The Attorney General, annually and in consultation with the courts, shall determine the specified percentage based on the proportion, of the total costs incurred by the Service and courts for essential services directly related to the naturalization process, which are incurred by courts.

(2) The Attorney General shall provide on an annual basis to the Committees on the Judiciary of the House of Representatives and of the Senate a detailed report on the use of the fees described in paragraph (1) and shall consult with such Committees before increasing such fees.

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, 1988, 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 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 any 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 shall be deposited by the Attorney General in the Treasury of the United States except that all such fees collected or paid over on or after October 1, 1988, shall be deposited in the Immigration Examinations Fee Account established under section 1356(m) of this title: Provided, however, That all fees received by the Attorney General from applicants residing in the Virgin Islands of the United States, and in Guam, under this subchapter, shall be paid over to the treasury of the Virgin Islands and to the treasury of Guam, respectively.

(D) During the time when the United States is at war the Attorney General may not charge or collect a naturalization fee from an alien in the military, air, or naval service of the United States for filing an application for naturalization or issuing a certificate of naturalization upon admission to citizenship.

(E) In addition to the other fees required by this subchapter, the applicant for naturalization shall, upon the filing of an application for naturalization, deposit with and pay to the Attorney General a sum of money sufficient to cover the expenses of subpenaing and paying the legal fees of any witnesses for whom such applicant may request a subpena, and upon the final discharge of such witnesses, they shall receive, if they demand the same from the Attorney General, the customary and usual witness fees from the monies which the applicant shall have paid to the Attorney General for such purpose, and the residue, if any, shall be returned by the Attorney General to the applicant.

(F)(1) The Attorney General shall pay over to courts administering oaths of allegiance to persons under this subchapter a specified percentage of all fees described in subsection (a)(1) collected by the Attorney General with respect to persons administered the oath of allegiance by the respective courts. The Attorney General, annually and in consultation with the courts, shall determine the specified percentage based on the proportion, of the total costs incurred by the Service and courts for essential services directly related to the naturalization process, which are incurred by courts.

(2) The Attorney General shall provide on an annual basis to the Committees on the Judiciary of the House of Representatives and of the Senate a detailed report on the use of the fees described in paragraph (1) and shall consult with such Committees before increasing such fees.

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, § 309(b)(14), which provided for a clarifying amendment to subsec. (c), could not be executed, because the phrase which was to be amended did not appear after the amendment by Pub. L. 102–232, § 309(a)(1)(A)(ii), see below.


Subsec. (a)(1). Pub. L. 101–649, § 407(c)(20), (d)(19)(A)(ii), (iii), substituted an “application” for “a petition”, struck “final” before “hearing”, and substituted “the Attorney General” for “the naturalization court”.

Subsec. (c). Pub. L. 101–649, § 407(d)(19)(B), (C), (F), redesignated subsec. (g) as (c), struck out “and”, and all fees paid over to the Attorney General by clerks of courts under the provisions of this subchapter, “before” shall be deposited by” and “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 received from any naturalization court 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 United States 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, collected, and accounted for.”

Subsec. (e). Pub. L. 101–649, § 407(c)(20), (d)(19)(B), (E), (F), redesignated subsec. (i) as (e), substituted an “application” for “a petition” and “applicant” for “petitioner” wherever appearing, substituted references to Attorney General for references to clerk of court wherever appearing, and struck out former subsec. (e) which read as follows: “The accounting required by subsections (c) and (d) of this section shall be made and the fees paid over to the Attorney General by such clerks in naturalization proceedings: Provided, however, That the clerk of the District Court of the Virgin Islands of the United States and in Guam which are turned over to the Attorney General shall be deposited by” and “or by the clerks of the courts” before “from applicants residing in”, and struck out former subsec. (d) which read as follows: “The clerk of any United States district court (except in the District Court of Guam) shall account for and pay over to the Attorney General the fees collected by any such clerk in naturalization proceedings in any fiscal year.”

Subsec. (f). Pub. L. 101–649, § 407(d)(19)(B), (C), (F), redesignated subsec. (g) as (d), substituted “the Attorney General” for “the clerk of court”.


Subsec. (g). Pub. L. 100–459, as amended by Pub. L. 102–232, § 309(a)(1)(A)(ii), inserted “except that all such fees collected or paid over on or after October 1, 1988, shall be deposited in the Immigration Examinations Fee Account established under section 1356(m) of this title” after “Treasury of the United States”.


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 Attorney General.


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 1961 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.

Admission of Alaska as State
Effectiveness of amendment of this section by Pub. L. 85–508 was dependent on admission of Alaska into the Union under section 8(b) of Pub. L. 85–508. Admission was accomplished Jan. 3, 1959 on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508. See notes preceding sections 1101 of this title.


§ 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 heretofore seeking citizenship to show by nationalities their relation to the numbers of aliens annually arriving and to the prevailing census populations of the foreign-born, their economic, vocational, and other classification, in statistical form, with analytical comment thereon, and to prepare such report annually hereafter. Payment for the equipment used in preparing such compilation shall be made from the appropriation for the enforcement of this chapter by the Service.

(June 27, 1952, ch. 477, title III, ch. 2, § 347, 66 Stat. 266.)

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.

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.


(b) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after September 26, 1961 under, or by virtue of, the provisions of this chapter or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the
evidence. Any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this chapter or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.


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. 316, 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—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,” and struck out former subsec. (b) which read as follows: “Any person who commits or performs any act specified in subsection (a) of this section shall be conclusively presumed to have done so voluntarily and without having been subjected to duress of any kind, if such person at the time of the act was a national of the state in which the act was performed and had been physically present in such state for a period or periods totaling ten years or more immediately prior to such act.”

1981—Subsec. (a). Pub. L. 97–116 struck out “(a)” designation as added by section 4 of Pub. L. 95–432, which was not executed since it would have resulted in a subsec. (a) designation of “(a)(a)”, and substituted in par. (1) “special immigrant” for “nonquota immigrant”.

1978—Subsec. (a)(5). Pub. L. 95–432, §§2, 4, redesignated par. (6) as (5), Former par. (5), which dealt with expatriation of persons who voted in a political election in a foreign state or participated in an election or plebiscite to determine sovereignty over foreign territory, was struck out.

Subsec. (a)(6), (7). Pub. L. 95–432, §4, redesignated paras. (7) and (9) as (6) and (7), respectively. Former paras. (6) and (7) redesignated (5) and (6), respectively.

Subsec. (a)(8). Pub. L. 95–432, §2, struck out par. (8) which dealt with expatriation of persons who were dismissed or dishonorably discharged as result of deserting the military, air, or naval forces of the United States in time of war.


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.


EFFECTIVE DATE OF 1988 AMENDMENT


EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–653, §23(e), 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


SAVINGS PROVISION

Amendment by Pub. L. 94–412 not to affect any action taken or proceeding pending at the time of amendment, see section 501(h) of Pub. L. 94–412, set out as a note under section 1601 of Title 50, War and National Defense.
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.

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 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, §350, 66 Stat. 269, provided that an individual with dual nationality who voluntarily claims the benefits of the foreign state for a reason specified in section 1481(a) of this title, prior to his eighteenth birthday, of any of the acts or the performance within the United States or any of its outlying possessions.

Effective Date of Repeal


§ 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.

nationality by continuous residence for five years in any foreign country of which the individual was not a
national or in which his place of birth was situated.

§ 1487. Act June 27, 1952, ch. 477, title III, ch. 3,
§ 355, 66 Stat. 272, related to loss of American national-
§ 1501. Certificate of diplomatic or consular offi-

§ 1488. Nationality lost solely from performance
of acts or fulfillment of conditions

The loss of nationality under this part shall result solely from the performance by a national of the acts or fulfillment of the conditions specified in this part.

§ 1489. Application of treaties; exceptions

Nothing in this subchapter shall be applied in contravention of the provisions of any treaty or convention to which the United States is a party and which has been ratified by the Senate before December 25, 1952: Provided, however, That no woman who was a national of the United States shall be deemed to have lost her nationality solely by reason of her marriage to an alien on or after September 22, 1922, or to an alien racially ineligible to citizenship on or after March 3, 1931, or, in the case of a woman who was a United States citizen at birth, through residence abroad following such marriage, notwithstanding the provisions of any existing treaty or convention.

§ 1503. Denial of rights and privileges as national

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

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.

AMENDMENTS

1994—Pub. L. 103–416 inserted at end “Approval by the Secretary of State of a certificate under this section shall constitute a final administrative determination of loss of United States nationality under this chapter, subject to such procedures for administrative appeal as the Secretary may prescribe by regulation, and also shall constitute a denial of a right or privilege of United States nationality for purposes of section 1503 of this title.”

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.

AMENDMENTS

1994—Pub. L. 103–416 inserted at end “Approval by the Secretary of State of a certificate under this section shall constitute a final administrative determination of loss of United States nationality under this chapter, subject to such procedures for administrative appeal as the Secretary may prescribe by regulation, and also shall constitute a denial of a right or privilege of United States nationality for purposes of section 1503 of this title.”

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.

§ 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

Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of part III of this subchapter, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates. Approval by the Secretary of State of a certificate under this section shall constitute a final administrative determination of loss of United States nationality under this chapter, subject to such procedures for administrative appeal as the Secretary may prescribe by regulation, and also shall constitute a denial of a right or privilege of United States nationality for purposes of section 1503 of this title.

§ 1501. Certificate of diplomatic or consular officer of United States as to loss of American nationality

Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of part III of this subchapter, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates. Approval by the Secretary of State of a certificate under this section shall constitute a final administrative determination of loss of United States nationality under this chapter, subject to such procedures for administrative appeal as the Secretary may prescribe by regulation, and also shall constitute a denial of a right or privilege of United States nationality for purposes of section 1503 of this title.

§ 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

Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of part III of this subchapter, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates. Approval by the Secretary of State of a certificate under this section shall constitute a final administrative determination of loss of United States nationality under this chapter, subject to such procedures for administrative appeal as the Secretary may prescribe by regulation, and also shall constitute a denial of a right or privilege of United States nationality for purposes of section 1503 of this title.
§ 1504

TITLE 8—ALIENS AND NATIONALITY

Page 482

may institute an action under the provisions of section 2201 of title 28 against the head of such department or independent agency for a judgment declaring him to be a national of the United States, except that no such action may be instituted in any case if the issue of such person's status as a national of the United States (1) arose by reason of, or in connection with any removal proceeding under the provisions of this chapter or any other act, or (2) is in issue in any such removal proceeding. An action under this subsection may be instituted only within five years after the final administrative denial of such right or privilege and shall be filed in the district court of the United States for the district in which such person resides or claims a residence, and jurisdiction over such officials in such cases is conferred upon those courts.

