1101(a)(27)(J)), as amended by paragraph (1), may not be denied special immigrant status under such section after December 23, 2008, based on age if the alien was a child on the date on which the alien applied for such status.

(7) Omitted

(8) Specialized needs of unaccompanied alien children

Applications for asylum and other forms of relief from removal in which an unaccompanied alien child is the principal applicant shall be governed by regulations which take into account the specialized needs of unaccompanied alien children and which address both procedural and substantive aspects of handling unaccompanied alien children's cases.

(e) Training

The Secretary of State, the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Attorney General shall provide specialized training to all Federal personnel, and upon request, state[1] and local personnel, who have substantive contact with unaccompanied alien children. Such personnel shall be trained to work with unaccompanied alien children, including identifying children who are victims of severe forms of trafficking in persons, and children for whom asylum or special immigrant relief may be appropriate, including children described in subsection (a)(2).

(f) Omitted

(g) Definition of unaccompanied alien child

For purposes of this section, the term ''unaccompanied alien child'' has the meaning given such term in section 279(g) of title 6.

(h) Effective date

This section—

(1) shall take effect on the date that is 90 days after December 23, 2008; and

(2) shall also apply to all aliens in the United States in pending proceedings before the Department of Homeland Security or the Executive Office for Immigration Review, or related administrative or Federal appeals, on December 23, 2008.

(i) Grants and contracts

The Secretary of Health and Human Services may award grants to, and enter into contracts with, voluntary agencies to carry out this section and section 279 of title 6.

(Pub. L. 110–457, title II, §235, Dec. 23, 2008, 122 Stat. 5074; Pub. L. 113–4, title XII, §§1261–1263, Mar. 7, 2013, 127 Stat. 156–159.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (a)(2)(B), 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.

March 7, 2013, referred to in subsec. (c)(6)(E)(iii), was in the original ''the date of the enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 113–4, known as the Violence Against Women Reauthorization Act of 2013, which enacted subsec. (c)(6)(B) 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 is comprised of section 235 of Pub. L. 110–457. Pars. (1), (3), and (7) of section 235(d) of Pub. L. 110–457 amended sections 1101, 1255, and 1158 of this title, respectively. Section 235(f) of Pub. L. 110–457 amended section 279 of Title 6, Domestic Security.

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. (c)(2). Pub. L. 113–4, §1261, designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

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).

Subsec. (d)(4)(A). Pub. L. 113–4, §1263(1), in introductory provisions, struck out ''either'' before ''in the custody'', substituted ''such child,'' for ''such child or who'', and inserted '', 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)),'' before '', shall be eligible for placement''.

Subsec. (d)(4)(B). Pub. L. 113–4, §1263(2), inserted '', or status under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)),'' before '', the Federal Government''.

PART V—ADJUSTMENT AND CHANGE OF STATUS

§ 1251. Transferred

CODIFICATION

Section 1251, act June 27, 1952, ch. 477, title II, ch. 5, §241, 66 Stat. 204, as amended, which related to deportable aliens, was renumbered section 237 of ch. 4 of title II of act June 27, 1952, by Pub. L. 104–208, div. C, title III, §305(a)(2), Sept. 30, 1996, 110 Stat. 3009–598, and was transferred to section 1227 of this title.

§ 1251a. Repealed. Pub. L. 87–301, § 24(a)(3), Sept. 26, 1961, 75 Stat. 657

Section, Pub. L. 85–316, §7, Sept. 11, 1957, 71 Stat. 640, excepted spouse, child or parent of a United States citizen, and aliens admitted between Dec. 22, 1945, and Nov. 1, 1954, inclusive, who misrepresented their nationality, place of birth, identity or residence, provided this latter group did so misrepresent because of fear of persecution because of race, religion or politics if repatriated and not to evade quota restrictions, or an investigation of themselves, from the deportation provisions of section 1251 of this title which declared excludable, those aliens who sought to procure or procured entry into the United States by fraud and misrepresentation, or who were not of the nationality specified in their visas, and authorized the admission, after Sept. 11, 1957, of any alien spouse, parent or child of a United States citizen or of an alien admitted for permanent residence who sought, or had procured fraudulent entry into the United States or admitted committing perjury in connection therewith, if otherwise admissible and the Attorney General consented. See section 1182(h) of this title.

§ 1252. Judicial review of orders of removal

(a) Applicable provisions

(1) General orders of removal

Judicial review of a final order of removal (other than an order of removal without a

hearing pursuant to section 1225(b)(1) of this title) is governed only by chapter 158 of title 28, except as provided in subsection (b) 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(h), 1182(i), 1229b, 1229c, or 1255 of this title, or

(ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title.

(C) Orders against criminal aliens

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in section 1182(a)(2) or 1227(a)(2)(A)(iii), (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 the law and an abuse of discretion.

No court shall reverse a determination made by a trier of fact with respect to the availability of corroborating evidence, as described in section 1158(b)(1)(B), 1229a(c)(4)(B), or 1231(b)(3)(C) of this title, unless the court finds, pursuant to subsection (b)(4)(B), 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 1253(g)[1] 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.

(June 27, 1952, ch. 477, title II, ch. 5, §242, 66 Stat. 208; Sept. 3, 1954, ch. 1263, §17, 68 Stat. 1232; Pub. L. 97–116, §18(h)(1), Dec. 29, 1981, 95 Stat. 1620; Pub. L. 98–473, title II, §220(b), Oct. 12, 1984, 98 Stat. 2028; Pub. L. 99–603, title VII, §701, Nov. 6, 1986, 100 Stat. 3445; Pub. L. 100–525, §9(n), Oct. 24, 1988, 102 Stat. 2620; Pub. L. 100–690, title VII, §7343(a), Nov. 18, 1988, 102 Stat. 4470; Pub. L. 101–649, title V, §§504(a), 545(e), title VI, §603(b)(2), Nov. 29, 1990, 104 Stat. 5049, 5066, 5085; Pub. L. 102–232, title III, §§306(a)(4), (c)(7), 307(m)(2), 309(b)(9), Dec. 12, 1991, 105 Stat. 1751, 1753, 1757, 1759; Pub. L. 103–322, title II, §20301(a), title XIII, §130001(a), Sept. 13, 1994, 108 Stat. 1823, 2023; Pub. L. 103–416, title II, §§219(h), 224(b), Oct. 25, 1994, 108 Stat. 4317, 4324; Pub. L. 104–132, title IV, §§436(a), (b)(1), 438(a), 440(c), (h), Apr. 24, 1996, 110 Stat. 1275, 1277, 1279; Pub. L. 104–208, div. C, title III, §§306(a), (d), 308(g)(10)(H), 371(b)(6), Sept. 30, 1996, 110 Stat. 3009–607, 3009–612, 3009–625, 3009–645; Pub. L. 109–13, div. B, title I, §§101(e), (f), 106(a), May 11, 2005, 119 Stat. 305, 310.)

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)(8)(B), was amended generally by Pub. L. 104–208, div. C, title III, §307(a), Sept. 30, 1996, 110 Stat. 3009–612, and, as so amended, no longer contains a subsec. (g). Provisions similar to those contained in former subsec. (g) of section 1253 are now contained in subsec. (d) of section 1253.

Rule 23 of the Federal Rules of Civil Procedure, referred to in subsec. (e)(1)(B), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, referred to in subsec. (f)(1), is div. C of Pub. L. 104–208, Sept. 30, 1996, 110 Stat. 3009–546. 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.

AMENDMENTS

2005—Subsec. (a)(2)(A). Pub. L. 109–13, §106(a)(1)(A)(i), inserted ''(statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title'' after ''Notwithstanding any other provision of law'' in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 109–13, §106(a)(1)(A)(ii), inserted ''(statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D)'' after ''Notwithstanding any other provision of law'' in introductory provisions.

Pub. L. 109–13, §101(f)(2), inserted ''and regardless of whether the judgment, decision, or action is made in removal proceedings,'' before ''no court shall'' in introductory provisions.

Subsec. (a)(2)(B)(ii). Pub. L. 109–13, §101(f)(1), inserted ''or the Secretary of Homeland Security'' after ''Attorney General'' in two places.

Subsec. (a)(2)(C). Pub. L. 109–13, §106(a)(1)(A)(ii), inserted ''(statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D)'' after ''Notwithstanding any other provision of law''.

Subsec. (a)(2)(D). Pub. L. 109–13, §106(a)(1)(A)(iii), added subpar. (D).

Subsec. (a)(4), (5). Pub. L. 109–13, §106(a)(1)(B), added pars. (4) and (5).

Subsec. (b)(4). Pub. L. 109–13, §101(e), added concluding provisions.

Subsec. (b)(9). Pub. L. 109–13, §106(a)(2), inserted at end ''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.''

Subsec. (g). Pub. L. 109–13, §106(a)(3), inserted ''(statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title'' after ''notwithstanding any other provision of law''.

1996—Pub. L. 104–208, §306(a)(2), amended section generally, substituting subsecs. (a) to (g) relating to judicial review of orders of removal for former subsecs. (a) to (i) relating to apprehension and deportation of aliens.

Subsec. (a)(2). Pub. L. 104–132, §440(c)(2), struck out subpar. (B) which read as follows: ''The Attorney General may not release from custody any lawfully admitted alien who has been convicted of an aggravated felony, either before or after a determination of deportability, unless the alien demonstrates to the satisfaction of the Attorney General that such alien is not a threat to the community and that the alien is likely to appear before any scheduled hearings.''

Pub. L. 104–132, §440(c)(1)(C), struck out ''but subject to subparagraph (B)'' before '', the Attorney General shall not release''.

Pub. L. 104–132, § 440(c)(1)(B), as amended by Pub. L. 104–208, §§ 306(d), 308(g)(10)(H), substituted ''any criminal offense covered in section 1251(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 1227(a)(2)(A)(i) of this title'' for ''an aggravated felony 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)''.

Pub. L. 104–132, § 440(c)(1)(A), substituted ''(2) The Attorney'' for ''(2)(A) The Attorney''.

Subsec. (b). Pub. L. 104–208, § 371(b)(6), substituted ''An immigration judge'' for ''A special inquiry officer'', ''an immigration judge'' for ''a special inquiry officer'' in two places, and ''immigration judge'' for ''special inquiry officer'' wherever appearing.

Pub. L. 104–132, § 436(a), inserted before period at end of second sentence ''; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien''.

Subsec. (c)(1). Pub. L. 104–132, § 440(h)(1), designated existing provisions of subsec. (c) as par. (1) and substituted ''Subject to paragraph (2), when a final order'' for ''When a final order''.

Subsec. (c)(2). Pub. L. 104–132, § 440(h)(2), as amended by Pub. L. 104–208, §§ 306(d), 308(g)(10)(H), added par. (2).

Subsec. (h). Pub. L. 104–132, § 438(a), amended subsec. (h) generally, restating prior single par. as par. (1) and adding pars. (2) and (3) authorizing the Attorney General to deport an alien prior to the completion of a sentence of imprisonment and requiring notice to deported aliens of penalties for reentry.

Subsec. (i). Pub. L. 104–132, § 436(b)(1), inserted at end ''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.''

Subsec. (j). Pub. L. 104–208, § 306(a)(1), redesignated subsec. (j) as subsec. (i) of section 1231 of this title.

1994—Subsec. (b). Pub. L. 103–416, § 224(b), substituted ''Except as provided in section 1252a(d) of this title, the'' for ''The'' in ninth sentence.

Subsec. (e). Pub. L. 103–322, § 130001(a), struck out ''paragraph (2), (3), or (4) of'' before ''section 1251(a) of this title'' and substituted ''shall be imprisoned not more than four years, or shall be imprisoned not more than ten years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 1251(a) of this title.'' for ''shall be imprisoned not more than ten years''.

Subsec. (h). Pub. L. 103–416, § 219(h), substituted ''Parole,'' for ''Parole,,''.

Subsec. (j). Pub. L. 103–322, § 20301(a), added subsec. (j).

1991—Subsec. (a)(2)(B). Pub. L. 102–232, § 306(a)(4), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The Attorney General shall release from custody an alien who is lawfully admitted for permanent residence on bond or such other conditions as the Attorney General may prescribe if the Attorney General determines that the alien is not a threat to the community and that the alien is likely to appear before any scheduled hearings.''