(b) Application for certificate of identity; appeal

If any person who is not within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may make application to a diplomatic or consular officer for admission to the United States for the purpose of traveling to a port of entry in the United States and applying for admission. Upon proof to the satisfaction of such diplomatic or consular officer that such application is made in good faith and has a substantial basis, he shall issue to such person a certificate of identity. From any denial of an application for such certificate the applicant shall be entitled to an appeal to the Secretary of State, who, if he approves the denial, shall state in writing his reasons for his decision. The Secretary of State shall prescribe rules and regulations for the issuance of certificates of identity as above provided. The provisions of this subsection shall be applicable only to a person who at some time prior to his application for the certificate of identity has been physically present in the United States, or to a person under sixteen years of age who was born abroad of a United States citizen parent.

c) Application for admission to United States under certificate of identity; revision of determination

A person who has been issued a certificate of identity under the provisions of subsection (b), 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 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


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 360 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 illegality or fraud practiced upon, the Secretary. The person for or to whom such document has been issued or made shall be given, at such person’s last known address, written notice of the cancellation of such document, together with the procedures for seeking a prompt post-cancellation hearing. The cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued.

(b) For purposes of this section, the term “Consular Report of Birth” refers to the report, designated as a “Report of Birth Abroad of a Citizen of the United States”, issued by a consular officer to document a citizen born abroad.


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 Sec-
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 151 and 152 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 1980 AMENDMENT


REFERENCES TO SECRETARY OF EDUCATION OR SECRETARY OF DEPARTMENT OF HEALTH AND HUMAN SERVICES

Pub. L. 96–212, title II, §204(e), Mar. 17, 1980, 94 Stat. 109, provided that: "Any reference in this Act [see Short Title of 1980 Amendment note set out under section 1101 of this title] or in chapter 2 of title IV of the Immigration and Nationality Act [this subchapter] to the Secretary of Education or the Secretary of Health and Human Services or to the Department of Health and Human Services shall be deemed, before the effective date of the Department of Education Organization Act [see Effective Date note set out under section 3401 of Title 20, Education], to be a reference to the Secretary of Health, Education, and Welfare or to the Department of Health, Education, and Welfare, respectively."

CONGRESSIONAL DECLARATION OF POLICIES AND OBJECTIVES

Pub. L. 96–212, title I, §101, Mar. 17, 1980, 94 Stat. 102, provided that:

(a) the Congress declares that it is the historic policy of the United States to encourage all nations to provide assistance and resettlement opportunities to refugees to the fullest extent possible;

(b) The objectives of this Act [see Short Title of 1980 Amendment note set out under section 1101 of this title] are to provide a permanent and systematic procedure for the admission to this country of refugees of special humanitarian concern to the United States, and to provide comprehensive and uniform provisions for the effective resettlement and absorption of those refugees who are admitted.

§1522. Authorization for programs for domestic resettlement of and assistance to refugees

(a) Conditions and considerations

(1)(A) In providing assistance under this section, the Director shall, to the extent of available appropriations, (i) make available sufficient resources for employment training and placement in order to achieve economic self-sufficiency among refugees as quickly as possible, (ii) provide refugees with the opportunity to acquire sufficient English language training to enable them to become effectively resettled as quickly as possible, (iii) insure that cash assistance is made available to refugees in such a manner as not to discourage their economic self-sufficiency, in accordance with subsection (e)(2), 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) 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,
§ 1522

of refugees within a State, the Federal agency needs of refugees for assistance and services with such policies and strategies and to the availability and other relevant factors, of the relative periodic assessment, based on refugee population, and localities, and 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) 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). 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)) 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),

(ii) for services for refugees under subsection (c)(1),

(iii) for targeted assistance project grants under subsection (c)(2), and

(iv) for assistance for refugee children under subsection (d)(2).

(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 and legal responsibility for unaccompanied refugee children in the State, and

(v) for the identification of refugees who at the time of resettlement in the State are determined to have medical conditions requiring, or medical histories indicating a need for, treatment or observation and such monitoring of such treatment or observation as may be necessary;

(B) meet standards, goals, and priorities, developed by the Director, which assure the effective resettlement of refugees and which promote their economic self-sufficiency as quickly as possible and the efficient provision of services; and

(C) submit to the Director, within a reasonable period of time after the end of each fiscal year, a report on the uses of funds provided under this subchapter which the State is responsible for administering.

(7) The Secretary, together with the Secretary of State with respect to assistance provided by the Secretary of State under subsection (b), 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 resettlement (including initial reception and placement with sponsors) of refugees in the United States. Grants to, or contracts with, private nonprofit voluntary agencies under this paragraph shall be made consistent with the objectives of this subchapter, taking into account the different resettlement approaches and practices of such agencies. Resettlement assistance under this paragraph shall be provided in coordination with the Director's provision of other assistance under this subchapter. Funds provided to agencies under such grants and contracts may only be obligated or expended during the fiscal year in which they are provided (or the subsequent fiscal year or such subsequent fiscal period as the Federal contracting agency may approve) to carry out the purposes of this subsection.

(B) If the President determines that the Director should not administer the program under this paragraph, the authority of the Director under the first sentence of subparagraph (A) shall be exercised by such officer as the President shall from time to time specify.

(2) The Director is authorized to develop programs for such orientation, instruction in English, and job training for refugees, and such other education and training of refugees, as facilitates their resettlement in the United States. The Director is authorized to implement such programs, in accordance with the provisions of this section, with respect to refugees in the United States. The Secretary of State is authorized to implement such programs with respect to refugees awaiting entry into the United States.

(3) The Secretary is authorized to make arrangements (including cooperative arrangements with other Federal agencies) for the temporary care of refugees in the United States in emergency circumstances, including the establishment of processing centers, if necessary, without regard to such provisions of law (other than the Renegotiation Act of 1951 and section 1524(b) of this title) regulating the making, performance, amendment, or modification of contracts and the expenditure of funds of the United States Government as the Secretary may specify.

(4) The Secretary shall—

(A) assure that an adequate number of trained staff are available at the location at which the refugees enter the United States to assure that all necessary medical records are available and in proper order;

(B) provide for the identification of refugees who have been determined to have medical conditions affecting the public health and requiring treatment;

(C) assure that State or local health officials at the resettlement destination within the United States of each refugee are promptly notified of the refugee's arrival and provided with all applicable medical records; and

(D) provide for such monitoring of refugees identified under subparagraph (B) as will insure that they receive appropriate and timely treatment.

The Secretary shall develop and implement methods for monitoring and assessing the quality of medical screening and related health services provided to refugees awaiting resettlement in the United States.

(5) The Director is authorized to make grants to, and enter into contracts with, State and local health agencies for payments to meet the 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.
§ 1522

mittees on the Judiciary of the House of Representatives and of the Senate.

transmitted under subparagraph (E) to the Committee promptly forward a copy of each annual report

(1) shall establish criteria for the performance

relating to an agency’s—

or private nonprofit agencies for projects specifically designed—

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).

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-suffi-
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), 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)) 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) or by the appropriate State or local employment service,

(ii) refuses to go to a job interview which has been arranged through such agency or service, or

(iii) refuses to participate in a social service or targeted assistance program referred to in subparagraph (A)(ii) which such agency or service determines to be available and appropriate,

cash assistance to the refugee shall be terminated (after opportunity for an administrative hearing) for a period of three months (for the first such refusal) or for a period of six months (for any subsequent refusal).

(3) The Director shall develop plans to provide English training and other appropriate services and training to refugees receiving cash assistance.

(4) If a refugee is eligible for aid or assistance under a State plan 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 supplemental security income benefits (including State supplementary payments) under the program established under title XVI of that Act [42 U.S.C. 1381 et seq.], funds authorized under this subsection shall only be used for the non-Ped official 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 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 man-
ner 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 for at least a year and six months or longer if the Secretary determines that refugees in the group have been significantly and disproportionately dependent on welfare and need the services provided under the project in order to become self-sufficient and that their coverage under the projects would be cost-effective.

(B) Refugees covered under such alternative projects shall be precluded from receiving cash or medical assistance under any other paragraph of this subsection or under title XIX or part A of title IV of the Social Security Act [42 U.S.C. 1396 et seq., 601 et seq.].

(C) The Secretary shall report to Congress not later than October 31, 1985, on the results of these projects and 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).

(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, which was classified principally to section 1211 et seq. of the former Appendix to Title 50, War and National Defense, prior to its omission from the Code.

The Social Security Act, referred to in subsecs. (d)(2)(B) and (e)(4), (5), (7)(B), (D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts A and B of title IV of the Social Security Act are classified generally to part A (§1301 et seq.) and part B (§1302 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Titles XVI and XIX of the Social Security Act are classified generally to subchapters XVI (§1161 et seq.) and XIX (§11966 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.

This chapter, referred to in subsec. (f)(1)(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.

AMENDMENTS

1996—Subsec. (b)(3). Pub. L. 104–208 struck out comma after "as authorized".


Subsec. (e)(4). Pub. L. 104–193 substituted "State program funded for "State plan approved".


Subsec. (b)(3), (4). Pub. L. 103–236, §162(m)(2)(B), struck out "Secretary is authorized," in par. (3) and after "The Secretary,

Subsec. (e)(7)(C). Pub. L. 103–236, §162(m)(2)(C), struck out "appropriate and county officials referred to in paragraph (2) for "all appropriate Federal, State, and county officials referred to in section B of this Act", "Cuban nationals described in paragraph (1) for "such persons defined in subsection (f)(1) of this section" and "authorized to carry out this subsection for "hereafter authorized by this section."


Subsec. (e)(7)(D). Pub. L. 103–416 struck out paragraph (1) or (2) of after "appropriate under".

1985—Subsec. (b)(3), (4). Pub. L. 99–605, §10, added subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (C).


Subsec. (b)(1). Pub. L. 99–605, §5(b)(2), struck out provisions which related to requirement in grants and contracts that agency provide notice to appropriate welfare office that refugee is offered employment, provide notice to the refugee about notice to the welfare office, and assure that refugees with medical conditions affecting public health and requiring treatment report to appropriate health agency in area of resettlement.

Subsec. (b)(6). Pub. L. 99–605, §6(a), amended par. (6) generally, substituting "shall directly conduct an annual financial audit" for "shall conduct an annual audit", and "grant or contract made under paragraph (1) for fiscal year 1986 and for fiscal year 1987 for "grants and contracts made under this subsection."

erate 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 Amendments**


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**

Pub. L. 100-525, § 8(c), Oct. 24, 1988, 102 Stat. 2616, 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**

Pub. L. 99-605, § 5(d), Nov. 6, 1986, 100 Stat. 3452, provided that: "(1) Section 412(b)(7) (other than subparagraphs (B)(i), (C), and (D)) of the Immigration and Nationality Act [§ 1522(c)] 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]."

"(2) Section 412(b)(7)(D) of the Immigration and Nationality Act [§ 1522(b)(7)] as added by subsection (b)(1) of this section, shall apply to grants and contracts made or renewed after the end of the six-month period beginning on the date of the enactment of this Act [Nov. 6, 1986]."

"(3) The criteria required under the amendment made by subsection (c) [amending this section] shall be established not later than 60 days after the date of the enactment of this Act [Nov. 6, 1986]."

Pub. L. 99-605, § 6(c), Nov. 6, 1986, 100 Stat. 3453, provided that: "The amendments made by subsection (a) [amending this section] shall apply to grants and contracts made before October 1, 1980, or such earlier date as the Director of the Office of Refugee Resettlement may establish."

**Effective Date of 1984 Amendment**

Pub. L. 98-473, title I, §101(d), Oct. 12, 1984, 98 Stat. 1877, 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**


"(1) sections 3(b), 4, 5(c), 5(d), 6(a), and 7 [amending this section and section 1523 of this title] take effect on October 1, 1982, and "(2) sections 5(c), 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**


"(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 1982 (22 U.S.C. 2601(b)) before October 1, 1978, the Director of the Office of Refugee Resettlement is authorized—"

"(1) to provide reimbursement—"

"(A) in fiscal year 1980, for 75 percent,"

"(B) in fiscal year 1981, for 60 percent,"

"(C) in fiscal year 1982, for 45 percent, and"

"(D) in fiscal year 1983, for 25 percent, of the non-Federal costs or providing cash and medical assistance (other than assistance described in paragraph (2)) to such refugees, and"

"(2) to provide reimbursement in any fiscal year for 100 percent of the non-Federal costs associated with such Cuban refugees with respect to whom supplemental security income payments were being paid as of September 30, 1978, under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.]."

"(d) the requirements of section 412(a)(6)(A) of the Immigration and Nationality Act [subsec. (a)(6)(A) of this section] shall apply to assistance furnished under chapter 2 of title IV of such Act [this subchapter] after October 1, 1980, or such earlier date as the Director of the Office of Refugee Resettlement may establish."

**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**

Pub. L. 99-605, § 7, Nov. 6, 1986, 100 Stat. 3453, 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 [§ 1522(c)]."

**Reimbursement to State and Local Public Agencies for Expenses Incurred for Providing Social Services to Applicants for Asylum**

§308(d)(4)(B), Sept. 30, 1996, 110 Stat. 3009-619, provided that:

“(a) The Director of the Office of Refugee Resettlement is authorized to use funds appropriated under paragraphs (1) and (2) of section 414(a) of the Immigration and Nationality Act [8 U.S.C. 1524(a)] to reimburse State and local public agencies for expenses which those agencies incurred, at any time, in providing aliens described in subsection (c) of this section with social services of the type 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 removal has not been entered.”

**ELIGIBILITY OF CERTAIN CUBAN-HAITIAN ENTRANTS ENTERING AFTER NOV. 1, 1979**

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, are security threats, or have incited civil disturbances in Federal processing facilities. The Congress urges the Executive branch, consistent with United States law, to seek the deportation of such individuals.”

**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, are security threats, or have incited civil disturbances in Federal processing facilities. The Congress urges the Executive branch, consistent with United States law, to seek the deportation of such individuals.”

**REFUGEE EDUCATION ASSISTANCE ACT OF 1980**

Pub. L. 96-422, Oct. 10, 1980, 94 Stat. 1796, as amended by Pub. L. 96-424, Oct. 10, 1980, 94 Stat. 1820; Pub. L. 97-33, title V, §§543(a)(2), 547, Aug. 13, 1981, 95 Stat. 463, 467, 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 with the immigration status of a Cuban-Haitian entrant (status pending) shall be considered to be an eligible participant (within the meaning of section 101(3) of such Act) but only during the 36-month period beginning with the first month in which the alien entered the United States as such an entrant or otherwise first acquired such status.”

**TREATMENT OF CERTAIN JURISDICTIONS**

**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, the sums as may be necessary to make payments to which State educational agencies are entitled under this Act and payments for administration under section 104.”

“(b)(1) If the sums appropriated for any fiscal year to make payments to States under this Act are not sufficient to pay in full the sum of the amounts which State educational agencies are entitled to receive under titles II through IV for any fiscal year, the allocations to State educational agencies under each of such titles shall be ratably reduced by the same percentage to the extent necessary to bring the aggregate of such allocations within the limits of the amounts so appropriated.

“(b)(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.”

**AUTHORIZATIONS AND ALLOCATION OF APPROPRIATIONS**

**SEC. 102. (a) There are authorized to be appropriated for each of the fiscal years 1981, 1982, and 1983, but only in a lump sum for all programs under this Act, the sums as may be necessary to make payments to which State educational agencies are entitled under this Act and payments for administration under section 104.”

“(b)(1) If the sums appropriated for any fiscal year to make payments to States under this Act are not sufficient to pay in full the sum of the amounts which State educational agencies are entitled to receive under titles II through IV for any fiscal year, the allocations to State educational agencies under each of such titles shall be ratably reduced by the same percentage to the extent necessary to bring the aggregate of such allocations within the limits of the amounts so appropriated.

“(b)(2) In the event that funds become available for making payments under this Act for any period after allocations have been made under paragraph (1) of this subsection for such period, the amounts reduced under such paragraph shall be increased on the same basis as they were reduced.”

**TREATMENT OF CERTAIN JURISDICTIONS**

**SEC. 103. (a) The jurisdictions to which this section applies are Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.”

“(b)(1) Each jurisdiction to which this section applies shall be entitled to grants for the purposes set forth in sections 201(a), 302, and 402 in amounts equal to amounts determined by the Secretary in accordance with criteria established by the Secretary, except that the aggregate of the amount to which such jurisdictions are so entitled for any period 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

“(b)(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 per-
§ 1522

"STATE ADMINISTRATIVE COSTS"

"SEC. 104. The Secretary is authorized to pay to each State educational agency an amount 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.

"WITHOLDING"

"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 educational agencies or other entities (in the case of funds under title IV) whose actions cause or are involved in such failure until the Secretary is satisfied that there is no longer any such failure to comply. Until the Secretary is so satisfied, no further payments shall be made to the State educational agency under such title, or payments by the State educational agency under such title shall be limited to local educational agencies or other entities (in the case of funds under title IV) whose actions did not cause or were not involved in the failure, as the case may be.

"CONSULTATION WITH OTHER AGENCIES"

"SEC. 106. To the extent that may be appropriate to facilitate the determination of the amount of any reductions under sections 201(b)(2), 301(b)(3), and 401(b)(2), the Secretary shall consult with the heads of other agencies providing assistance to eligible participants in order to secure information concerning the disbursement of funds for educational purposes under programs administered by them and provide, wherever feasible, for coordination among those programs and the programs under titles II through IV of this Act.

"TITLE II—GENERAL ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES"

"STATE ENTITLEMENTS"

"SEC. 201. (a) The Secretary shall, in accordance with the provisions of this title, make grants to State educational agencies for fiscal year 1981, and for each subsequent fiscal year, for the purposes of assisting local educational agencies of that State in providing basic educational services 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. 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 entitlement of such jurisdictions shall be determined in the manner specified in section 103, but for purposes of this title and section 105 any payments made under section 103 for the purposes set forth in section 201(a) shall be considered to be payments under this title.

"(c) Determinations by the Secretary under this title for any period with respect to the number of eligible participants and the amount of the reduction under subsection (b)(2) shall be made, whenever actual satisfactory data are not available, on the basis of estimates. No such determination shall operate because of an underestimate or overestimate to deprive any State educational agency of its entitlement to any payment (or the amount thereof) under this title to which such agency would be entitled had such determination been made on the basis of accurate data.

"APPLICATIONS"

"SEC. 202. (a) No State educational agency shall be entitled to any payment under this title for any period unless that agency submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require. Each such application shall—

"(1) provide that the payments under this title will be used for the purposes set forth in section 201;

"(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. 302. (a) The Secretary shall pay to each State educational agency having an application approved under section 202 the amount which that State is entitled to receive under this title.

(b) For fiscal year 1981 and for each subsequent fiscal year, there is authorized to be appropriated, in the manner specified under section 102, to make payments under this title an amount equal to the product of—

(1) the total number of eligible participants enrolled in elementary or secondary public schools under the jurisdiction of local educational agencies within all the States (other than the jurisdictions to which section 103 is applicable) during the fiscal year for which the determination is made, multiplied by—

("(2) $400.

"TITLE III—SPECIAL IMPACT ASSISTANCE FOR SUBSTANTIAL INCREASES IN ATTENDANCE"

"STATE ENTITLEMENTS"

"SEC. 301. (a) The Secretary shall, in accordance with the provisions of this title, make payments to State educational agencies for fiscal year 1981, and for each subsequent fiscal year for the purpose set forth in section 302.

(b)(1) Except as provided in paragraph (3) of this subsection and in subsections (c) and (d) of this section, the amount of the grant to which a State educational agency is entitled under this title for any fiscal year shall be equal to the sum of—

(A) the amount equal to the product of (i) the number of eligible participants enrolled during the period for which the determination is made in elementary or secondary public schools under the jurisdiction of each local educational agency described under paragraph (2) within that State, or in any elementary or secondary nonpublic school within the district served by each such local educational agency, who have been eligible participants less than one year, multiplied by (ii) $700;

(B) the amount equal to the product of (i) the number of eligible participants enrolled during the period for which the determination is made in elementary or secondary public schools under the jurisdiction of each local educational agency described under paragraph (2) within that State, or in any elementary or secondary nonpublic school within the district served by each such local educational agency, who have been eligible participants at least one year but not more than two years, multiplied by (ii) $500; and

(C) the product of (i) the number of eligible participants enrolled during the period for which the determination is made in elementary or secondary public schools under the jurisdiction of each local educational agency described under paragraph (2) within that State, or in any elementary or secondary nonpublic school within the district served by each such local educational agency, who have been eligible participants at least one year but not more than two years, multiplied by (ii) $500; and

"(2) the local educational agencies referred to in paragraph (1) are those local educational agencies in which the sum of the number of eligible participants who are enrolled in elementary or secondary public schools under the jurisdiction of such agencies, or in elementary or secondary nonpublic schools within the districts served by such agencies, during the fiscal year for which the payments are to be made under this title, and are receiving supplementary educational services during such period, is equal to—

(A) at least 500; or

(B) at least 5 percent of the total number of students enrolled in such public or nonpublic schools during such fiscal year, whichever number is less. Notwithstanding the provisions of this paragraph, the local educational agencies referred to in paragraph (1) shall include local educational agencies eligible to receive assistance by reason of the last sentence of section 3(b) and section 3(c)(2)(B) of the Act of September 20, 1960 (Public Law 874, 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.