Subsec. (b). Pub. L. 102–232, § 306(c)(7), amended eighth sentence generally, substituting ''Such regulations shall include requirements that are consistent with section 1252b of this title and that provide that—'' and pars. (1) to (4) for ''Such regulations shall include requirements consistent with section 1252b of this title.''

Subsec. (e). Pub. L. 102–232, § 307(m)(2), substituted ''paragraph (2), (3), or (4)'' for ''paragraphs (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19)''.

Subsec. (h). Pub. L. 102–232, § 309(b)(9), inserted a comma after ''Parole''.

1990—Subsec. (a)(2). Pub. L. 101–649, § 504(a), designated existing text as subpar. (A), substituted ''upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense)'' for ''upon completion of the alien's sentence for such conviction'' and ''Notwithstanding paragraph (1) or subsections (c) and (d) of this section but subject to subparagraph (B)'' for ''Notwithstanding subsection (a) of this section'', and added subpar. (B).

Subsec. (b). Pub. L. 101–649, § 603(b)(2)(A), substituted ''(2), (3), or (4)'' for ''(4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19)''.

Pub. L. 101–649, § 545(e), amended eighth sentence generally. Prior to amendment, eighth sentence read as follows: ''Such regulations shall include requirements that—

''(1) the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held;

''(2) the alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose;

''(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; and

''(4) no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.''

Subsec. (e). Pub. L. 101–649, § 603(b)(2)(B), which directed the substitution of ''paragraph (2), (3) or (4)'' for ''paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19)'', could not be executed because the quoted language differed from the text. See 1991 Amendment note above.

1988—Subsec. (a). Pub. L. 100–690 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), any'' for ''Any'', redesignated cls. (1) to (3) as (A) to (C), respectively, and added pars. (2) and (3).

Subsec. (e). Pub. L. 100–525 struck out ''or from September 23, 1950, whichever is the later,'' after ''from the date of the final order of the court,''.

1986—Subsec. (i). Pub. L. 99–603 added subsec. (i).

1984—Subsec. (h). Pub. L. 98–473, which directed that ''supervised release,'' be inserted after ''parole,'', was executed by inserting ''supervised release,'' after ''Parole,'' to reflect the probable intent of Congress.

1981—Subsec. (b). Pub. L. 97–116, § 18(h)(1)(A), substituted ''(18), or (19)'' for ''or (18)'' in provision following par. (4).

Subsec. (e). Pub. L. 97–116, § 18(h)(1)(B), substituted ''(18), or (19)'' for ''or (18)''.

1954—Subsec. (d). Act Sept. 3, 1954, struck out ''shall upon conviction be guilty of a felony.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–13, div. B, title I, § 101(h)(3), (4), May 11, 2005, 119 Stat. 305, 306, provided that:

''(3) The amendment made by subsection (e) [amending this section] shall take effect 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.

''(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 pending before any court on or after such date.''

Pub. L. 109–13, div. B, title I, § 106(b), May 11, 2005, 119 Stat. 311, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect upon the date of the enactment of this division [May 11, 2005] and shall apply to cases in which the final administrative order of removal, deportation, or exclusion was issued before, on, or after the date of the enactment of this division.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Pub. L. 104–208, div. C, title III, §306(c), Sept. 30, 1996, 110 Stat. 3009–612, as amended by Pub. L. 104–302, §2(1), Oct. 11, 1996, 110 Stat. 3657, provided that:

''(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsections (a) and (b) [amending this section and section 1231 of this title and repealing section 1105a of this title] shall apply as provided under section 309 [8 U.S.C. 1101 note], except that subsection (g) of section 242 of the Immigration and Nationality Act [8 U.S.C. 1252(g)] (as added by subsection (a)), shall apply without limitation to claims arising from all past, pending, or future exclusion, deportation, or removal proceedings under such Act [8 U.S.C. 1101 et seq.].

''(2) LIMITATION.—Paragraph (1) shall not be considered to invalidate or to require the reconsideration of any judgment or order entered under section 106 of the Immigration and Nationality Act [former 8 U.S.C. 1105a], as amended by section 440 of Public Law 104–132.''

[Pub. L. 104–302, §2, Oct. 11, 1996, 110 Stat. 3657, provided that the amendment made by section 2(1) to section 306(c)(1) of Pub. L. 104–208, set out above, is effective Sept. 30, 1996.]

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 the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132.

Amendment by section 308(g)(10)(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.

Amendment by section 371(b)(6) of Pub. L. 104–208 effective Sept. 30, 1996, see section 371(d)(1) of Pub. L. 104–208, set out as a note under section 1101 of this title.

For delayed effective date of amendment by section 440(c) of Pub. L. 104–132, see section 303(b)(2) of Pub. L. 104–208, set out as a note under section 1226 of this title.

Pub. L. 104–132, title IV, §436(b)(3), Apr. 24, 1996, 110 Stat. 1275, provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note under section 1101 of this title] shall take effect as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416).''

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 219(h) of Pub. L. 103–416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 219(dd) of Pub. L. 103–416, set out as a note under section 1101 of this title.

Pub. L. 103–416, title II, §224(c), Oct. 25, 1994, 108 Stat. 4324, provided that: ''The amendments made by this section [amending this section and section 1252a of this title] shall apply to all aliens whose adjudication of guilt or guilty plea is entered in the record after the date of enactment of this Act [Oct. 25, 1994].''

Pub. L. 103–322, title II, §20301(b), Sept. 13, 1994, 108 Stat. 1824, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1994.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 306(a)(4), (c)(7) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

Pub. L. 102–232, title III, §307(m), Dec. 12, 1991, 105 Stat. 1757, provided that the amendment made by section 307(m)(2) of Pub. L. 102–232 is effective as if included in section 603(b) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–649, title V, §504(c), Nov. 29, 1990, 104 Stat. 5050, 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].''

Pub. L. 101–649, title V, §545(g), Nov. 29, 1990, 104 Stat. 5066, as amended by Pub. L. 104–208, div. C, title III, §308(b)(6)(B), Sept. 30, 1996, 110 Stat. 3009–623, provided that:

''(1) NOTICE-RELATED PROVISIONS.—

''(A) Subsections (a), (b), (c), and (e)(1) of section 242B of the Immigration and Nationality Act [former 8 U.S.C. 1252b(a), (b), (c) and (e)(1)] (as inserted by the amendment made by subsection (a)), and the amendment made by subsection (e) [amending this section], shall be effective on a date specified by the Attorney General in the certification described in subparagraph (B), which date may not be earlier than 6 months after the date of such certification.

''(B) The Attorney General shall certify to the Congress when the central address file system (described in section 239(a)(4) [probably means 239(a)(3)] of the Immigration and Nationality Act) [8 U.S.C. 1229(a)(3)] has been established.

''(C) The Comptroller General shall submit to Congress, within 3 months after the date of the Attorney General's certification under subparagraph (B), a report on the adequacy of such system.

''(2) CERTAIN LIMITS ON DISCRETIONARY RELIEF; SANCTIONS FOR FRIVOLOUS BEHAVIOR.—Subsections (d), (e)(2), and (e)(3) of section 242B of the Immigration and Nationality Act (as inserted by the amendment made by subsection (a)) shall be effective on the date of the enactment of this Act [Nov. 29, 1990].

''(3) LIMITS ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR IN ASYLUM HEARING.—Subsection (e)(4) of section 242B of the Immigration and Nationality Act (as inserted by the amendment made by subsection (a)) shall be effective on February 1, 1991.

''(4) CONSOLIDATION OF RELIEF IN JUDICIAL REVIEW.—The amendments made by subsection (b) [amending section 1105a of this title] shall apply to final orders of deportation entered on or after January 1, 1991.''

Amendment by section 603(b)(2) of Pub. L. 101–649 not applicable to deportation proceedings for which notice has been provided to the alien before Mar. 1, 1991, see section 602(d) of Pub. L. 101–649, set out as a note under section 1227 of this title.

EFFECTIVE DATE OF 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 1254 of this title] shall apply to any alien who has been convicted, on or after the date of the enactment of this Act [Nov. 18, 1988], of an aggravated felony.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97–116, set out as a note under section 1101 of this title.

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 offered in deportation proceedings, which regulations include a limitation on the number of such motions that may be filed and a maximum time period for the filing of such motions; and

''(2) the time period for the filing of administrative appeals in deportation proceedings and for the filing of appellate and reply briefs, which regulations include a limitation on the number of administrative appeals that may be made, a maximum time period for the filing of such motions and briefs, the items to be included in the notice of appeal, and the consolidation of motions to reopen or to reconsider with the appeal of the order of deportation.''

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

TRANSFER OF CASES

Pub. L. 109–13, div. B, title I, §106(c), May 11, 2005, 119 Stat. 311, provided that: ''If an alien's case, brought under section 2241 of title 28, United States Code, and challenging a final administrative order of removal, deportation, or exclusion, is pending in a district court on the date of the enactment of this division [May 11, 2005], then the district court shall transfer the case (or the part of the case that challenges the order of removal, deportation, or exclusion) to the court of appeals for the circuit in which a petition for review could have been properly filed under section 242(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1252), 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, 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 1651 of such title, such petition for review shall be the sole and exclusive means for judicial review of an order of deportation or exclusion.''

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

AUTHORITY TO ACCEPT CERTAIN ASSISTANCE

Pub. L. 103–322, title XIII, §130008, Sept. 13, 1994, 108 Stat. 2029, provided that:

''(a) IN GENERAL.—Subject to subsection (b) and notwithstanding any other provision of law, the Attorney General, in the discretion of the Attorney General, may accept, hold, administer, and utilize gifts of property and services (which may not include cash assistance) from State and local governments for the purpose of assisting the Immigration and Naturalization Service in the transportation of deportable aliens who are arrested for misdemeanor or felony crimes under State or Federal law and who are either unlawfully within the United States or willing to submit to voluntary departure under safeguards. Any property acquired pursuant to this section shall be acquired in the name of the United States.

''(b) LIMITATION.—The Attorney General shall terminate or rescind the exercise of the authority under subsection (a) if the Attorney General determines that the exercise of such authority has resulted in discrimination by law enforcement officials on the basis of race, color, or national origin.''

§ 1252a. Transferred

CODIFICATION

Section 1252a, act June 27, 1952, ch. 477, title II, ch. 5, §242A, as added Nov. 18, 1988, Pub. L. 100–690, title VII, §7347(a), 102 Stat. 4471, as amended, which related to expedited removal of aliens convicted of committing aggravated felonies, was renumbered section 238 of ch. 4 of title II of act June 27, 1952, by Pub. L. 104–208, div. C, title III, §308(b)(5), Sept. 30, 1996, 110 Stat. 3009–615, and was transferred to section 1228 of this title.

§ 1252b. Repealed. Pub. L. 104–208, div. C, title III, § 308(b)(6), Sept. 30, 1996, 110 Stat. 3009–615

Section, act June 27, 1952, ch. 477, title II, ch. 5, §242B, as added Nov. 29, 1990, Pub. L. 101–649, title V, §545(a), 104 Stat. 5061; amended Dec. 12, 1991, Pub. L. 102–232, title III, §306(c)(6), 105 Stat. 1753; Oct. 25, 1994, Pub. L. 103–416, title II, §219(i), 108 Stat. 4317; Sept. 30, 1996, Pub. L. 104–208, div. C, title III, §371(b)(7), 110 Stat. 3009–645, related to deportation procedures. See sections 1229 and 1229a of this title.

EFFECTIVE DATE OF REPEAL

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

§ 1252c. Authorizing State and local law enforcement officials to arrest and detain certain illegal aliens

(a) In general

Notwithstanding any other provision of law, to the extent permitted by relevant State and local law, State and local law enforcement officials are authorized to arrest and detain an individual who—

(1) is an alien illegally present in the United States; and

(2) has previously been convicted of a felony in the United States and deported or left the United States after such conviction,

but only after the State or local law enforcement officials obtain appropriate confirmation from the Immigration and Naturalization Service of the status of such individual and only for such period of time as may be required for the Service to take the individual into Federal custody for purposes of deporting or removing the alien from the United States.