(c) Determinations by the Secretary under this title for any period with respect to the number of eligible participants and the amount of the reduction under subsection (b)(3) shall be made, whenever actual satisfactory data are not available, on the basis of estimates. No such determination shall operate because of an underestimate or overestimate to deprive any State educational agency of its entitlement to any payment (or the amount thereof) under this title to which such agency would be entitled had such determination been made on the basis of accurate data.

(d) Whenever the Secretary determines that any amount of a payment made to a State under this title for a fiscal year will not be used by such State for carrying out the purpose for which the payment was made, the Secretary shall make such amount available for carrying out such purpose to one or more other States to the extent the Secretary determines that such other States will be able to use such additional amount for carrying out such purpose.

(e) 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.

"USBS OF FUNDS"

"SEC. 302. (a) Payments made under this title to any State may be used in accordance with applications approved under section 303 for supplementary educational services and costs, as described under subsection (b) of this section, for eligible participants enrolled in the elementary and secondary public schools under the jurisdiction of the local educational agencies of the State described in section 301(b)(2) and in elementary and secondary nonpublic schools of that State within the districts served by such agencies.

(b) Financial assistance provided under this title shall be available to meet the costs of providing eligible participants supplementary educational services, including but not limited to—

(1) supplementary educational services necessary to enable those children to achieve a satisfactory level of performance, including—

(A) English language instruction;

(B) other bilingual educational services; and

(C) special materials and supplies;

(2) additional basic instructional services which are directly attributable to the presence in the school..."
§ 1522

Each such application shall—

(1) provide that the educational programs, services, and activities for which payments under this title are made will be administered by or under the supervision of the agency;

(2) provide assurances that payments under this title will be used for purposes set forth in section 302;

(3) provide assurances that such payments will be distributed among local educational agencies within that State in accordance with section 301, subject to any reductions in payments for local educational agencies identified under paragraph (5) to take into account the funds described by section 301(b)(3) that are made available for educational, or education-related, services or activities for eligible participants enrolled in elementary or secondary public schools under the jurisdiction of such agencies or elementary or secondary nonpublic schools served by the districts served by such agencies;

(4) provide that the Education State 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)(5) that are made available under other Federal laws to agencies or other entities for educational, or education-related, services or activities within the State because of a significant concentration of eligible participants, and (B) the local educational agencies within whose districts are eligible participants provided services from such funds who are enrolled in elementary or secondary schools under the jurisdiction of such agencies, or in elementary or secondary nonpublic schools served by such agencies;

(6) provide for making such reports as the Secretary may reasonably require to perform his functions under this Act; and

(7) provide assurances—

(a) that to the extent consistent with the number of eligible participants enrolled in the elementary or secondary nonpublic schools within the district served by a local educational agency, such agency, after consultation with appropriate officials of such schools, shall provide for the benefit of these children secular, neutral, and nonideological services, materials, and equipment necessary for the education of such children; and

(b) that the control of funds provided under this paragraph and the title to any materials, equipment, and property repaired, remodeled, or constructed with those funds shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer such funds and property; and

(c) that the provision of services pursuant to this paragraph shall be provided by employees of a public agency or through contract by such public agency with a person, association, agency or corporation who or which, in the provision of such services, is independent of such elementary or secondary nonpublic school and of any religious organization; and such employment or contract shall be under the control and supervision of such public agency, and the funds provided under this paragraph shall not be commingled with State or local funds.

(b) The Secretary shall approve an application which meets the requirements of subsection (a). If 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. 301. (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 in public educational services for children enrolled in the State in accordance with section 303(a)(6), or if the Secretary determines that State, other than any such refugees who are enrolled in elementary or secondary public schools under the jurisdiction of local educational agencies; multiplied by—

(B) $300.

(2) The amount of the grant to which a State educational agency is otherwise entitled for any fiscal year 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, paroled, 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 160, but for purposes of this title and section 105 any payments made under section 103 for the purposes set forth in section 402 shall be considered to be payments under this title.
“(c) Determinations by the Secretary under this title for any period with respect to the number of eligible participants and the amount of the reduction under subsection (b)(2) shall be made, whenever actual satisfactory data are not available, on the basis of estimates. No such determination shall operate because of an underestimate or overestimate to deprive any State educational agency of its entitlement to any payment (or the amount thereof) under this title to which such agency would be entitled had such determination been made on the basis of accurate data.

“USE OF FUNDS

“SEC. 402. (a) Funds made available to State educational agencies under this title shall be used by such agencies to provide for programs of adult education and adult basic education to eligible participants aged 16 or older in need for such services who are not enrolled in elementary or secondary public schools under the jurisdiction of local educational agencies. Such programs may be provided directly by the State educational agency, or such agency may make grants, or enter into contracts, with local educational agencies, and other public or private nonprofit agencies, organizations, or institutions to provide for such programs. Funds available under this title may be used for—

(1) programs of instruction of such adult refugees in basic reading and mathematics, in development and enhancement of necessary skills, and for the promotion of literacy among such refugees;

(2) administrative costs of planning and operating such programs of instruction;

(3) educational support services which meet the needs for such adult refugees, including guidance and counseling with regard to educational, career, and employment opportunities; and


“(b) The Secretary shall approve an application submitted by an educational agency of its entitlement to any payment under this title for any period with respect to the number of eligible participants and the amount of the reduction under section 402(b) under this title to which such agency would be entitled had such determination been made on the basis of accurate data.

“SEC. 403. (a) No State educational agency shall be entitled to any payment under this title for any period unless such 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 an application of a State educational agency except after reasonable notice and opportunity for a hearing on the record to such agency.

“TITLE V—OTHER PROVISIONS RELATING TO CUBAN AND HAITIAN ENTRANTS

“AUTHORITIES FOR OTHER PROGRAMS AND ACTIVITIES

“SEC. 501. (a)(1) The President shall exercise authorities with respect to Cuban and Haitian entrants which are identical to the authorities which are exercised under chapter 2 of title IV of the Immigration and Nationality Act [8 U.S.C. 1521 et seq.].(2) The authorities provided in section 414 of that Act [8 U.S.C. 1524] shall be available to carry out this section without regard to the dollar limitation contained in section 414(a)(2).

“(b) Any reference in chapter 2 of the RAND Act of 1980 to the International Security and Development Assistance Act of 1989 shall be construed to be a reference to paragraph (1) of this subsection.

“(b) In addition, the President may, by regulation, provide that benefits granted under any law of the United States (other than the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]) with respect to individuals admitted to the United States under section 1157 of the Immigration and Nationality Act [8 U.S.C. 1157(c)] shall be granted in the same manner and to the same extent with respect to Cuban and Haitian entrants.

“(c) The State educational agency shall provide for the use of funds made available under this title in such manner that the maximum number of eligible participants aged 16 or older residing within the State receive education under the programs of instruction described under subsection (a).

“APPLICATIONS

“SEC. 406. (a) Funds made available to State educational agencies under this title shall be used only for the purposes, and in the manner, set forth in section 402.

“(b) The President may direct the head of any Federal agency to provide assistance (in the form of materials, supplies, equipment, work, services, facilities, or otherwise) for the processing, care, maintenance, security, transportation, and initial reception and placement in the United States of Cuban and Haitian entrants. Such assistance shall be provided on such terms and conditions as the President may determine.

“(b) Funds available to carry out this subsection shall be used to reimburse Federal agencies for assistance which they provide under subparagraph (A).

“(c) 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.].

“(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—

(1) 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."


[For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 26, United States Code.]
Chapter.
as may be necessary to carry out this sub-
each of fiscal years 2000 through 2002 such sums
sections and Intercourse.
as a note under section 2651a of Title 22, Foreign Rela-
see section 161(b) of Pub. L. 103–236, as amended, set out
mental directives implementing the amendments by
State when executive orders, regulations, or depart-

AMENDMENTS
1994—Subsec. (a). Pub. L. 103–236 struck out “, in consulta-
tion with the Coordinator,” after “The Secretary”.
(A)(1) as (a) and former subsec. (A)(2) as (b), and within
(b), further redesignated former subpars. (A) to (H) as pars. (1) to (8), respectively, and former cls. (i) and (ii)
of pars. (4) and (5) as clss. (A) and (B), respectively; and
struck out former subsec. (b) which provided for a re-
port 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.
United States within the five-fiscal-year period imme-
diately preceding the fiscal year within which the re-
port 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”.
(d).


EFFECTIVE DATE OF 1994 AMENDMENT
Amendment by Pub. L. 103–236 applicable with re-
spect to officials, offices, and bureaus of Department of
State when executive orders, regulations, or depart-
mental 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 Rela-
tions and Intercourse.

EFFECTIVE DATE OF 1982 AMENDMENT
Amendment by Pub. L. 97–363 effective Oct. 1, 1982,
see section 8 of Pub. L. 97–363, set out as a note under
section 1532 of this title.

§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 sub-

(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 appro-
priation Acts.

(June 27, 1952, ch. 477, title IV, ch. 2, §414, as
added Pub. L. 96–212, title III, §311(a)(2), Mar. 17,
24, 1988, 102 Stat. 2622; Pub. L. 102–110, §5, Oct. 1,
1991, 105 Stat. 558; Pub. L. 103–37, §1, June 8, 1993,

AMENDMENTS
through 2002” for “1996 and 1997”.
amended subsec. (a) identically, substituting “each of
fiscal years 1998 and 1999” for “fiscal year 1995, fiscal
year 1996, and fiscal year 1997”.
year 1995, fiscal year 1996, and fiscal year 1997” for
“fiscal year 1993 and fiscal year 1994”.
year 1993 and fiscal year 1994” for “fiscal year 1992”.
generally, substituting present provisions for provi-
sions which authorized appropriations for fiscal years
1997 and 1998 to carry out this subchapter generally and
specifically to carry out section 1522(c)(1), (b)(5), and (f)
of this title.
“through (4)” for “through (5)”.
1986—Subsec. (a)(1). Pub. L. 99–605, §2(a), (b)(1), sub-
tituted “for each of fiscal years 1987 and 1988” for “for
fiscal year 1983”, and “(2) through (5)” for “(2) and (3)”.
(2) generally, substituting “1987 $74,783,000, and for fiscal
year 1988 $77,924,000,” for “1983 $100,000,000,” and
“1522(c)(1)” for “1522(c)”.

(3) generally, substituting “1987 $8,761,000, and for fiscal
year 1988 $12,150,000,” for “1983 $14,000,000”.
1982—Subsec. (a). Pub. L. 97–363, §2, substituted provi-
sions with regard to fiscal 1983 authorizing appropri-
sions of sums necessary to carry out provisions of this
chapter, authorizing appropriations of $100,000,000 for
services to refugees under section 1522(c) of this title,
and authorizing appropriations of $14,000,000 for the
purpose of carrying out section 1522(b)(5) of this title,
for provisions with regard to fiscal 1980 and each of the
two succeeding fiscal years authorizing appropriation
of sums necessary for initial resettlement assistance,
cash and medical assistance, and child welfare services
under subsecs. (b)(1), (3), (4), (b)(2), and (e) of section
1522 of this title, and authorizing appropriations of
$200,000,000 for other programs.

EFFECTIVE DATE OF 1997 AMENDMENTS
2639, provided that: “The amendments made by sub-
section (a) [amending this section] shall take effect Oc-
tober 1, 1997.”

EFFECTIVE DATE OF 1988 AMENDMENT
Amendment by Pub. L. 100–525 effective as if included
in enactment of Refugee Assistance Extension Act of
1986, Pub. L. 99–605, see section 6(c) of Pub. L. 100–525,
set out as a note under section 1532 of this title.

30, 1994, 108 Stat. 409

Stat. 109, related to appointment and duties of United States Coordinator for Refugees Affairs.

EFFECTIVE DATE OF REPEAL
Repeal applicable with respect to officials, offices,
and bureaus of Department of State when executive or-
ders, regulations, or departmental directives imple-
menting 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 an Effective
Date of 1994 Amendment note under section 2651a of
Title 22, Foreign Relations and Intercourse.

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;
§ 1532

(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 subsec. (d), is section 1 of Pub. L. 96–456, Oct. 15, 1980, 94 Stat. 2025, which is set out as a note under section 1101 of this title.

AMENDMENTS


EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(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 1101 of this title.


AMENDMENTS


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 1326 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 1326 of the Antiterrorism and Effective Death Penalty Act of 1996 (50 U.S.C. 1803(a)).

(b) Terms

Each judge designated under subsection (a) 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) Expedient 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. 1810 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 accordance with (and subject to the penalties under) this subchapter.


REFERENCES IN TEXT


AMENDMENTS


EFFECTIVE DATE


§ 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.

§ 1534

(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 the person to whom it is directed to produce books, 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 evidence or the source of that evidence. 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.

(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 proceedings 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 derived 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; and

(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(c) 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 reference to the summary provided pursuant to this subparagraph. 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—

---

1 So in original. Probably should be “proceeding”.
(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 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) 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 1229b 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.

(f) 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 and efficacy 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).


REFERENCES IN TEXT


*So in original. The word “by” probably should not appear.

*See References in Text note below.
Section 1254(e) of this title, referred to in subsec. (k)(4), was in the original a reference to “section 244(e)', meaning section 244(e) of act June 27, 1952, which was classified to section 1254(e) of this title. Pub. L. 104–208, div. C, title III, §308(b)(7), Sept. 30, 1996, 110 Stat. 3009–615, repealed section 244 and renumbered section 244A as section 244, which is classified to section 1254A of this title. For provisions relating to voluntary departure, see section 1229c of this title.


Amendments
Pub. L. 104–208, §354(b)(1)(A)(i), inserted “the Government is authorized to use in a removal proceedings 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 108 of that Act and before ‘‘discovery of information’”.
Subsec. (e)(3)(A). 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.
Subsec. (e)(3)(D)(ii). Pub. L. 104–208, §354(a)(1)(A), inserted at end “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.”
Subsec. (j). Pub. L. 104–208, §354(b)(3), inserted at end “Any portion of the order that would reveal the substance or source of information received in camera and ex parte pursuant to subsection (e) shall not be made available to the alien or the public.”
Subsec. (k)(2). Pub. L. 104–208, §308(g)(7)(B), substituted “by withholding of removal under section 1231(b)(3) of this title” for “withholding of deportation under section 1231(b)(3) of this title”.
Subsec. (k)(8)(A)(ii), substituted “cancellation of removal under section 1229b of this title” for “withholding of deportation under subsection (a) or (e) of section 1254 of this title”.
Subsec. (k)(4) to (6). Pub. L. 104–208, §357, added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Effective Date of 1996 Amendment
Amendment by section 308(g)(7)(B), (8)(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.
Amendment by sections 354(a)(1), (2), (b), and (3), and 357 of Pub. L. 104–208 effective as if included in the enactment of subtitle A of title IV of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132, see section 358 of Pub. L. 104–208, set out as a note under section 1182 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.

§ 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 1334(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 in—
volving an alien lawfully admitted for permanent residence who is denied a written summary of classified information under section 1534(c)(3) of this title and with respect to which the procedures described in section 1534(c)(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.

(4) Expedited appellate proceeding

In an appeal or review to the Court of Appeals under this subsection—

(A) the appeal or review shall be heard as expeditiously as practicable and the court may dispense with full briefing and hear the matter solely on the record of the judge of the removal court and on such briefs or motions as the court may require to be filed by the parties;

(B) the Court of Appeals shall issue an opinion not later than 60 days after the date of the issuance of the final order of the district court;

(C) the court shall review all questions of law de novo; and

(D) a finding of fact shall be accorded deference by the reviewing court and shall not be set aside unless such finding was clearly erroneous, 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 1534(c)(3) of this title, the Court of Appeals shall review questions of fact de novo.

(d) Certiorari

Following a decision by the Court of Appeals pursuant to subsection (c), 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 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

1996—Subsec. (c)(1). Pub. L. 104–208, § 354(a)(3)(A), substituted “Subject to paragraph (2), the decision” for “The decision”.


Subsec. (c)(3)(D). 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 1534(c)(3) of this title, the Court of Appeals shall review questions of fact de novo”.


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.

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, 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.

(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(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.

(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.

(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 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) Continued detention pending trial

(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.

(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 be given reasonable opportunity, as determined by the Attorney General, to communicate with and receive visits from members of the alien’s family, and to contact, retain, and communicate with an attorney.

(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.


**Amendments**

1996—Subsec. (b)(2)(D). Pub. L. 104–208 substituted ‘‘removal because such alien is inadmissible’’ for ‘‘exclusion because such alien is excludable’’.

**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 399 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 399(d)(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**

8 sec.
1551. Immigration and Naturalization Service.
1552. Commissioner of Immigration and Naturalization; office.
1553. Assistant Commissioners and one District Director; compensation and salary grade.
1554. Special immigrant inspectors at Washington.
1555. Immigration Service expenses.
1556. Transferred.
1557. Prevention of transportation in foreign commerce of alien women and girls under international agreement; Commissioner designated as authority to receive and preserve information.

**SUBCHAPTER II—IMMIGRATION SERVICES AND INFRASTRUCTURE IMPROVEMENTS**

1571. Purposes.
1572. Definitions.
1573. Immigration Services and Infrastructure Improvements Account.
1574. Reports to Congress.

**SUBCHAPTER I—ORGANIZATION**

§1551. Immigration and Naturalization Service

There is created and established in the Department of Justice an Immigration and Naturalization Service.

CODIFICATION

Section was formerly classified to section 342 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. 374.

SHORT TITLE OF 2000 AMENDMENT


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 the United States, were to have been transferred to Secretary of the Treasury by 1973 Reorg. Plan No. 2, §2, eff. July 1, 1973, 38 U.S. L. 15902, 87 Stat. 197, 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. 93–253, 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 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, Judicial and Judicial Procedure.

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 abilities 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 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 of the Commissioner 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.

For treatment of references to any agency, officer, or office, etc. the functions of which were transferred to the Department of Homeland Security, see sections 520(d) and 527 of Title 6.

INDEPENDENT COMPREHENSIVE MANAGEMENT ANALYSIS OF SERVICE OPERATIONS; ARRANGEMENTS RESPECTING, ETC.

Pub. L. 96–132, §10, Nov. 30, 1979, 93 Stat. 1047, 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 legislative 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 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’)
as ‘the Special Investigator’) who shall be appointed by the Attorney General without 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 7321 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 supervising 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 Special Investigator may be removed from the position of Special Investigator by the Attorney General if the Special Investigator—

(1) is not qualified to discharge the duties of the position, or

(2) is not properly accounting for or spending funds appropriated to carry out the Act.

(d) The Attorney General is authorized to appoint such staff as may be necessary to carry out this section.

(e) The Special Investigator shall receive a salary of $37,000 per annum and such additional compensation as the Attorney General may authorize.

(f) The Special Investigator shall have the power to procure necessary information and assistance from any person or office of the United States Government.

(g) The provisions of this section shall take effect on the date of the enactment of this Act.

HISTORY OF IMMIGRATION AND NATURALIZATION AGENCIES

By acts Aug. 3, 1862, ch. 376, § 2, 12 Stat. 214; Feb. 23, 1877, ch. 220, 24 Stat. 413, the administration of the immigration laws then in force was reposed in the Secretary of the Treasury. Subsequently, by act Mar. 3, 1881, ch. 551, § 7, 26 Stat. 1087, the office of the Superintendent of Immigration was created, and thereafter was redesignated Commissioner General of Immigration and the Bureau of Immigration was transferred to that Department 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. 6166, § 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. Plan No. V, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238, set out in the Appendix to Title 5.

§ 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.


CONDITIO:

Section was formerly classified to section 342b 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.

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, 38 F.R. 15932, 87 Stat. 1091, set out in the Appendix to Title 5, Government Organization and Employees.

§ 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. Thereafter, it was classified to section 1551 of this title prior to its transfer to this section.

§ 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.

§ 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 Immigration and Naturalization 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 1353d 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 procuration 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 492(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 350 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. 15992, 87 Stat. 1991, 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. 58, 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 their performance or performance of any of his functions by any of such officers, agencies, and employees, by 1956 Reorg. Plan No. 2, §§ 1, 2, eff. May 24, 1956, 15 U.S.C. 1317, 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. 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 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).

(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);

(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); 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 au-
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; and

(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 1154 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) registrations 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).