(b) Cooperation

The Attorney General shall cooperate with the States to assure that information in the control of the Attorney General, including information in the National Crime Information Center, that would assist State and local law enforcement officials in carrying out duties under subsection (a) is made available to such officials.

(Pub. L. 104–132, title IV, §439, Apr. 24, 1996, 110 Stat. 1276.)

CODIFICATION

This section was enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

§ 1253. Penalties related to removal

(a) Penalty for failure to depart

(1) In general

Any alien against whom a final order of removal is outstanding by reason of being a member of any of the classes described in section 1227(a) of this title, who—

(A) willfully fails or refuses to depart from the United States within a period of 90 days from the date of the final order of removal under administrative processes, or if judicial review is had, then from the date of the final order of the court,

(B) willfully fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure,

(C) connives or conspires, or takes any other action, designed to prevent or hamper 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 1231(a)(3) of this title or knowingly give false information in response to an inquiry under such section shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(c) Penalties relating to vessels and aircraft

(1) Civil penalties

(A) Failure to carry out certain orders

If the Attorney General is satisfied that a person has violated subsection (d) or (e) of section 1231 of this title, the person shall pay to the Commissioner the sum of $2,000 for each violation.

(B) Failure to remove alien stowaways

If the Attorney General is satisfied that a person has failed to remove an alien stowaway as required under section 1231(d)(2) of this title, the person shall pay to the Commissioner the sum of $5,000 for each alien stowaway not removed.

(C) No compromise

The Attorney General may not compromise the amount of such penalty under this paragraph.

(2) Clearing vessels and aircraft

(A) Clearance before decision on liability

A vessel or aircraft may be granted clearance before a decision on liability is made under paragraph (1) only if a bond approved by the Attorney General or an amount sufficient to pay the civil penalty is deposited with the Commissioner.

(B) Prohibition on clearance while penalty unpaid

A vessel or aircraft may not be granted clearance if a civil penalty imposed under paragraph (1) is not paid.

(d) Discontinuing granting visas to nationals of country denying or delaying accepting alien

On being notified by the Attorney General that the government of a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country after the Attorney General asks whether the government will accept the alien under this section, the Secretary of State shall order consular officers in that foreign country to discontinue granting immigrant visas or nonimmigrant visas, or both, to citizens, subjects, nationals, and residents of that country until the Attorney General notifies the Secretary that the country has accepted the alien.

(June 27, 1952, ch. 477, title II, ch. 5, § 243, 66 Stat. 212; Pub. L. 89–236, § 11(f), Oct. 3, 1965, 79 Stat. 918; Pub. L. 95–549, title I, § 104, Oct. 30, 1978, 92 Stat. 2066; Pub. L. 96–212, title II, § 203(e), Mar. 17, 1980, 94 Stat. 107; Pub. L. 97–116, § 18(i), Dec. 29, 1981, 95 Stat. 1620; Pub. L. 101–649, title V, § 515(a)(2), title VI, § 603(b)(3), Nov. 29, 1990, 104 Stat. 5053, 5085; Pub. L. 104–132, title IV, § 413(a), (f), Apr. 24, 1996, 110 Stat. 1269; Pub. L. 104–208, div. C, title III, § 307(a), Sept. 30, 1996, 110 Stat. 3009–612.)

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(f), added par. (3) which read as follows: ''Notwithstanding any other provision of law, paragraph (1) shall apply to any alien if the Attorney General determines, in the discretion of the Attorney General, that—

''(A) such alien's life or freedom would be threatened, in the country to which such alien would be deported or returned, on account of race, religion, nationality, membership in a particular social group, or political opinion; and

''(B) the application of paragraph (1) to such alien is necessary to ensure compliance with the 1967 United Nations Protocol Relating to the Status of Refugees.''

1990—Subsec. (h)(1). Pub. L. 101–649, § 603(b)(3), substituted ''1251(a)(4)(D)'' for ''1251(a)(19)''.

Subsec. (h)(2). Pub. L. 101–649, § 515(a)(2), inserted sentence at end relating to aliens who have been convicted of aggravated felonies.

1981—Subsec. (a). Pub. L. 97–116 inserted a comma after ''subject'' in fourth sentence.

1980—Subsec. (h). Pub. L. 96–212 substituted provisions relating to deportation or return of an alien where the Attorney General determines that the return would threaten the life or freedom of the alien on account of race, religion, nationality, membership in a particular social group, or political opinion, for provisions relating to withholding of deportation for any necessary period of time where the Attorney General decides the alien would be subject to persecution on account of race, religion, or political opinion.

1978—Subsec. (h). Pub. L. 95–549 inserted ''(other than an alien described in section 1251(a) of this title)'' before ''within the United States''.

1965—Subsec. (h). Pub. L. 89–236 substituted ''persecution on account of race, religion, or political opinion'' for ''physical persecution''.

EFFECTIVE DATE OF 1996 AMENDMENTS

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

Pub. L. 104–132, title IV, § 413(g), Apr. 24, 1996, 110 Stat. 1269, provided that: ''The amendments made by this section [amending this section and sections 1254, 1255, and 1259 of this title] shall take effect on the date of the enactment of this Act [Apr. 24, 1996] and shall apply to applications filed before, on, or after such date if final action has not been taken on them before such date.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 515(a)(2) of Pub. L. 101–649 applicable to convictions entered before, on, or after Nov. 29, 1990, and to applications for withholding of deportation made on or after such date, see section 515(b)(2) of Pub. L. 101–649, as amended, set out as a note under section 1158 of this title.

Amendment by section 603(b)(3) of Pub. L. 101–649 not applicable to deportation proceedings for which notice has been provided to the alien before Mar. 1, 1991, see section 602(d) of Pub. L. 101–649, set out as a note under section 1227 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97–116, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–212 effective Mar. 17, 1980, and applicable to fiscal years beginning with the fiscal year beginning Oct. 1, 1979, see section 204 of Pub. L. 96–212, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

For effective date of amendment by Pub. L. 89–236, see section 20 of Pub. L. 89–236, set out as a note under section 1151 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

SENSE OF CONGRESS RESPECTING TREATMENT OF CUBAN POLITICAL PRISONERS

Pub. L. 99–603, title III, § 315(c), Nov. 6, 1986, 100 Stat. 3440, as amended by Pub. L. 104–208, div. C, title III, § 308(g)(7)(C)(i), Sept. 30, 1996, 110 Stat. 3009–623, provided that: ''It is the sense of the Congress that the Secretary of State should provide for the issuance of visas to nationals of Cuba who are or were imprisoned in Cuba for political activities without regard to section 243(d) of the Immigration and Nationality Act (8 U.S.C. 1253(d)).''

§ 1254. Repealed. Pub. L. 104–208, div. C, title III, § 308(b)(7), Sept. 30, 1996, 110 Stat. 3009–615

Section, acts June 27, 1952, ch. 477, title II, ch. 5, § 244, 66 Stat. 214; Oct. 24, 1962, Pub. L. 87–885, § 4, 76 Stat. 1247; Oct. 3, 1965, Pub. L. 89–236, § 12, 79 Stat. 918; Oct. 20, 1976, Pub. L. 94–571, § 7(f), 90 Stat. 2706; Oct. 30, 1978, Pub. L. 95–549, title I, § 105, 92 Stat. 2066; Mar. 17, 1980, Pub. L. 96–212, title II, § 203(d), 94 Stat. 107; Dec. 29, 1981, Pub. L. 97–116, §§ 9, 18(h)(2), (j), 95 Stat. 1616, 1620; Nov. 6, 1986, Pub. L. 99–603, title III, § 315(b), 100 Stat. 3439; Oct. 24, 1988, Pub. L. 100–525, § 2(q)(1), 102 Stat. 2613; Nov. 18, 1988, Pub. L. 100–690, title VII, § 7343(b), 102 Stat. 4470; Nov. 29, 1990, Pub. L. 101–649, title I, § 162(e)(2), title VI, § 603(b)(3), (4), 104 Stat. 5011, 5085; Dec. 12, 1991, Pub. L. 102–232, title III, § 307(m)(1), 105 Stat. 1757; Sept. 13, 1994, Pub. L. 103–322, title IV, § 40703, 108 Stat. 1955; Apr. 24, 1996, Pub. L. 104–132, title IV, § 413(b), (c), 110 Stat. 1269, related to suspension of deportation. See sections 1229b and 1229c of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective, with certain transitional provisions, on the first day of the first month beginning more than

180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1254a. Temporary protected status

(a) Granting of status

(1) In general

In the case of an alien who is a national of a foreign state designated under subsection (b) (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 subsection 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 of aliens who are nationals of the state, and

(iii) the foreign state officially has requested designation under this subparagraph; or

(C) the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning 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)—

(i) the provisions of paragraphs (5) and (7)(A) of section 1182(a) of this title shall not apply;

(ii) except as provided in clause (iii), the Attorney General may waive any other provision of section 1182(a) of this title in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest; but

(iii) the Attorney General may not waive—

(I) paragraphs (2)(A) and (2)(B) (relating to criminals) of such section,

(II) paragraph (2)(C) of such section (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana, or

(III) paragraphs (3)(A), (3)(B), (3)(C), and (3)(E) of such section (relating to national security and participation in the Nazi persecutions or those who have engaged in genocide).

(B) Aliens ineligible

An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that—

(i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States, or

(ii) the alien is described in section 1158(b)(2)(A) of this title.

(3) Withdrawal of temporary protected status

The Attorney General shall withdraw temporary protected status granted to an alien under this section if—

(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 permitted 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. The Attorney General may stagger the periods of validity of the documentation and authorization in order to provide for an orderly renewal of such documentation and authorization and for an orderly transition (under paragraph (3)) upon the termination of a designation of a foreign state (or any part of such foreign state).

(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 to remain in the United States temporarily because of their particular nationality or region of foreign state of nationality.

(h) Limitation on consideration in Senate of legislation adjusting status

(1) In general

Except as provided in paragraph (2), it shall not be in order in the Senate to consider any bill, resolution, or amendment that—

(A) provides for adjustment to lawful temporary or permanent resident alien status for any alien receiving temporary protected status under this section, or

(B) has the effect of amending this subsection or limiting the application of this subsection.

(2) Supermajority required

Paragraph (1) may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate duly chosen and sworn shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under paragraph (1).

(3) Rules

Paragraphs (1) and (2) are enacted—

(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the matters described in paragraph (1) and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner as in the case of any other rule of the Senate.

(i) Annual report and review

(1) Annual report

Not later than March 1 of each year (beginning with 1992), the Attorney General, after consultation with the appropriate agencies of the Government, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the operation of this section during the previous year. Each report shall include—

(A) a listing of the foreign states or parts thereof designated under this section,

(B) the number of nationals of each such state who have been granted temporary protected status under this section and their immigration status before being granted such status, and

(C) an explanation of the reasons why foreign states or parts thereof were designated under subsection (b)(1) 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.

(June 27, 1952, ch. 477, title II, ch. 5, § 244, formerly § 244A, as added and amended Pub. L. 101–649, title III, § 302(a), title VI, § 603(a)(24), Nov. 29, 1990, 104 Stat. 5030, 5084; Pub. L. 102–232, title III, §§ 304(b), 307(*l*)(5), Dec. 12, 1991, 105 Stat. 1749, 1756; Pub. L. 103–416, title II, § 219(j), (z)(2), Oct. 25, 1994, 108 Stat. 4317, 4318; renumbered § 244 and amended Pub. L. 104–208, div. C, title III, § 308(b)(7), (e)(1)(G), (11), (g)(7)(E)(i), (8)(A)(i), Sept. 30, 1996, 110 Stat. 3009–615, 3009–619, 3009–620, 3009–624.)

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

1996—Subsec. (a)(1)(A). Pub. L. 104–208, § 308(e)(11), substituted ''remove'' for ''deport''.

Subsec. (a)(3)(B), (C). Pub. L. 104–208, § 308(e)(1)(G), substituted ''removal'' for ''deportation''.

Subsec. (b)(5)(B). Pub. L. 104–208, § 308(e)(1)(G), substituted ''removal'' for ''deportation''.

Subsec. (c)(2)(B)(ii). Pub. L. 104–208, § 308(g)(7)(E)(i), substituted ''section 1158(b)(2)(A)'' for ''section 1253(h)(2)''.

Subsec. (e). Pub. L. 104–208, § 308(g)(8)(A)(i), substituted ''section 1229b(a)'' for ''section 1254(a)''.

Pub. L. 104–208, § 308(e)(11), amended heading.

1994—Subsec. (c)(1)(B). Pub. L. 103–416, § 219(z)(2), made technical correction to directory language of Pub. L. 102–232, § 304(b)(2). See 1991 Amendment note below.

Subsec. (c)(2)(A)(iii)(III). Pub. L. 103–416, § 219(j), substituted ''paragraphs'' for ''Paragraphs'' and ''and (3)(E)'' for ''or (3)(E)''.

1991—Subsec. (a)(1). Pub. L. 102–232, § 304(b)(1), inserted parenthetical relating to alien having no nationality.

Subsec. (c)(1)(A). Pub. L. 102–232, § 304(b)(3), inserted parenthetical relating to alien having no nationality.

Subsec. (c)(1)(B). Pub. L. 102–232, § 304(b)(2), as amended by Pub. L. 103–416, § 219(z)(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)(iii)(I). Pub. L. 102–232, §307(*l*)(5)(A), substituted ''paragraphs (2)(A) and (2)(B)'' for ''paragraphs (9) and (10)''.

Subsec. (c)(2)(A)(iii)(III). Pub. L. 102–232, §307(*l*)(5)(B), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: ''paragraphs (3) (relating to security and related grounds).''

1990—Subsec. (c)(2)(A)(i). Pub. L. 101–649, §603(a)(24)(A), which directed the substitution of ''(5) and (7)(A)'' for ''(14), (20), (21), (25), and (32)'', was executed by making the substitution for ''(14), (15), (20), (21), (25), and (32)'', as the probable intent of Congress.

Subsec. (c)(2)(A)(iii)(I). Pub. L. 101–649, §603(a)(24)(B), which directed the substitution of ''Paragraphs (2)(A) and (2)(B)'' for ''Paragraphs (9) and (10)'', could not be executed because the quoted language differed from the text. See 1991 Amendment note above.

Subsec. (c)(2)(A)(iii)(II). Pub. L. 101–649, §603(a)(24)(C), substituted ''(2)(C)'' for ''(23)'' and inserted ''or'' at end.

Subsec. (c)(2)(A)(iii)(III). Pub. L. 101–649, §603(a)(24)(D), which directed the substitution of ''(3) (relating to security and related grounds)'' for ''(27) and (29) (relating to national security)'', and a period for ''; or'', was executed by substituting ''(3) (relating to security and related grounds)'' for ''(27) and (29) of such section (relating to national security)'', and a period for '', or'', as the probable intent of Congress.

Subsec. (c)(2)(A)(iii)(IV). Pub. L. 101–649, §603(a)(24)(E), struck out subcl. (IV) which referred to par. (33).

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

Amendment by section 219(j) of Pub. L. 103–416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 219(dd) of Pub. L. 103–416, set out as a note under section 1101 of this title.

Pub. L. 103–416, title II, §219(z), Oct. 25, 1994, 108 Stat. 4318, provided that the amendment made by subsec. (z)(2) of section 219 is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 304(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 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

Pub. L. 102–232, title III, §307(*l*), Dec. 12, 1991, 105 Stat. 1756, provided that the amendment made by section 307(*l*) is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 603(a)(24) of Pub. L. 101–649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

LIMITATION ON SUSPENSION OF DEPORTATION

The Attorney General may not suspend deportation and adjust status under this section of more than 4,000 aliens 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. 104–208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

ALIENS AUTHORIZED TO TRAVEL ABROAD TEMPORARILY

Pub. L. 102–232, title III, §304(c), Dec. 12, 1991, 105 Stat. 1749, as amended by Pub. L. 104–208, div. C, title III, §308(g)(1), (8)(A)(ii), (C), Sept. 30, 1996, 110 Stat. 3009–622, 3009–624, provided that:

''(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 240A(a) of the Immigration and Nationality Act [8 U.S.C. 1229b(a)] if the absence meets the requirements of section 240A(b)(2) of such Act.

''(2) Aliens described in this paragraph are the following:

''(A) Aliens provided benefits under section 301 of the Immigration Act of 1990 (relating to family unity).

''(B) Aliens provided temporary protected status under section 244 of the Immigration and Nationality Act, including aliens provided such status under section 303 of the Immigration Act of 1990 [Pub. L. 101–649, set out below].''

EFFECT ON EXECUTIVE ORDER 12711

Pub. L. 101–649, title III, §302(c), Nov. 29, 1990, 104 Stat. 5036, as amended by Pub. L. 102–232, title III, §304(a), Dec. 12, 1991, 105 Stat. 1749; Pub. L. 103–416, title II, §219(y), Oct. 25, 1994, 108 Stat. 4318; Pub. L. 104–208, div. C, title III, §308(g)(1), Sept. 30, 1996, 110 Stat. 3009–622, provided that: ''Notwithstanding subsection (g) of section 244 of the Immigration and Nationality Act [8 U.S.C. 1254a(g)] (inserted by the amendment made by subsection (a)), such section shall not supersede or affect Executive Order 12711 (April 11, 1990 [8 U.S.C. 1101 note], relating to policy implementation with respect to nationals of the People's Republic of China).''

SPECIAL TEMPORARY PROTECTED STATUS FOR SALVADORANS

Pub. L. 101–649, title III, §303, Nov. 29, 1990, 104 Stat. 5036, as amended by Pub. L. 102–65, §1, July 2, 1991, 105 Stat. 322; Pub. L. 104–208, div. C, title III, §308(g)(1), (6)(A), Sept. 30, 1996, 110 Stat. 3009–622, 3009–623, provided that:

''(a) DESIGNATION.—

''(1) IN GENERAL.—El Salvador is hereby designated under section 244(b) of the Immigration and Nationality Act [8 U.S.C. 1254a(b)], subject to the provisions of this section.

''(2) PERIOD OF DESIGNATION.—Such designation shall take effect on the date of the enactment of this section [Nov. 29, 1990] and shall remain in effect until the end of the 18-month period beginning January 1, 1991.

''(b) ALIENS ELIGIBLE.—

''(1) IN GENERAL.—In applying section 244 of the Immigration and Nationality Act [8 U.S.C. 1254a] 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)(1) of such Act only 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)(2)(B) of such Act; and

''(C) in a manner which the Attorney General shall establish, the alien registers for temporary protected status under this section during the registration period beginning January 1, 1991, and ending October 31, 1991.

''(2) REGISTRATION FEE.—The Attorney General shall require payment of a reasonable fee as a condition of registering an alien under paragraph (1)(C) (including providing an alien with an 'employment authorized' endorsement or other appropriate work permit under this section). The amount of the fee shall be sufficient to cover the costs of administration of this section. Notwithstanding section 3302 of title 31, United States Code, all such registration fees collected shall be credited to the appropriation to be used in carrying out this section.

''(c) APPLICATION OF CERTAIN PROVISIONS.—

''(1) IN GENERAL.—Except as provided in this subsection, the provisions of section 244 of the Immigration and Nationality Act [8 U.S.C. 1254a] (including subsection (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), (b)(3), (c)(1), (c)(4), (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(c)(3)(C) of such Act under this section, 'semiannually, at the end of each 6-month period' shall be substituted for 'annually, at the end of each 12-month period' and, notwithstanding section 244(d)(2) of such Act, the period of validity of documentation under this section shall be 6 months.

''(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 1998 and each fiscal year thereafter.

(Pub. L. 111–83, title V, § 549, Oct. 28, 2009, 123 Stat. 2177.)

CODIFICATION

This section was enacted as part of the Department of Homeland Security Appropriations Act, 2010, and not as part of the Immigration and Nationality Act which comprises this chapter.

§ 1255. Adjustment of status of nonimmigrant to that of person admitted for permanent residence

(a) Status as person admitted for permanent residence on application and eligibility for immigrant visa

The status of an alien who was inspected and admitted or paroled into the United States 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.

(c) Alien crewmen, aliens continuing or accepting unauthorized employment, and aliens admitted in transit without visa

Other than an alien having an approved petition for classification as a VAWA self-petitioner, subsection (a) 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,[1] (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)[2] 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-

[1] So in original. The comma probably should be a semicolon.

[2] See References in Text note below.

ble 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 equalling $1,000 as of the date of receipt of the application, but such sum shall not be required from a child under the age of seventeen, or an alien who is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 1160 or 1255a of this title or section 202 of the Immigration Reform and Control Act of 1986 at any date, who—

(i) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 1160 or 1255a of this title or section 202 of the Immigration Reform and Control Act of 1986;

(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 the success of an authorized criminal investigation or the prosecution of an individual described in subclause (III) of that section,

the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under that section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 1182(a)(3)(E) of this title.

(2) If, in the sole discretion of the Attorney General—

(A) a nonimmigrant admitted into the United States under section 1101(a)(15)(S)(ii) of this title has supplied information described in subclause (I) of such section, and

(B) the provision of such information has substantially contributed to—

(i) the prevention or frustration of an act of terrorism against a United States person or United States property, or

(ii) the success of an authorized criminal investigation of, or the prosecution of, an individual involved in such an act of terrorism, and

(C) the nonimmigrant has received a reward under section 2708(a) of title 22,

the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under such section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 1182(a)(3)(E) of this title.

(3) Upon the approval of adjustment of status under paragraph (1) or (2), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 1151(d) and 1153(b)(4) of this title for the fiscal year then current.

(k) Inapplicability of certain provisions for certain employment-based immigrants

An alien who is eligible to receive an immigrant visa under paragraph (1), (2), or (3) of section 1153(b) of this title (or, in the case of an alien who is an immigrant described in section 1101(a)(27)(C) of this title, under section 1153(b)(4) of this title) may adjust status pursuant to subsection (a) 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;

(2) the alien, subsequent to such lawful admission has not, for an aggregate period exceeding 180 days—

(A) failed to maintain, continuously, a lawful status;

(B) engaged in unauthorized employment; or

(C) otherwise violated the terms and conditions of the alien's admission.

(*l*) Adjustment of status for victims of trafficking

(1) If, in the opinion of the Secretary of Homeland Security, or in the case of subparagraph (C)(i), in the opinion of the Secretary of Homeland Security, in consultation with the Attorney General, as appropriate[3] a nonimmigrant admitted into the United States under section 1101(a)(15)(T)(i) of this title—

(A) has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under section 1101(a)(15)(T)(i) of this title, or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and that, in the opinion of the Attorney General, the investigation or prosecution is complete, whichever period of time is less;

(B) subject to paragraph (6), has, throughout such period, been a person of good moral character; and

(C)(i) has, during such period, complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking;

(ii) the alien[4] 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.[5]

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[6] 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)),[7] 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)(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; and

(B) in the opinion of the Secretary of Homeland Security, the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

(2) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien

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[3] So in original. Probably should be followed by a comma.

[4] So in original. The words ''the alien'' probably should not appear.

[5] So in original. The period probably should be a comma.

[6] So in original. Probably should be ''Secretary's''.

[7] So in original. Probably should be ''(10)(E)),''.

has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days unless the absence is in order to assist in the investigation or prosecution or unless an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

(3) Upon approval of adjustment of status under paragraph (1) of an alien described in section 1101(a)(15)(U)(i) of this title the Secretary of Homeland Security may adjust the status of or issue an immigrant visa to a spouse, a child, or, in the case of an alien child, a parent who did not receive a nonimmigrant visa under section 1101(a)(15)(U)(ii) of this title if the Secretary considers the grant of such status or visa necessary to avoid extreme hardship.

(4) Upon the approval of adjustment of status under paragraph (1) or (3), the Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval.

(5)(A) The Secretary of Homeland Security shall consult with the Attorney General, as appropriate, in making a determination under paragraph (1) whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a Federal law enforcement official, Federal prosecutor, Federal judge, or other Federal authority investigating or prosecuting criminal activity described in section 1101(a)(15)(U)(iii) 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.