§ 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 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 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.

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 6402 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’.”

SUBCHAPTER I—ELIGIBILITY FOR FEDERAL BENEFITS

§ 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), 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)).

(b) Exceptions

(1) Subsection (a) 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 1928d of title 7, to the extent that the alien is receiving such a benefit on August 22, 1996.

(2) Subsection (a) 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 is lawfully present in the United States as determined by the Attorney General, to any benefit if nonpayment of such benefit would contravene an international agreement described in section 233 of the Social Security Act [42 U.S.C. 433], to any benefit if nonpayment would be contrary to section 202(t) of the Social Security Act [42 U.S.C. 402(t)], or to any benefit payable under title II of the Social Security Act to which entitlement is based on an application filed in or before August 1996.

(3) Subsection (a) 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) 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) shall not apply to eligibility for benefits for the program defined in section 1612(a)(3)(A) of this title (relating to the supplementary 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 99–658 (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 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 subchapters II (§ 401 et seq.), IV (§ 601 et seq.), XVI (§ 1396 et seq.), XVIII (§ 1395 et seq.), and XIX (§ 1396 et seq.), respectively, 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.

The Housing Act of 1949, referred to in subsec. (b)(1)(E), is act July 15, 1949, ch. 398, 63 Stat. 413, as amended. Title V of the Act is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of Title 42. The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1411 of Title 42 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (b)(4), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 89–245, title I, § 101, Oct. 16, 1974, 88 Stat. 1365, which 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 612 of Title 45, and sections 2311 of Title 42, 2311 of Title 45, and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (b)(4), is act June 26, 1926, ch. 880, 42 Stat. 1094, which is classified principally to chapter 11 (§§ 1351 et seq.) 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. 2290, which enacted this chapter, section 1183a of this title, and sections 611a and 1477 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 1406a 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.

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 Government of 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, set out as a
§ 1612

TITILE 8—ALIENS AND NATIONALITY  Page 514

note under section 1901 of Title 48, Territories and Insular Possessions, and section 141 of the Compact of Free Association between the United States and the Government of Palau, which is contained in section 201 of Pub. L. 99–658, set out as a note under section 1931 of Title 48.

The Immigration and Nationality Act, referred to in subsec. (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


"(d) STATE Defined.—For purposes of this section, the term 'State' includes the District of Columbia.

"(e) STATE Entitlement.—This section constitutes budget authority, and does not confer 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, § 5006, 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 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'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 584 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 of coverage as defined under title II of the Social Security Act [42 U.S.C. 401 et seq.] who—

(i) is lawfully residing in any State and

(ii) is 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,

(iii) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(iv) 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, 1996, 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) 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

(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) 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 3(i) of the Food Stamp Act of 1977

1 See References in Text note below.
2 So in original. Probably should be “2012(j))”. 
(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) who is an American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) apply; or

(ii) who is a member of an Indian tribe (as defined in section 450(e) of title 25).

(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 unmarried surviving spouse of such an individual who is deceased.

(L) Food stamp exception for certain qualified aliens

With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to any qualified alien who has resided in the United States with a status within the meaning of the term “qualified alien” for a period of 5 years or more beginning on the date of the alien’s entry into the United States.

(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 under 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 7105(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)], 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 1641(b) of this title) or victim of trafficking in persons (as defined in section 7105(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) during the period beginning on August 22, 1996, and ending on September 30, 2008, solely by reason of the termination of the 7-year period described in subparagraph (A) shall be eligible for such program for an additional 2-year period in accordance with this clause, if such qualified alien or victim of trafficking meets all other eligibility factors under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.], furnishes to the Commissioner of Social Security the declaration required under subclause (IV) (if applicable), and is described in subclause (III).

(III) Aliens and victims described

For purposes of subclauses (I) and (II), a qualified alien or victim of trafficking described in this subclause is an alien or victim who—

(aa) has been a lawful permanent resident for less than 6 years and such status has not been abandoned, rescinded under section 246 of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], has been a lawful permanent resident for more than 6 years and less than 8 years and such status has not been abandoned, rescinded under section 246 of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], has been a lawful permanent resident for more than 8 years and less than 10 years and such status has not been abandoned, rescinded under section 246 of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], has been a lawful permanent resident for more than 10 years and such status has not been abandoned, rescinded under section 246 of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]; and

(bb) is an alien who has been lawfully admitted for temporary stay for a period of 2 years and has not been abandoned, rescinded under section 246 of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], has been a lawful permanent resident for more than 6 years and less than 8 years and such status has not been abandoned, rescinded under section 246 of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], has been a lawful permanent resident for more than 8 years and less than 10 years and such status has not been abandoned, rescinded under section 246 of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], has been a lawful permanent resident for more than 10 years and such status has not been abandoned, rescinded under section 246 of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].
1256], or terminated through removal proceedings under section 240 of the Immigration and Nationality Act [8 U.S.C. 1229a], and the Commissioner of Social Security has verified such status, through procedures established in consultation with the Secretary of Homeland Security;

(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 96–422), 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(h) 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

(ff) 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 (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 in persons (as defined in section 7105(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 336(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 procedures established in consultation with the Secretary of Homeland Security, that such application is pending or has been approved.

(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 supplementary 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(b) of the Food Stamp Act of 1977.1

(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 1611(a) 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 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);

(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 admitted to the United States as an Amerasian immigrant as described in subsection (a)(2)(A)(i)(V) 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 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);

(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 admitted to the United States as an Amerasian immigrant as described in subsection (a)(2)(A)(i)(V) 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.];

(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.]; and

(iii) is lawfully residing in the United States, or

(IV) an alien who on August 22, 1996, is lawfully residing in any State and is receiving benefits 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.

(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.

(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).

(F) Medicaid exception for aliens receiving SSI

An alien who is receiving benefits under the program defined in subsection (a)(3)(A) (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.


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. 2262 which enacted this chapter, section 1183a of this title, and sections 611a 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 of the Code, see Tables.

Section 212(b) of Public Law 93–66, referred to in subsec. (a)(3)(A), is set out as a note under section 1382 of Title 42, The Public Health and Welfare.


REFERENCES IN TEXT

Section 243 of such Act and section 243 of the Immigration and Nationality Act, referred to in subsecs. (a)(2)(A)(ii)(I), (M)(i)(II), (3)(A) and (b)(2)(B)(ii)(I), (F), are section 243 of act June 27, 1952, which is classified to section 1253 of this title. Section 1253 of this title was amended generally by Pub. L. 104–208, div. C, title V, § 510, June 22, 1996, 110 Stat. 2262 which enacted this chapter, section 1183a of this title, and sections 611a 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 of the Code, see Tables.

Section 212(b) of Public Law 93–66, referred to in subsec. (a)(3)(A), is set out as a note under section 1382 of Title 42, The Public Health and Welfare.


CODIFICATION


AMENDMENTS


2002—Subsec. (a)(2)(F). Pub. L. 107–171, § 4401(a), added cl. (i), substituted “(ii) in the case” for “(II in the case)”, and struck out former cls. (i) and (ii)(I) which read as follows:

“(i) was lawfully residing in the United States on August 22, 1996; and

(ii)(I) in the case of the specified Federal program described in paragraph (3)(A), is blind or disabled, as defined in section 1614(a)(2) or 1614(a)(3) of the Social Security Act; and”.


“(i) was lawfully residing in the United States on August 22, 1996; and

(ii) is under 18 years of age.”


1998—Subsec. (a)(2)(A). Pub. L. 105–185, § 503, struck out cl. (i) designation and heading after subpar. (A) which headings, substituted “programs described in paragraph (3)” for “program described in paragraph (3)(A) in introductory provisions, redesignated subcl. (I) to (V) as cl. (i) to (v), respectively, and realigned their margins, and struck out heading and text of former cl. (ii) which related to eligibility of certain aliens for the food stamp program.


Subsec. (a)(2)(F)(ii). Pub. L. 105–185, § 504(2), designated existing provisions as subcl. (I), inserted “in the case of the specified Federal program described in paragraph (3)(A)” before “was eligible”, substituted “(ii)” for “(II)”, and added subcl. (II).

entry into the United States.

Prior to amendment, text read as follows: “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;

(ii) an alien is granted asylum under section 208 of such Act; or

(iii) an alien’s deportation is withheld under section 240A(h) of such Act.”


Pub. L. 105–33, § 5563(b), inserted “and who fulfills the minimum active-duty service requirements of section 533A(d) of title 38” after “alienage.”

Subsec. (a)(2)(C)(i). Pub. L. 105–33, § 5563(c), inserted “, 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”.}

Subsec. (b)(2)(C)(i). Pub. L. 105–33, § 5563(c), inserted “, 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” after “alienage.”

Subsec. (b)(2)(D)(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**


**EFFECTIVE DATE OF 2002 AMENDMENT**


**EFFECTIVE DATE OF 1998 AMENDMENT**

§ 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), an alien who is a qualified alien (as defined in section 1611(b)(1)(A) of section 1612(a)(2)(A)(v) 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) 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 305 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 5303A(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.

(c) Application of term Federal means-tested public benefit

(1) The limitation under subsection (a) shall not apply to assistance or benefits under paragraph (2).

(2) Assistance and benefits under this paragraph are as follows:

(A) Medical assistance described in section 1311(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 who would, in the absence of subsection (a), 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 1611(b)(1)(A) of title 42).

(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.

(H) Programs of student assistance under titles IV, V, IX, and X of the Higher Education

²See References in Text note below.


(j) Benefits under the Head Start Act [42 U.S.C. 9831 et seq.].

(k) Benefits under title I of the Workforce Innovation and Opportunity Act [29 U.S.C. 3111 et seq.].

(l) Assistance or benefits provided to individuals under the age of 18 under the Food Stamp Act of 1977 7 (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) shall not apply to—

(1) an individual described in section 1612(a)(2)(C) 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 programs described in section 1612(a)(3)(B) of this title.


REFERENCES IN TEXT


Section 501(e) of the Refugee Education Assistance Act of 1989, referred to in subsec. (b)(1)(D), is section 501(e) of Pub. L. 96–422, as amended, which is set out in a note under section 1522 of this title.


The Richard B. Russell National School Lunch Act, referred to in subsec. (c)(2)(C), is act June 26, 1946, ch. 624, 59 Stat. 536, which is classified generally to chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 42 and Tables.


The Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(2)(I), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 7 (§ 2751 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Workforce Innovation and Opportunity Act, referred to in subsec. (c)(2)(J), is chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to chapter 7 (§ 2751 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 20 and Tables.