(June 27, 1952, ch. 477, title II, ch. 5, § 245, 66 Stat. 217; Pub. L. 85–700, § 1, Aug. 21, 1958, 72 Stat. 699; Pub. L. 86–648, § 10, July 14, 1960, 74 Stat. 505; Pub. L. 89–236, § 13, Oct. 3, 1965, 79 Stat. 918; Pub. L. 94–571, § 6, Oct. 20, 1976, 90 Stat. 2705; Pub. L. 97–116, § 5(d)(2), Dec. 29, 1981, 95 Stat. 1614; Pub. L. 99–603, title I, § 117, title III, § 313(c), Nov. 6, 1986, 100 Stat. 3384, 3438; Pub. L. 99–639, §§ 2(e), 3(b), 5(a), Nov. 10, 1986, 100 Stat. 3542, 3543; Pub. L. 100–525, §§ 2(f)(1), (p)(3), 7(b), Oct. 24, 1988, 102 Stat. 2611, 2613, 2616; Pub. L. 101–649, title I, §§ 121(b)(4), 162(e)(3), title VII, § 702(a), Nov. 29, 1990, 104 Stat. 5011, 5086; Pub. L. 102–110, § 2(c), Oct. 1, 1991, 105 Stat. 556; Pub. L. 102–232, title III, §§ 302(d)(2), (e)(7), 308(a), Dec. 12, 1991, 105 Stat. 1744, 1746, 1757; Pub. L. 103–317, title V, § 506(b), Aug. 26, 1994, 108 Stat. 1765; Pub. L. 103–322, title XIII, § 130003(c), Sept. 13, 1994, 108 Stat. 2025; Pub. L. 103–416, title II, § 219(k), Oct. 25, 1994, 108 Stat. 4317; Pub. L. 104–132, title IV, § 413(d), Apr. 24, 1996, 110 Stat. 1269; Pub. L. 104–208, div. C, title III, §§ 308(f)(1)(O), (2)(C), (g)(10)(B), 375, 376(a), title VI, § 671(a)(4)(A), (5), Sept. 30, 1996, 110 Stat. 3009–621, 3009–625, 3009–648, 3009–721; Pub. L. 105–119, title I, §§ 110(3), 111(a), (c), Nov. 26, 1997, 111 Stat. 2458; Pub. L. 106–386, div. A, § 107(f), div. B, title V, §§ 1506(a)(1), 1513(f), Oct. 28, 2000, 114 Stat. 1479, 1527, 1536; Pub. L. 106–553, § 1(a)(2) [title XI, §§ 1102(c), (d)(2), 1103(c)(3)], Dec. 21, 2000, 114 Stat. 2762, 2762A–143 to 2762A–145; Pub. L. 106–554, § 1(a)(4) [div. B, title XV, § 1502], Dec. 21, 2000, 114 Stat. 2763, 2763A–324; Pub. L. 108–193, §§ 4(b)(3), 8(a)(4), Dec. 19, 2003, 117 Stat. 2879, 2886; Pub. L. 109–162, title VIII, § 803, Jan. 5, 2006, 119 Stat. 3054; Pub. L. 109–271, § 6(f), Aug. 12, 2006, 120 Stat. 763; Pub. L. 110–457, title II, §§ 201(d), (e), 235(d)(3), Dec. 23, 2008, 122 Stat. 5053, 5054, 5080.)

REFERENCES IN TEXT

Subsection (p) of section 1184 of this title, referred to in subsec. (e)(3), was redesignated subsec. (r) of section 1184 by Pub. L. 108–193, § 8(a)(3), Dec. 19, 2003, 117 Stat. 2886.

Section 202 of the Immigration Reform and Control Act of 1986, referred to in subsec. (i)(1), is section 202 of Pub. L. 99–603, which is set out as a note under section 1255a of this title.

Section 301 of the Immigration Act of 1990, referred to in subsec. (i)(1)(iii), is section 301 of Pub. L. 101–649, which is set out as a note under section 1255a of this title.

AMENDMENTS

2008—Subsec. (h)(2)(A). Pub. L. 110–457, § 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. (*l*)(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,'' 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. (*l*)(1)(B). Pub. L. 110–457, § 201(d)(1)(B), inserted ''subject to paragraph (6),'' after subpar. designation and substituted ''; and'' for '', and''.

Subsec. (*l*)(1)(C)(i). Pub. L. 110–457, § 201(d)(1)(C)(i), substituted semicolon for '', or''.

Subsec. (*l*)(1)(C)(ii), (iii). Pub. L. 110–457, § 201(d)(1)(C)(iii), which directed amendment of subpar. (C) by substituting ''; or'' for period at end and adding cl. (iii), was executed by making the substitution for comma at end of cl. (ii) and adding cl. (iii), to reflect the probable intent of Congress.

Subsec. (*l*)(3). Pub. L. 110–457, § 201(d)(2), substituted '', unless—'' for period at end and added subpars. (A) and (B).

Subsec. (*l*)(6), (7). Pub. L. 110–457, § 201(d)(3), added pars. (6) and (7).

Subsec. (m)(1). Pub. L. 110–457, § 201(e)(1), substituted ''unless the Secretary'' for ''unless the Attorney General'' in introductory provisions.

Subsec. (m)(5). Pub. L. 110–457, § 201(e)(2), added par. (5).

2006—Subsec. (a). Pub. L. 109–271, § 6(f)(1), substituted ''as a VAWA self-petitioner'' for ''under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 1154(a)(1) of this title or''.

Subsec. (c). Pub. L. 109–271, § 6(f)(2), substituted ''as a VAWA self-petitioner'' for ''under subparagraph (A)(iii), (A)(iv), (A)(v), (A)(vi), (B)(ii), (B)(iii), or (B)(iv) of section 1154(a)(1) of this title''.

Subsec. (*l*)(1). Pub. L. 109–162, § 803(a)(1)(A), substituted ''Secretary of Homeland Security, or in the case of subparagraph (C)(i), the Attorney General,'' for ''Attorney General'' in two places.

Subsec. (*l*)(1)(A), Pub. L. 109–162, § 803(a)(1)(B), inserted at end ''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;''.

Subsec. (*l*)(2). Pub. L. 109–162, §803(a)(2), substituted ''Secretary of Homeland Security'' for ''Attorney General'' in two places.

Subsec. (*l*)(5). Pub. L. 109–162, §803(a)(3), substituted ''Secretary of Homeland Security'' for ''Attorney General''.

Subsec. (m)(1). Pub. L. 109–162, §803(b)(1)(A), substituted ''Secretary of Homeland Security may adjust'' for ''Attorney General may adjust'' in introductory provisions.

Subsec. (m)(1)(B). Pub. L. 109–162, §803(b)(1)(B), substituted ''Secretary of Homeland Security'' for ''Attorney General''.

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''.

Subsec. (m)(4). Pub. L. 109–162, §803(b)(3), substituted ''Secretary of Homeland Security'' for ''Attorney General''.

2003—Subsec. (*l*). Pub. L. 108–193, §8(a)(4)(B), redesignated subsec. (*l*), relating to adjustment of status for victims of crimes against women, as (m).

Subsec. (*l*)(1). Pub. L. 108–193, §4(b)(3)(A), in concluding provisions, substituted ''admitted under section 1101(a)(15)(T)(ii) of this title'' for ''admitted under that section'' and inserted ''sibling,'' after ''parent,''.

Subsec. (*l*)(2). Pub. L. 108–193, §8(a)(4)(A), redesignated par. (2), relating to alien's maintenance of continuous physical presence, as (3).

Subsec. (*l*)(3). Pub. L. 108–193, §8(a)(4)(A), redesignated par. (2), relating to alien's maintenance of continuous physical presence, as (3). Former par. (3) redesignated (4).

Subsec. (*l*)(3)(B). Pub. L. 108–193, §4(b)(3)(B), inserted ''siblings,'' after ''daughters,''.

Subsec. (*l*)(4), (5). 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)(B), redesignated subsec. (*l*), relating to adjustment of 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), or (B)(iii) of section 1154(a)(1) of this title or'' after ''into the United States.'', was executed by making the insertion after ''into the United States'' to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 106–386, §1506(a)(1)(B), substituted ''Other than an alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (A)(v), (A)(vi), (B)(ii), (B)(iii), or (B)(iv) of section 1154(a)(1) of this title, subsection (a) 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. 106–553, §1(a)(2) [title XI, §1103(c)(3)(A)], struck out ''(relating to an alien fiancee or fiance or the minor child of such alien)'' before ''except to that of an alien''.

Pub. L. 106–553, §1(a)(2) [title XI, §1102(d)(2)(A)], substituted ''under subsection (a) or (m),'' for ''under subsection (a),'' in two places.

Subsec. (e)(1). Pub. L. 106–554, §1(a)(4) [div. B, title XV, §1502(b)(2)], struck out ''or (m)'' after ''under subsection (a)''.

Pub. L. 106–553, §1(a)(2) [title XI, §1102(d)(2)(B)], substituted ''subsection (a) or (m)'' for ''subsection (a)''.

Subsec. (e)(3). Pub. L. 106–553, §1(a)(2) [title XI, §1103(c)(3)(B)], 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. (f). Pub. L. 106–554, §1(a)(4) [div. B, title XV, §1502(b)(2)], struck out ''or (m)'' after ''under subsection (a)''.

Pub. L. 106–553, §1(a)(2) [title XI, §1102(d)(2)(A)], substituted ''under subsection (a) or (m),'' for ''under subsection (a),''.

Subsec. (i)(1)(B)(i). Pub. L. 106–554, §1(a)(4) [div. B, title XV, §1502(a)(1)(B)], substituted ''April 30, 2001'' for ''January 14, 1998''.

Subsec. (i)(1)(C). Pub. L. 106–554, §1(a)(4) [div. B, title XV, §1502(a)(1)(A), (C), (D)], added subpar. (C).

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. (*l*). Pub. L. 106–386, §1513(f), added subsec. (*l*) relating to adjustment of status for victims of crimes against women.

Pub. L. 106–386, §107(f), added subsec. (*l*) relating to adjustment of status for victims of trafficking.

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 1101(a)(15)(V) of this title who was determined to have been physically present in the United States at any time during period beginning July 1, 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. (i)(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, §110(3), substituted ''Breached Bond/Detention Fund established under section 1356(r) of this title'' for ''Immigration Detention Account established under section 1356(s) of this title''.

Subsec. (k). Pub. L. 105–119, §111(c)(2), added subsec. (k).

1996—Subsec. (c)(6). Pub. L. 104–208, §308(g)(10)(B), substituted ''section 1227(a)(4)(B)'' for ''section 1251(a)(4)(B)''.

Pub. L. 104–132 added cl. (6).

Subsec. (c)(7), (8). Pub. L. 104–208, §375, added cls. (7) and (8).

Subsec. (e)(2). Pub. L. 104–208, §308(f)(2)(C), substituted ''be admitted'' for ''enter''.

Subsec. (e)(3). Pub. L. 104–208, §308(f)(1)(O), substituted ''admission'' for ''entry''.

Subsec. (i). Pub. L. 104–208, §671(a)(4)(A), redesignated subsec. (i), relating to adjustment to permanent resident status, as (j).

Subsec. (i)(1). Pub. L. 104–208, §376(a)(1), substituted ''$1,000'' for ''five times the fee required for the processing of applications under this section''.

Subsec. (i)(3). Pub. L. 104–208, §376(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Sums remitted to the Attorney General pursuant to paragraphs (1) and (2) of this subsection shall be disposed of by the Attorney General as provided in sections 1356(m), (n), and (*o*) of this title.''

Subsec. (j). Pub. L. 104–208, §671(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)''.

1994—Subsec. (c)(5). Pub. L. 103–322, § 130003(c)(2), added cl. (5).

Subsec. (h)(2)(B). Pub. L. 103–416 substituted ''and (3)(E)'' for ''or (3)(E)''.

Subsec. (i). 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''.

Subsec. (c)(2). Pub. L. 102–232, § 302(d)(2)(A), inserted ''(J),'' after ''(I),''.

Pub. L. 102–110, § 2(c)(1), substituted '', (I), or (K)'' for ''or (I)''.

Subsec. (e)(3). Pub. L. 102–232, § 308(a), substituted ''section 1154(g)'' for ''section 1154(h)''.

Subsec. (g). Pub. L. 102–110, § 2(c)(2), added subsec. (g).

Subsec. (h). Pub. L. 102–232, § 302(d)(2)(B), added subsec. (h).

1990—Subsec. (b). Pub. L. 101–649, § 162(e)(3), struck out ''or nonpreference'' after ''number of the preference'' and substituted ''1151(a)'' for ''1152(e) or 1153(a)'' and ''succeeding fiscal year'' for ''fiscal year then current''.

Subsec. (e)(1). Pub. L. 101–649, § 702(a)(1), substituted ''Except as provided in paragraph (3), an alien'' for ''An alien''.

Subsec. (e)(3). Pub. L. 101–649, § 702(a)(2), added par. (3).

Subsec. (f). Pub. L. 101–649, § 121(b)(4), added subsec. (f).

1988—Subsec. (c)(2). Pub. L. 100–525, § 2(f)(1), substituted ''1101(a)(27)(H) or (I)'' for ''1101(a)(27)(H)'', inserted ''or'' after ''no fault of his own'', and substituted ''in unlawful'' for ''not in legal'' and ''lawful status'' for ''legal status''.

Subsec. (c)(4). Pub. L. 100–525, § 2(p)(3), made technical correction to Pub. L. 99–603, § 313(c). See 1986 Amendment note below.

Subsec. (d). Pub. L. 100–525, § 7(b), amended Pub. L. 99–639, § 3(b). See 1986 Amendment note below.

1986—Subsec. (c). Pub. L. 99–639, § 5(a)(1), substituted ''Subsection (a) of this section'' for ''The provisions of this section''.

Subsec. (c)(2). Pub. L. 99–603, § 117, inserted ''or who is not in legal immigration status on the date of filing the application for adjustment or who has failed (other than through no fault of his own for technical reasons) to maintain continuously a legal status since entry into the United States''.

Subsec. (c)(4). Pub. L. 99–603, § 313(c), as amended by Pub. L. 100–525, § 2(p)(3), added cl. (4).

Subsec. (d). Pub. L. 99–639, § 3(b), as amended by Pub. L. 100–525, § 7(b), inserted ''The Attorney General may not adjust, under subsection (a), 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 such alien) 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.''

Pub. L. 99–639, § 2(e), added subsec. (d).

Subsec. (e). Pub. L. 99–639, § 5(a)(2), added subsec. (e).

1981—Subsec. (c)(2). Pub. L. 97–116 inserted ''or a special immigrant described in section 1101(a)(27)(H) of this title'' after ''section 1151(b) of this title''.

1976—Subsec. (a). Pub. L. 94–571 struck out '', other than alien crewman,'' after ''status of an alien'' and substituted ''filed'' for ''approved''.

Subsec. (b). Pub. L. 94–571 inserted reference to section 1152(e) of this title and struck out comma after ''chargeable''.

Subsec. (c). Pub. L. 94–571 substituted provision making the section inapplicable to alien crewmen, aliens continuing or accepting unauthorized employment, and aliens admitted in transit without visa for provision making the section inapplicable to natives of contiguous country or adjacent island.

1965—Subsec. (b). Pub. L. 89–236, § 13(a), struck out reference to quota area to which the alien is chargeable under section 1152 of this title and substituted reference to number of preference or nonpreference visas authorized to be issued under section 1153(a) of this title within the class to which the alien is chargeable.

Subsec. (c). Pub. L. 89–236, § 13(b), substituted ''any country of the Western Hemisphere'' for ''any country contiguous to the United States''.

1960—Subsec. (a). Pub. L. 86–648 substituted ''alien, other than an alien crewman, who was inspected and admitted or paroled into the United States'' for ''alien who was admitted to the United States as a bona fide nonimmigrant'', struck out former cl. (3) which read ''an immigrant visa was immediately available to him at the time of his application'', redesignated cl. (4) as (3), and struck out concluding sentence which read as follows: ''A quota immigrant visa shall be considered immediately available for the purposes of this subsection only if the portion of the quota to which the alien is chargeable is undersubscribed by applicants registered on a consular waiting list.''

1958—Pub. L. 85–700 among other changes, substituted provisions allowing adjustment of status of alien who was admitted as a bona fide nonimmigrant to that of an alien lawfully admitted for permanent residence, for provisions allowing adjustment of status of alien who was lawfully admitted as a bona fide nonimmigrant and continued to maintain that status, to that of a permanent resident either as a quota immigrant or as a nonquota immigrant claiming nonquota status as the spouse or child of a citizen under certain specified conditions, by striking out provision terminating nonimmigrant quota status of alien who files application for adjustment of status, and by adding subsec. (c).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 201 of Pub. L. 110–457 effective Dec. 23, 2008, and applicable to applications for immigration benefits filed on or after Dec. 23, 2008, see section 201(f) of Pub. L. 110–457, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 2000 AMENDMENTS

Pub. L. 106–554, § 1(a)(4) [div. B, title XV, § 1506], Dec. 21, 2000, 114 Stat. 2763, 2763A–328, provided that: ''This title [amending this section, enacting provisions set out as notes under this section, and amending provisions set out as notes under this section and section 1101 of this title] shall take effect as if included in the enactment of the Legal Immigration Family Equity Act [see Short Title of 2000 Amendments note set out under section 1101 of this title].''

Amendment by section 1(a)(2) [title XI, § 1102(c), (d)(2)] of Pub. L. 106–553 effective Dec. 21, 2000, and applicable to an alien who is the beneficiary of a classification petition filed under section 1154 of this title 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 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. 106–386, div. B, title V, § 1506(a)(2), Oct. 28, 2000, 114 Stat. 1527, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to applications for adjustment of status pending on or made on or after January 14, 1998.''

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 date of the enactment of this Act [Sept. 30, 1996].''

Amendment by section 671(a)(4)(A), (5) of Pub. L. 104–208 effective as if included in the enactment of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, see section 671(a)(7) of Pub. L. 104–208, set out as a note under section 1101 of this title.

Amendment by Pub. L. 104–132 effective Apr. 24, 1996, and applicable to applications filed before, on, or after such date if final action not yet taken on them before such date see section 413(g) of Pub. L. 104–132, set out as a note under section 1253 of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 219(dd) of Pub. L. 103–416, set out as a note under section 1101 of this title.

Amendment by Pub. L. 103–317 effective Oct. 1, 1994, see section 506(c) of Pub. L. 103–317, as amended, set out as an Effective and Termination Dates of 1994 Amendment note under section 1182 of this title.

EFFECTIVE DATE OF 1991 AMENDMENTS

Amendment by section 302(d)(2), (e)(7) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

Pub. L. 102–232, title III, §308(a), Dec. 12, 1991, 105 Stat. 1757, provided that the amendment made by section 308(a) is effective Oct. 1, 1991.

Amendment by Pub. L. 102–110 effective 60 days after Oct. 1, 1991, see section 2(d) of Pub. L. 102–110, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by sections 121(b)(4), 162(e)(3) of Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Amendment by section 702(a) of Pub. L. 101–649 applicable to marriages entered into before, on, or after Nov. 29, 1990, see section 702(c) of Pub. L. 101–649, set out as a note under section 1154 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–525, §2(f)(2), 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. 99–603, amending this section] shall apply to applications for adjustment of status filed on or after November 6, 1986.''

Amendment by section 2(f)(1), (p)(3) of Pub. L. 100–525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99–603, see section 2(s) of Pub. L. 100–525, set out as a note under section 1101 of this title.

Amendment by section 7(b) of Pub. L. 100–525 effective as if included in enactment of Immigration Marriage Fraud Amendments of 1986, Pub. L. 99–639, see section 7(d) of Pub. L. 100–525, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99–639, §3(d)(2), Nov. 10, 1986, 100 Stat. 3542, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to adjustments occurring on or after the date of the enactment of this Act [Nov. 10, 1986].''

Amendment by section 5(a) of Pub. L. 99–639 applicable to marriages entered into on or after Nov. 10, 1986, see section 5(c) of Pub. L. 99–639, set out as a note under section 1154 of this title.

Amendment by section 117 of Pub. L. 99–603 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 1988 Amendment note above.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97–116, set out as a note under section 1101 of this title.

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.

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—

''(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;

''(2) is physically present in the United States;

''(3) is admissible to the United States as an immigrant, except as provided in subsection (c); and

''(4) files an application for an adjustment of status under this section not later than 3 years after the date of the enactment of this Act [Dec. 9, 2010].

''(b) NUMERICAL LIMITATION.—The number of aliens who are granted the status of an alien lawfully admitted for permanent residence under this section shall not exceed 1400.

''(c) GROUNDS OF INADMISSIBILITY.—Section 212(a)(7)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(7)(A)) shall not apply to an alien seeking an adjustment of status under this section.

''(d) VISA AVAILABILITY.—The Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) for any alien granted the status of having been lawfully admitted for permanent residence under this section.

''(e) ALIENS DEEMED TO MEET DEFINITION OF CHILD.—An unmarried alien described in subsection (a) who is under the age of 18 years shall be deemed to satisfy the requirements applicable to adopted children under section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) if—

''(1) the alien obtained adjustment of status under this section; and

''(2) a citizen of the United States adopted the alien prior to, on, or after the date of the decision granting such adjustment of status.

''(f) NO IMMIGRATION BENEFITS FOR BIRTH PARENTS.—No birth parent of an alien who obtains adjustment of status under this section shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this section or the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

''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

Pub. L. 106–554, §1(a)(4) [div. B, title XV, §1505(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–326, provided that: ''Notwithstanding any time and number limitations imposed by law on motions to reopen exclusion, removal, or deportation proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined by section 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 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].''

Pub. L. 106–554, §1(a)(4) [div. B, title XV, §1505(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–327, provided that: ''Notwithstanding any time and number limitations imposed by law on motions to reopen exclusion, removal, or deportation proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined by section 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. 105–277, set out below], may file one motion to reopen exclusion, deportation, or removal proceedings to apply for such adjustment 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

Pub. L. 105–277, div. A, §101(h) [title IX, §902], Oct. 21, 1998, 112 Stat. 2681–480, 2681–538; as amended by Pub. L. 106–386, div. B, title V, §1511(a), Oct. 28, 2000, 114 Stat. 1532; Pub. L. 106–554, §1(a)(4) [div. B, title XV, §1505(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–326; Pub. L. 109–162, title VIII, §824(a), Jan. 5, 2006, 119 Stat. 3063; Pub. L. 110–161, div. H, title I, §1502(d), Dec. 26, 2007, 121 Stat. 2250, provided that:

''(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. 1231(a)(5)] shall not apply; and

''(B) the Attorney General may grant the alien a waiver on the grounds of inadmissibility under subparagraphs (A) and (C) of section 212(a)(9) of such Act [8 U.S.C. 1182(a)(9)].

In granting waivers under subparagraph (B), the Attorney General shall use standards used in granting consent under subparagraphs (A)(iii) and (C)(ii) of such section 212(a)(9).

''(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—An alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] may, notwithstanding such order, apply for adjustment of status under paragraph (1). Such an alien may not be required, as a condition 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) was a child (as defined in the text above subparagraph (A) of section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) at the time of arrival in the United States and on December 31, 1995, and who—

''(i) arrived in the United States without parents in the United States and has remained without parents in the United States since such arrival,

''(ii) became orphaned subsequent to arrival in the United States, or

''(iii) was abandoned by parents or guardians prior to April 1, 1998 and has remained abandoned since such abandonment; and

''(2) has been physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending not earlier than the date the application for such adjustment is filed, except that an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence, or absences, from the United States for any period or periods amounting in the aggregate to not more than 180 days.

''(c) STAY OF REMOVAL.—

''(1) IN GENERAL.—The Attorney General shall provide by regulation for an alien who is subject to a final order of deportation or removal or exclusion to seek a stay of such order based on the filing of an application under subsection (a).