The Social Security Act, referred to in subsec. (c)(2)(E), (F), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts B and E of title IV of the Act are classified generally to parts B (§ 420 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 1385 of Title 42 and Tables.

The Food Stamp Act of 1977, referred to in subsec. (c)(2)(L), subsequently renamed the Food and Nutrition Act of 2008, is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 7 (§ 2751 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 7 and Tables.


§ 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 subtitle", meaning subtitle A of title IV of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2261, as amended, which enacted this subchapter and sections 611a and 1437y of Title 42, The Public Health and Welfare, and amended section 1388 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 1641(b) of this title, benefits under programs established under the provisions of law described in paragraph (2).

(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 203(b) of title 7.


REFERENCES IN TEXT


The Richard B. Russell National School Lunch Act, referred to in subsecs. (a) and (b)(2)(A), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified
generally to chapter 13 (§1751 et seq.) of Title 42. For complete classification of this Act to the Code, see \$1621 note set out under section 1751 of Title 42 and Tables.


Section 4 of the Agriculture and Consumer Protection Act of 1990, referred to in subsec. (b)(2)(B), is section 4 of Pub. L. 96–8, Mar. 24, 1980, 94 Stat. 4, which is set out as a note under section 1621 of Title 7, Agriculture.

The Emergency Food Assistance Act of 1983, referred to in subsec. (b)(2)(C), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 102 (§1751 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

| SUBCHAPTER II—ELIGIBILITY FOR STATE AND LOCAL PUBLIC BENEFITS PROGRAMS |

\$1621. Aliens who are not qualified aliens or nonimmigrants ineligible for State and local public benefits

(a) In general

Notwithstanding any other provision of law and except as provided in subsections (b) and (d), an alien who is not—

(1) a qualified alien (as defined in section 1641 of this title),

(2) a nonimmigrant under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], or

(3) 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,

is not eligible for any State or local public benefit (as defined in subsection (c)).

(b) Exceptions

Subsection (a) shall not apply with respect to the following State or local public benefits:

(1) Assistance for health care items and services that are necessary for the treatment of an emergency medical condition (as defined in section 1395h(v)(3) of title 19) of the alien involved and are not related to an organ transplant procedure.

(2) Short-term, non-cash, in-kind emergency disaster relief.

(3) 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.

(4) 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.

(c) “State or local public benefit” defined

(1) Except as provided in paragraphs (2) and (3), for purposes of this subchapter the term “State or local public benefit” means—

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government;

(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 a State or local government or by appropriated funds of a State or local government.

(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.] qualifies for such benefits and for whom the United States under reciprocal treaty agreement 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) 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. 747, 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.

§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), 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 1611 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. 1231(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)(i)(Y)1 of this title.

(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)(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.

(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 5333A(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

1 See References in Text note below.
2 So in original. Probably should be "paragraph (A) or (B)".

REFERENCES IN TEXT
The Immigration and Nationality Act, referred to in subsecs. (a) and (b)(2)(A), is act June 27, 1952, ch. 77, 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 501(e) of the Refugee Education Assistance Act of 1989, referred to in subsec. (b)(1)(D), is section 501(e) of Pub. L. 96–422, as amended, which is set out in a note under section 1532 of this title.


AMENDMENTS

Pub. L. 105–33, §5562, substituted “section 243(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 309 of Pub. L. 104–208, set out as a note under section 1532 of this title) for “section 243(b) 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 “and who fulfills the minimum active-duty service requirements of section 383(a)(3) 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 383 after “alienage”.

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.

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.
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) 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 qualifying 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).

**(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. 2011 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 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) 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

---

1 See References in Text note below.
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


REFERENCES IN TEXT

Section 231A of the Immigration and Nationality Act (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 Pub. L. 104–208.

The Immigration and Nationality Act, referred to in subsec. (b)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended. Chapter 2 of title III of the Act is classified generally to subchapter II (§1421 et seq.) of subchapter III of chapter 12 of this title. For complete classification of this Act to the Code, see Title 8—Aliens and Nationality and Tables.


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 “and the battery or cruelty described in clause (i) or (ii)”.


Subsecs. (e), (f). Pub. L. 104–208, § 552, added subsecs. (e) and (f).

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; Premigration 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), 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) 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.


The Child Nutrition Act of 1966, referred to in subsec. (b)(4), is Pub. L. 89–624, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

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 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),

(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) a 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 (ii) or (iii) of section 204(a)(1)(B) of the Act [8 U.S.C. 1154(a)(1)(B)(ii), (iii)],

1 So in original. The semicolon probably should be a comma.
§ 1641

This subsection shall not apply to an alien during any period in which the individual resides in the same household or family eligibility unit as the individual subjected to such battery or cruelty.

Housing and Urban Development, the Commissioner of Social Security, and with the heads of other Federal agencies administering benefits as the Attorney General considers appropriate, the

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, §5652, 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".

References in Text

This chapter, referred to in text, was originally contained in Title V of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. 104–208, which enacted this chapter, section 1138a of this title, and sections 1139, 1140, 1141, 1142, and 1143 of Title 6, which was classified to sections 1142, 1143, 1144, and 1145 of Title 6 prior to amendment, which is classified to Title 6, except that the term "section 243 of such Act" means section 1229b of such Act.

[(i) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [8 U.S.C. 1254(a)(3)] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigration Responsibility Act of 1996).][4]

[(iv) status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1) of such Act [8 U.S.C. 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1) of such Act [8 U.S.C. 1154(a)(1)(B)(i)];][5]

[(v) cancellation of removal pursuant to section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)];][6]

[(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’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, and the alien did not actively participate 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) who meets the requirement of subparagraph (B) of paragraph (1);][7]

[(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][8]

[(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.][9]
The Immigration and Nationality Act, referred to in subsec. (a)(3), is act June 27, 1952, ch. 729, title IV, § 1101 et seq., as classified in section 1103 of this title.

References to Text

§ 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 government 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.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title” meaning title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 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 1496a 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.

AMENDMENTS

1997—Subsecs. (a)(1), Pub. L. 105–33, § 5572(a)(1), inserted at end “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.”


1996—Subsec. (a). Pub. L. 104–208, § 504, designated existing provisions as par. (1) and added par. (2).


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—
§ 1646. Derivative eligibility for benefits

(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 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, 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, 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, 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.

CHANGE OF NAME

References to the food stamp program established under the Food and Nutrition Act of 2006 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

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.

CHAPTER 15—ENHANCED BORDER SECURITY AND VISA ENTRY REFORM

Sec. 1701. Definitions.

SUBCHAPTER I—FUNDING

1711. Authorization of appropriations for hiring and training Government personnel.

1712. Authorization of appropriations for improvements in technology and infrastructure.


1714. Surcharges related to consular services.

SUBCHAPTER II—INTERAGENCY INFORMATION SHARING

1721. Interim measures for access to and coordination of law enforcement and other information.

1722. Interoperable law enforcement and intelligence data system with name-matching capacity and training.

1723. Commission on Interoperable Data Sharing.

1724. Personnel management authorities for positions involved in the development and implementation of the interoperable electronic data system (“Chimera system”).

SUBCHAPTER III—VISA ISSUANCE

1731. Implementation of an integrated entry and exit data system.

1732. Machine-readable, tamper-resistant entry and exit documents.

1733. Terrorist lookout committees.

1734. Improved training for consular officers.

1735. Restriction on issuance of visas to nonimmigrants from countries that are state sponsors of international terrorism.

1736. Check of lookout databases.

1737. Tracking system for stolen passports.

1738. Identification documents for certain newly admitted aliens.

SUBCHAPTER IV—INSPECTION AND ADMISSION OF ALIENS

§ 1701

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 3003(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 Intercept and Obstruct Terrorism 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. 543, 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.

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 3001 of Title 50, War and National Defense.

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.

Short Title


§ 1752. Staffing levels at ports of entry.

§ 1753. Joint United States-Canada projects for alternative inspections services.

§ 1761. Foreign student monitoring program.

§ 1762. Review of institutions and other entities authorized to enroll or sponsor certain nonimmigrants.

§ 1772. Review of institutions and other entities authorized to enroll or sponsor certain nonimmigrants.

SUBCHAPTER V—FOREIGN STUDENTS AND EXCHANGE VISITORS

§ 1772. Foreign student monitoring program.

§ 1773. Review of institutions and other entities authorized to enroll or sponsor certain nonimmigrants.

§ 1774. Retention of nonimmigrant visa applications after release on own recognizance.

§ 1775. Retention of nonimmigrant visa applications after release on own recognizance.

§ 1776. Training program.

§ 1777. Establishment of Human Smuggling and Trafficking Center.

§ 1778. Vulnerability and threat assessment.
sections 1187, 1201, 1221, 1356, 1372, and 1379 of this title, enacting provisions set out as notes under section 1221 of this title, and amending provisions set out as notes under sections 1101, 1351, and 1365a of this title] may be cited as the ‘Enhanced Border Security and Visa Entry Reform Act of 2002’.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and obligations 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 this title, 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.

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 534(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.

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.

ACHIEVING OPERATIONAL CONTROL ON THE BORDER


“(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act [Oct. 26, 2006], the Secretary of Homeland Security shall take all actions the Secretary determines necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States, to include the following—

“(1) systematic surveillance of the international land and maritime borders of the United States through more effective use of personnel and technology, such as unmanned aerial vehicles, ground-based sensors, satellites, radar coverage, and cameras; and

“(2) physical infrastructure enhancements to prevent unlawful entry by aliens into the United States and facilitate access to the international land and maritime borders by United States Customs and Border Protection, such as additional checkpoints, all weather access roads, and vehicle barriers.

“(b) OPERATIONAL CONTROL DEFINED.—In this section, the term ‘operational control’ means the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.

“(c) REPORT.—Not later than one year after the date of enactment of this Act and annually thereafter, the Secretary 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 in accordance with this section.’’

BORDER SURVEILLANCE


“(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 the President and the appropriate committees of Congress a comprehensive plan for the systematic surveillance of the southwest border of the United States by remotely piloted aircraft.

“(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 of 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.

(3) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this subsection, including such sums as may be necessary to provide facilities, attorney per-
sonnel and support staff, and other resources needed to support the increased number of inspectors, investigative staff, and associated support staff.