''(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 made a final 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 Haiti;

''(B)(i) the alien is the spouse, child, or unmarried son or daughter of an alien who is or was eligible for classification under subsection (a), except that, in the case of such an unmarried son or daughter, the son or daughter shall be required to establish that the son or daughter has been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date on which the application for such adjustment is filed;

''(ii) at the time of filing of the application for adjustment under subsection (a), the alien is the spouse or child of an alien who is or was eligible for classification under subsection (a) and the spouse, child, or child of the spouse has been battered or subjected to extreme cruelty by the individual described in subsection (a); and

''(iii) 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) [8 U.S.C. 1154(a)(1)(J)].

''(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 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) 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 VISAS AVAILABLE.—When an alien is granted the status of having been lawfully admitted for permanent resident 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.].

''(h) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—Except as otherwise specifically provided in this title [section 101(h) [title IX] of Pub. L. 105–277, enacting sections 1377 and 1378 of this title and provisions set out as a note under section 1101 of this title], the definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section. Nothing contained in this title shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

''(i) ADJUSTMENT OF STATUS HAS NO EFFECT ON ELIGIBILITY FOR WELFARE AND PUBLIC BENEFITS.—No alien whose status has been adjusted in accordance with this section and who was not a qualified alien on the date of enactment of this Act [Oct. 21, 1998] may, solely on the basis of such adjusted status, be considered to be a qualified alien under section 431(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(b)), as amended by section 5302 of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 598), for purposes of determining the alien's eligibility for supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) or medical assistance under title XIX of such Act (42 U.S.C. 1396 et seq.).

''(j) PERIOD OF APPLICABILITY.—Subsection (i) shall not apply after October 1, 2003.''

[Pub. L. 109–162, title VIII, §824(b), Jan. 5, 2006, 119 Stat. 3063, provided that: ''The amendment made by subsection (a)(3) [amending section 101(h) [title IX, §902] of div. A of Pub. L. 105–277, set out above] shall take effect as if included in the enactment of the Violence Against Women Act of 2000 (division B of Public Law 106–386; 114 Stat. 1491).'']

[Pub. L. 106–386, div. B, title V, §1511(b), Oct. 28, 2000, 114 Stat. 1533, provided that: ''The amendment made by subsection (a) [amending section 101(h) [title IX, §902] of div. A of Pub. L. 105–277, set out above] shall be effective as if included in the Haitian Refugee Immigration Fairness Act of 1998 (division A of section 101(h) of Public Law 105–277; 112 Stat. 2681–538).'']

ADJUSTMENT OF STATUS OF CERTAIN NICARAGUANS AND CUBANS

Pub. L. 105–100, title II, §202, Nov. 19, 1997, 111 Stat. 2193, as amended by Pub. L. 105–139, §1(a), (b), Dec. 2, 1997, 111 Stat. 2644; Pub. L. 106–386, div. B, title V, §1510(a), Oct. 28, 2000, 114 Stat. 1531; Pub. L. 106–554, §1(a)(4) [div. B, title XV, §1505(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–326; Pub. L. 109–162, title VIII, §815(a), (b), Jan. 5, 2006, 119 Stat. 3060, provided that:

''(a) ADJUSTMENT OF STATUS.—

''(1) IN GENERAL.—The status of any alien described in subsection (b) shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if the alien—

''(A) applies for such adjustment before April 1, 2000; and

''(B) is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4), (5), (6)(A), (7)(A), (9)(B)] shall not apply.

''(2) RULES IN APPLYING CERTAIN PROVISIONS.—In the case of an alien described in subsection (b) or (d) who is applying for adjustment of status under this section—

''(A) the provisions of section 241(a)(5) of the Immigration and Nationality Act [8 U.S.C. 1231(a)(5)] shall not apply; and

''(B) the Attorney General may grant the alien a waiver on the grounds of inadmissibility under subparagraphs (A) and (C) of section 212(a)(9) of such Act [8 U.S.C. 1182(a)(9)].

In granting waivers under subparagraph (B), the Attorney General shall use standards used in granting consent under subparagraphs (A)(iii) and (C)(ii) of such section 212(a)(9).

''(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—An alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] may, notwithstanding such order, apply for adjustment of status under paragraph (1). Such an alien may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate such order. If the Attorney General grants the application, the Attorney General shall cancel the order. If the Attorney General renders a final administrative decision to deny the application, the order shall be effective and enforceable to the same extent as if the application had not been made.

''(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—

''(1) IN GENERAL.—The benefits provided by subsection (a) shall apply to any alien who is a national of Nicaragua or Cuba and who has been physically present in the United States for a continuous period, beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment under 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) PROOF OF COMMENCEMENT OF CONTINUOUS PRESENCE.—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—

''(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, former 1252b] (as in effect prior to April 1, 1997);

''(iii) was placed in exclusion proceedings under section 236 of such Act [8 U.S.C. 1226] (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; or

''(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);

''(C) the alien applies for such adjustment and is physically present in the United States on the date the application is filed;

''(D) the alien is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4), (5), (6)(A), (7)(A), (9)(B)] shall not apply; and

''(E) 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—

''(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.

''(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) 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 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.].

''(h) 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.''

[Pub. L. 109–162, title VIII, §815(c), Jan. 5, 2006, 119 Stat. 3060, provided that: ''The amendment made by subsection (b) [amending section 202(d)(3) of Pub. L. 105–100, set out above] shall take effect as if included in the enactment of the Violence Against Women Act of 2000 (division B of Public Law 106–386; 114 Stat. 1491).'']

ADJUSTMENT OF STATUS FOR CERTAIN POLISH AND HUNGARIAN PAROLEES

Pub. L. 104–208, div. C, title VI, §646, Sept. 30, 1996, 110 Stat. 3009–709, provided that:

''(a) IN GENERAL.—The Attorney General shall adjust the status of an alien described in subsection (b) to that of an alien lawfully admitted for permanent residence if the alien—

''(1) applies for such adjustment;

''(2) has been physically present in the United States for at least 1 year and is physically present in the United States on the date the application for such adjustment is filed;

''(3) is admissible to the United States as an immigrant, except as provided in subsection (c); and

''(4) pays a fee (determined by the Attorney General) for the processing of such application.

''(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—The benefits provided in subsection (a) shall only apply to an alien who—

''(1) was a national of Poland or Hungary; and

''(2) was inspected and granted parole into the United States during the period beginning on November 1, 1989, and ending on December 31, 1991, after being denied refugee status.

''(c) WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.—The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(4), (5), (7)(A)] shall not apply to adjustment of status under this section and the Attorney General may waive any other provision of such section (other than paragraph (2)(C) and subparagraphs (A), (B), (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. 1101 et seq.].''

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

Pub. L. 102–404, Oct. 9, 1992, 106 Stat. 1969, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Chinese Student Protection Act of 1992'.

''SEC. 2. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS OF CERTAIN NATIONALS OF THE PEOPLE'S REPUBLIC OF CHINA.

''(a) IN GENERAL.—Subject to subsection (c)(1), whenever an alien described in subsection (b) applies for adjustment of status under section 245 of the Immigration and Nationality Act [8 U.S.C. 1255] during the application period (as defined in subsection (e)) the following rules shall apply with respect to such adjustment:

''(1) The alien shall be deemed to have had a petition approved under section 204(a) of such Act [8 U.S.C. 1154(a)] for classification under section 203(b)(3)(A)(i) of such Act [8 U.S.C. 1153(b)(3)(A)(i)].

''(2) The application shall be considered without regard to whether an immigrant visa number is immediately available at the time the application is filed.

''(3) In determining the alien's admissibility as an immigrant, and the alien's eligibility for an immigrant visa—

''(A) paragraphs (5) and (7)(A) of section 212(a) and section 212(e) of such Act [8 U.S.C. 1182(a), (e)] shall not apply; and

''(B) the Attorney General may waive any other provision of section 212(a) (other than paragraph (2)(C) and subparagraph (A), (B), (C), or (E) of paragraph (3)) of such Act with respect to such adjustment for humanitarian purposes, for purposes of assuring family unity, or if otherwise in the public interest.

''(4) The numerical level of section 202(a)(2) of such Act [8 U.S.C. 1152(a)(2)] shall not apply.

''(5) Section 245(c) of such Act [8 U.S.C. 1255(c)] shall not apply.

''(b) ALIENS COVERED.—For purposes of this section, an alien described in this subsection is an alien who—

''(1) is a national of the People's Republic of China described in section 1 of Executive Order No. 12711 [8 U.S.C. 1101 note] as in effect on April 11, 1990;

''(2) has resided continuously in the United States since April 11, 1990 (other than brief, casual, and innocent absences); and

''(3) was not physically present in the People's Republic of China for longer than 90 days after such date and before the date of the enactment of this Act [Oct. 9, 1992].

''(c) CONDITION; DISSEMINATION OF INFORMATION.—

''(1) NOT APPLICABLE IF SAFE RETURN PERMITTED.—Subsection (a) shall not apply to any alien if the President has determined and certified to Congress, before the first day of the application period, that conditions in the People's Republic of China permit aliens described in subsection (b)(1) to return to that foreign state in safety.

''(2) DISSEMINATION OF INFORMATION.—If the President has not made the certification described in paragraph (1) by the first day of the application period, the Attorney General shall, subject to the availability of appropriations, immediately broadly disseminate to aliens described in subsection (b)(1) information respecting the benefits available under this section. To the extent practicable, the Attorney General shall provide notice of these benefits to the last known mailing address of each such alien.

''(d) OFFSET IN PER COUNTRY NUMERICAL LEVEL.—

''(1) IN GENERAL.—The numerical level under section 202(a)(2) of the Immigration and Nationality Act [8 U.S.C. 1152(a)(2)] applicable to natives of the People's Republic of China in each applicable fiscal year (as defined in paragraph (3)) shall be reduced by 1,000.

''(2) ALLOTMENT IF SECTION 202(e) APPLIES.—If section 202(e) of the Immigration and Nationality Act is applied to the People's Republic of China in an applicable fiscal year, in applying such section—

''(A) 300 immigrant visa numbers shall be deemed to have been previously issued to natives of that foreign state under section 203(b)(3)(A)(i) of such Act [8 U.S.C. 1153(b)(3)(A)(i)] in that year, and

''(B) 700 immigrant visa numbers shall be deemed to have been previously issued to natives of that foreign state under section 203(b)(5) of such Act in that year.

''(3) APPLICABLE FISCAL YEAR.—

''(A) IN GENERAL.—In this subsection, the term 'applicable fiscal year' means each fiscal year during 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).

''(B) NUMBER COUNTED EACH YEAR.—The number counted under this subparagraph for a fiscal year (beginning during or after the application period) is 1,000, plus the number (if any) by which (i) the immigration level under section 202(a)(2) of the Immigration and Nationality Act for the People's Republic of China in the fiscal year (as reduced under this subsection), exceeds (ii) the number of aliens who were chargeable to such level in the year.

''(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

Pub. L. 101–238, §2, Dec. 18, 1989, 103 Stat. 2099, as amended by Pub. L. 101–649, title I, §162(f)(1), Nov. 29, 1990, 104 Stat. 5011; Pub. L. 102–232, title III, §§302(e)(10), 307(*l*)(10), Dec. 12, 1991, 105 Stat. 1746, 1757, provided that:

''(a) IN GENERAL.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act [8 U.S.C. 1151, 1152] shall not apply to the adjustment of status under section 245 of such Act [8 U.S.C. 1255] of an immigrant, and the immigrant's accompanying spouse and children—

''(1) who, as of September 1, 1989, has the status of a nonimmigrant under paragraph (15)(H)(i) of section 101(a) of such Act [8 U.S.C. 1101(a)(15)(H)(i)] to perform services as a registered nurse,

''(2) who, for at least 3 years before the date of application for adjustment of status (whether or not before, on, or after, the date of the enactment of this Act [Dec. 18, 1989]), has been employed as a registered nurse in the United States, and

''(3) whose continued employment as a registered nurse in the United States meets the standards established for the certification described in section 212(a)(5)(A) of such Act [8 U.S.C. 1182(a)(5)(A)].

The Attorney General shall promulgate regulations to carry out this subsection by not later than 90 days after the date of the enactment of this Act.