(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 an increase in the annual rate of basic pay effective October 1, 2002—

(A) for all journeyman Border Patrol agents and inspectors who have completed at least one year’s service and are receiving an annual rate of basic pay for positions at GS–9 of the General Schedule under section 5332 of title 5 from the annual rate of basic pay payable for positions at GS–9 of the General Schedule under section 5332, to an annual rate of basic pay payable for positions at GS–11 of the General Schedule under such section 5332;

(B) for inspections assistants, from the annual rate of basic pay payable for positions at GS–5 of the General Schedule under section 5332 of title 5 to an annual rate of basic pay payable for positions at GS–7 of the General Schedule under such section 5332; and

(C) for the support staff associated with the personnel described in subparagraphs (A) and (B), at the appropriate GS level of the General Schedule under such section 5332.

(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 235a(b) of this title.\(^1\)

(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


Section 1225a(b) of this title, referred to in subsec. (c)(4), was in the original “section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225A(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 nec-

---

1 So in original. No par. (2) has been enacted.
2 See References in Text note below.
essary to improve and expand facilities for use by the personnel of those agencies.


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.

USE OF GROUND SURVEILLANCE TECHNOLOGIES FOR BORDER SECURITY


“(a) PILOT PROGRAM.—Not later than 180 days after the date of the enactment of this division [May 11, 2005], the Under Secretary of Homeland Security for Science and Technology, in consultation with the Under Secretary of Homeland Security for Border and Transportation Security, the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection, and the Secretary of Defense, shall develop a pilot program to utilize, or increase the utilization of, ground surveillance technologies to enhance the border security of the United States. In developing the program, the Under Secretary shall—

“(1) consider various current and proposed ground surveillance technologies that could be utilized to enhance the border security of the United States;

“(2) assess the threats to the border security of the United States that could be addressed by the utilization of such technologies; and

“(3) assess the feasibility and advisability of utilizing such technologies to address such threats, including an assessment of the technologies considered best suited to address such threats.

“(b) ADDITIONAL REQUIREMENTS.—

“(1) IN GENERAL.—The pilot program shall include the utilization of a variety of ground surveillance technologies in a variety of topographies and areas (including both populated and unpopulated areas) on both the northern and southern borders of the United States in order to evaluate, for a range of circumstances—

“(A) the significance of previous experiences with such technologies in homeland security or critical infrastructure protection for the utilization of such technologies for border security;

“(B) the cost, utility, and effectiveness of such technologies for border security; and

“(C) liability, safety, and privacy concerns relating to the utilization of such technologies for border security.

“(2) TECHNOLOGIES.—The ground surveillance technologies utilized in the pilot program shall include the following:

“(A) Video camera technology.

“(B) Sensor technology.

“(C) Motion detection technology.

“(d) IMPLEMENTATION.—The Under Secretary of Homeland Security for Border and Transportation Security shall implement the pilot program developed under this section.

“(d) REPORT.—Not later than 1 year after implementing the pilot program under subsection (a), the Under Secretary shall submit a report on the program to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Science [now Committee on Science, Space, and Technology], the House of Representatives Committee on Homeland Security, and the House of Representatives Committee on the Judiciary. The Under Secretary shall include in the report a description of the program together with such recommendations as the Under Secretary finds appropriate, including recommendations for terminating the program, making the program permanent, or enhancing the program.”

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 subtitle 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.

“(b) COORDINATION WITH OTHER AGENCIES.—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.

“SEC. 5103. ADMINISTRATIVE PROVISIONS.

“(a) PROCUREMENT OF ADVANCED TECHNOLOGY.—The Secretary of Homeland Security may enter into contracts for the procurement or use of such advanced technologies as the Secretary determines appropriate for the pilot program under this subtitle.

“(b) PROGRAM PARTNERSHIPS.—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(b), institutions of higher education, and private sector entities.

“SEC. 5104. REPORT.

“(a) REQUIREMENT FOR 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.

“(b) CONTENT.—The report under subsection (a) shall include the following matters:

“(1) A discussion of the implementation of the pilot program, including the experience under the pilot program.

“(2) A recommendation regarding whether to expand the pilot program along the entire northern border of the United States and a timeline for the implementation of the expansion.

“SEC. 5105. AUTHORIZATION OF APPROPRIATIONS.

“There is authorized to be appropriated such sums as may be necessary to carry out the pilot program under this subtitle.”
§ 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.


Codification


§ 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:

(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 to pay the costs related to consular services in support of enhanced border security incurred in connection with the activity or item for which the surcharge is charged.

(4) A surcharge shall be available for obligation and expenditure only to pay the costs related to consular services in support of enhanced border security incurred in providing services in connection with the activity or item for which the surcharge is charged.

SUBCHAPTER II—INTERAGENCY INFORMATION SHARING

§ 1721. Interim measures for access to and coordination of law enforcement and other information

(a) Interim directive

Until the plan required by subsection (c) 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).

(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) 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) 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.

(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(a) 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 of such title for violation of that paragraph.


REPRESENTATION IN CONGRESS

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 3 (§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)(F), was repealed and a new section 403–3 was enacted by Pub. L. 108–458, title I, §1011(a), Dec. 17, 2004, 118 Stat. 3643, 3655, and subsequently editorially reclassified to section 3025 of Title 50, War and National Defense; 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 3024 of Title 50.

CODIFICATION


AMENDMENTS


ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transferred 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


"(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, 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) Report.—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 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."
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) shall—
(A) have the capacity to compensate for disparate name formats among the different databases referred to in subsection (a);
(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), 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

1 See References in Text note below.
§ 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 the manner prescribed under section 1721(c)(3) of this title. The purposes of the Commission shall be to—

(1) monitor the protections described in section 1722(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.

§ 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 (Pub. L. 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), 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

The Immigration and Naturalization Service Data Management Improvement Act of 2000, referred to in subsec. (a), is Pub. L. 106–215, June 15, 2000, 114 Stat. 337, which amended section 1365a of this title and enacted provisions set out as notes under sections 1101 and 1365a of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1101 of this title and Tables.

§ 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); and

(B) deployment of the equipment and software to allow biometric comparison and authentication of the documents described in subsections (b) and (c).

(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).

(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); 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.
§ 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) 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) shall meet at least monthly to share information pertaining to the committee’s purpose as described in subsection (b)(2).

(e) Periodic reports to the Secretary of State

Each committee established under subsection (a) 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.


(g) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to implement 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, interagency 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) Use of foreign intelligence information

As an ongoing component of the training required in subsection (a), the Secretary of State shall coordinate with the Assistant to the President for Homeland Security, Federal law enforcement agencies, and the intelligence community to compile and disseminate to the Bureau of Consular Affairs reports, bulletins, updates, and other current unclassified information relevant to terrorists and terrorism and to screening visa applicants who pose a potential threat to the safety or security of the United States.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to implement this section.

AMENDMENTS

2014—Subsec. (f). Pub. L. 113–235 struck out subsec. (f). Text read as follows: “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.”

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–458 inserted at end “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.”
§ 1735. Restriction on issuance of visas to non-immigrants from countries that are state sponsors of international terrorism

(a) In general

No nonimmigrant visa under section 1101(a)(15) of this title shall be issued to any alien from a country that is a state sponsor of international terrorism unless the Secretary of State determines, in consultation with the Attorney General and the heads of other appropriate United States agencies, that such alien does not pose a threat to the safety or national security of the United States. In making a determination under this subsection, the Secretary of State shall apply standards developed by the Secretary of State, in consultation with the Attorney General and the heads of other appropriate United States agencies, that are applicable to the nationals of such states.

(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 4605(j)(1)(A) of title 50 (or successor statute),

(B) Section 2780(d) of title 22,

(C) Section 2371(a) of title 22.


§ 1736. Check of lookout databases

Prior to the admission of an alien under the visa waiver program established under section 1187 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.


§ 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) into an existing data system being used to determine the admissibility or deportability of aliens.


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.

§ 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.


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 IV—Inspection and Admission of Aliens

§ 1751. 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 Na-
§ 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 proceeding 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.

§ 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 be-
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).

(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), except that fees and forms established for such projects shall be published as a notice in the Federal Register.


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 V—FOREIGN STUDENTS AND EXCHANGE VISITORS

§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


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 non-immigrants

(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 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.

§1772. International cooperation

(a) International electronic data system

The Secretary of State and the Commissioner of Immigration and Naturalization, in consultation 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 requiring Canada, Mexico, and countries treated as visa waiver program countries under section 217 of the Immigration and Nationality Act [8 U.S.C. 1187] to develop an intergovernmental network of interoperable electronic data systems that—

(1) facilitates real-time access to that country’s law enforcement and intelligence information that is needed by the Department of State and the Immigration and Naturalization Service to screen visa applicants and applicants for admission into the United States to identify aliens who are inadmissible or deportable 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 implementation 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).


REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (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 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

§ 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.


References in Text

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–173, May 14, 2002, 116 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 1101 of this title and Tables.

§ 1775. Retention of nonimmigrant visa applications by the Department of State

The Department of State shall retain, for a period of seven years from the date of application, every application for a nonimmigrant visa under section 101(a)(15) of the Immigration and Nationality 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, including removal proceedings under such Act [8 U.S.C. 1101 et seq.], without regard to whether the application was approved or denied.


References in Text

The Immigration and Nationality Act, referred to in text, 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.

§ 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) recognition of travel patterns, tactics, and behaviors exhibited by terrorists;

(D) effective utilization of information contained in databases and data systems available to the Department of Homeland Security; and

(E) other topics determined to be appropriate by the Secretary of Homeland Security, in consultation with the Secretary of State or the Director of National Intelligence.

(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 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 border and immigration officials who inspect or review 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);

(II) explains the reasons, if any, for not completing the requisite training described in paragraph (1)(C)(i); (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);

(II) explains the reasons, if any, for not completing the requisite training described in paragraph (1)(C)(i); (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.


CODIFICATION

Section was enacted as part of the Intelligence Reform and Terrorism Prevention Act of 2004, and also as part of the 9/11 Commission Implementation Act of 2004, and not as part of the Enhanced Border Security and Visa Entry Reform Act of 2002 which comprises this chapter.

FINDINGS

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 in-
formation 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, detailees 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 detailees

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 detailees 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 operation 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;

1 So in original. The comma probably should not appear.
(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.

(Pub. L. 108–458, title VII, § 7202, Dec. 17, 2004, 118 Stat. 3471; Pub. L. 110–53, title VII, § 721(a)(3), added subsec. (d) to (f). Former subsec. (d) and (e) redesignated (g) and (h), respectively.
Subsec. (g). Pub. L. 110–53, § 721(b), redesignated subsec. (d) as (g).

DELEGATION OF FUNCTIONS
For assignment of functions of President under subsec. (g) of this section, see section 1 of Memorandum of the President of the United States, Apr. 21, 2005, 70 F.R. 24833, set out as a note under section 301 of Title 3, The President.

§ 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) 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).