''(b) TRANSITION.—For purposes of adjustment of status under section 245 of the Immigration and Nationality Act [8 U.S.C. 1255] in the case of an alien who, as of September 1, 1989, is present in the United States in the status of a nonimmigrant under section 101(a)(15)(H)(i) of such Act [8 U.S.C. 1101(a)(15)(H)(i)] to perform services as a registered nurse, who, as of September 1, 1989, is present in the United States and had been admitted to the United States in the status of nonimmigrant under section 101(a)(15)(H)(i) of such Act to perform services as a registered nurse but has failed to maintain that status due to the expiration of the time limitation with respect to such status, or who is the spouse or child of such an alien, unauthorized employment performed before the date of the enactment of the Immigration Act of 1990 [Nov. 29, 1990] shall not be taken into account in applying section 245(c)(2) of the Immigration and Nationality Act and such an alien shall be considered as having 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).''

[Pub. L. 102–232, title III, §302(e)(10), Dec. 12, 1991, 105 Stat. 1746, provided that the amendment made by section 302(e)(10) to section 2(b) of Pub. L. 101–238, set out above, is effective as if included in the Immigration Nursing Relief Act of 1989, Pub. L. 101–238.]

[Pub. L. 102–232, title III, §307(*l*), Dec. 12, 1991, 105 Stat. 1756, provided that the amendment made by section 307(*l*) to section 2(a)(3) of Pub. L. 101–238, set out above, is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.]

ADJUSTMENT OF STATUS FOR CERTAIN SOVIET AND INDOCHINESE PAROLEES

Pub. L. 106–429, §101(a) [title V, §586], Nov. 6, 2000, 114 Stat. 1900, 1900A–57, as amended by Pub. L. 108–447, div. D, title V, §534(m)(1)–(6), Dec. 8, 2004, 118 Stat. 3007, provided that:

''(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.

''(b) The benefits provided by subsection (a) shall apply to any alien who is a native or citizen of Vietnam, Laos, or Cambodia and who was inspected and paroled into the United States 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 nothwithstanding [sic] any other provision of law, the Secretary of Homeland Security may waive 212(a)(1); 212(a)(6)(B), (C), and (F); 212(a)(8)(A); 212(a)(10)(B) and (D) with respect to such an alien in order to prevent extreme hardship to the alien or the alien's spouse, parent, son or daughter, who is a citizen of the United States or an alien lawfully admitted for permanent residence. Any such waiver by the Secretary of Homeland Security shall be in writing and shall be granted only on an individual basis following an investigation.

''(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 State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].

''(f) ADJUDICATION OF APPLICATIONS.—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.''

[Pub. L. 108–447, div. D, title V, §534(m)(7), Dec. 8, 2004, 118 Stat. 3007, provided that: ''The amendments made by this subsection [amending section 101(a) [title V, §586] of Pub. L. 106–429, set out above] shall take effect as if enacted as part of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 [Pub. L. 106–429].'']

Pub. L. 101–167, title V, §599E, Nov. 21, 1989, 103 Stat. 1263, as amended by Pub. L. 101–513, title V, §598(b), Nov. 5, 1990, 104 Stat. 2063; Pub. L. 101–649, title VI, §603(a)(22), Nov. 29, 1990, 104 Stat. 5084; Pub. L. 102–232, title III, §307(*l*)(9), Dec. 12, 1991, 105 Stat. 1757; Pub. L. 102–391, title V, §582(a)(2), (b)(2), Oct. 6, 1992, 106 Stat. 1686; Pub. L. 102–511, title IX, §905(b)(2), Oct. 24, 1992, 106 Stat. 3356; Pub. L. 103–236, title V, §512(2), Apr. 30, 1994, 108 Stat. 466; Pub. L. 103–416, title II, §219(bb), Oct. 25, 1994, 108 Stat. 4319; Pub. L. 104–208, div. A, title I, §101(c) [title V, §575(2)], Sept. 30, 1996, 110 Stat. 3009–121, 3009–168; Pub. L. 104–319, title I, §101(2), Oct. 19, 1996, 110 Stat. 3865; Pub. L. 105–118, title V, §574(2), Nov. 26, 1997, 111 Stat. 2432; Pub. L. 105–277, div. A, §101(f) [title VII, §705(2)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–389; Pub. L. 106–113, div. B, §1000(a)(4) [title II, §214(2)], Nov. 29, 1999, 113 Stat. 1535, 1501A–240; Pub. L. 106–554, §1(a)(1) [title II, §212(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–27; Pub. L. 107–116, title II, §213(2), Jan. 10, 2002, 115 Stat. 2200; Pub. L. 108–7, div. G, title II, §213(2), Feb. 20, 2003, 117 Stat. 324; Pub. L. 108–199, div. E, title II, §213(2), Jan. 23, 2004, 118 Stat. 253; Pub. L. 108–447, div. F, title II, §213(2), Dec. 8, 2004, 118 Stat. 3140; Pub. L. 109–102, title V, §534(m)(2), Nov. 14, 2005, 119 Stat. 2211; Pub. L. 109–289, div. B, title II, §20412(b)(2), as added by Pub. L. 110–5, §2, Feb. 15, 2007, 121 Stat. 25; Pub. L. 110–161, div. J, title VI, §634(k)(2), Dec. 26, 2007, 121 Stat. 2329; Pub. L. 111–8, div. H, title VII, §7034(g)(2), Mar. 11, 2009, 123 Stat. 878; Pub. L. 111–117, div. F, title VII, §7034(f)(2), Dec. 16, 2009, 123 Stat. 3361; Pub. L. 112–10, div. B, title XI, §2121(m)(2), Apr. 15, 2011, 125 Stat. 186; Pub. L. 112–74, div. I, title VII, §7034(r)(2), Dec. 23, 2011, 125 Stat. 1218; Pub. L. 113–6, div. F, title VII, §1706(h)(2), Mar. 26, 2013, 127 Stat. 430; Pub. L. 113–76, div. K, title VII, §7034(m)(8)(B), Jan. 17, 2014, 128 Stat. 516; Pub. L. 113–235, div. J, title VII, §7034(*l*)(8)(B), Dec. 16, 2014, 128 Stat. 2625; Pub. L. 114–113, div. K, title VII, §7034(k)(8)(B), Dec. 18, 2015, 129 Stat. 2765, provided that:

''(a) IN GENERAL.—The Attorney General shall adjust the status of an alien described in subsection (b) to that of an alien lawfully admitted for permanent residence if the alien—

''(1) applies for such adjustment,

''(2) has been physically present in the United States for at least 1 year and is physically present in the United States on the date the application for such adjustment is filed,

''(3) is admissible to the United States as an immigrant, except as provided in subsection (c), and

''(4) pays a fee (determined by the Attorney General) for the processing of such application.

''(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—The benefits provided in subsection (a) shall only apply to an alien who—

''(1) was a national of an independent state of the former Soviet Union, Estonia, Latvia, Lithuania, Vietnam, Laos, or Cambodia, and

''(2) was inspected and granted parole into the United States during the period beginning on August 15, 1988, and ending on September 30, 2016, 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) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an adjustment for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

''(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 a lawful permanent resident as of the date of the alien's inspection and parole described in subsection (b)(2).

''(e) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—When an alien is granted the status of having been lawfully admitted for permanent residence under this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].''

[Pub. L. 102–232, title III, § 307(*l*), Dec. 12, 1991, 105 Stat. 1756, provided that the amendment made by section 307(*l*) to section 599E of Pub. L. 101–167, set out above, is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.]

Pub. L. 95–145, title I, §§ 101–107, Oct. 28, 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 was paroled into United States as 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 after Oct. 28, 1977, 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. 5011, provided that status of alien who was inspected and admitted to Virgin Islands of 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 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. 3465, 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

Pub. L. 104–208, div. C, title VI, § 606, Sept. 30, 1996, 110 Stat. 3009–695 provided that:

''(a) IN GENERAL.—Public Law 89–732 [set out below] is repealed effective only upon a determination by the President under section 203(c)(3) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 [22 U.S.C. 6063(c)] (Public Law 104–114) that a democratically elected government in Cuba is in power.

''(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. 106–386, 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, 1959 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 subsection, 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 for 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) [Jan. 5, 2006], or for 2 years after the date of termination of the marriage (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.

''SEC. 2. 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 subsecs. (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 [this section] filed with the Attorney General 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 1 of this Act shall not require the Secretary of State to reduce the number of visas authorized to be issued in

any class in the case of any alien who is physically present in the United States on or before the effective date of the Immigration and Nationality Act Amendments of 1976 [see Effective Date of 1976 Amendment note above].''

[Pub. L. 109–162, title VIII, §823(b), Jan. 5, 2006, 119 Stat. 3063, provided that: ''The amendment made by subsection (a)(1) [amending Pub. L. 89–732 set out above] shall take effect as if included in the enactment of the Violence Against Women Act of 2000 (division B of Public Law 106–386; 114 Stat. 1491).'']

[Pub. L. 106–386, div. B, title V, §1509(b), Oct. 28, 2000, 114 Stat. 1531, provided that: ''The amendment made by subsection (a) [amending Pub. L. 89–732 set out above] shall be effective as if included in 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].)'']

[Pub. L. 96–212, title II, §204(b)(1)(C), Mar. 17, 1980, 94 Stat. 108, provided that the amendment made by section 204(b)(1)(C) to section 1 of Pub. L. 89–732, set out above, is effective immediately before Apr. 1, 1980.]

§ 1255a. Adjustment of status of certain entrants before January 1, 1982, to that of person admitted for lawful residence

(a) Temporary resident status

The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

(1) Timely application

(A) During application period

Except as provided in subparagraph (B), the alien must apply for such adjustment during the 12-month period beginning on a date (not later than 180 days after November 6, 1986) designated by the Attorney General.

(B) Application within 30 days of show-cause order

An alien who, at any time during the first 11 months of the 12-month period described in subparagraph (A), is the subject of an order to show cause issued under section 1252 of this title (as in effect before October 1, 1996), must make application under this section not later than the end of the 30-day period beginning either on the first day of such 12-month period or on the date of the issuance of such order, whichever day is later.

(C) Information included in application

Each application under this subsection shall contain such information as the Attorney General may require, including information on living relatives of the applicant with respect to whom a petition for preference or other status may be filed by the applicant at any later date under section 1154(a) of this title.

(2) Continuous unlawful residence since 1982

(A) In general

The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

(B) Nonimmigrants

In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

(C) Exchange visitors

If the alien was at any time a nonimmigrant exchange alien (as defined in section 1101(a)(15)(J) of this title), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 1182(e) of this title or has fulfilled that requirement or received a waiver thereof.

(3) Continuous physical presence since November 6, 1986

(A) In general

The alien must establish that the alien has been continuously physically present in the United States since November 6, 1986.

(B) Treatment of brief, casual, and innocent absences

An alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

(C) Admissions

Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

(4) Admissible as immigrant

The alien must establish that he—

(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2),

(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 residence and nature of temporary resident status

(1) Adjustment to permanent residence

The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (a) 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 or other appropriate work permit.

(c) Applications for adjustment of status

(1) To whom may be made

The Attorney General shall provide that applications for adjustment of status under subsection (a) 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

Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(7) Application fees

(A) Fee schedule

The Attorney General shall provide for a schedule of fees to be charged for the filing of applications for adjustment under subsection (a) or (b)(1). 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

Not to exceed $3,000,000 of the unobligated balances remaining in the account established in subparagraph (B) shall be available in fiscal year 1992 and each fiscal year thereafter for grants, contracts, and cooperative agreements to community-based organizations for outreach programs, to be administered by the Office of Special Counsel for Immigration-Related Unfair Employment Practices: *Provided*, That such amounts shall be in addition to any funds appropriated to the Office of Special Counsel for such purposes:

Provided further, That none of the funds made available by this section shall be used by the Office of Special Counsel to establish regional offices.

(d) Waiver of numerical limitations and certain grounds for exclusion

(1) Numerical limitations do not apply

The numerical limitations of sections 1151 and 1152 of this title shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) Waiver of grounds for exclusion

In the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(C)(i), and (b)(2)(B)—

(A) Grounds of exclusion not applicable

The provisions of paragraphs (5) and (7)(A) of section 1182(a) of this title shall not apply.

(B) Waiver of other grounds

(i) In general

Except as provided in clause (ii), the Attorney General may waive any other provision of section 1182(a) of this title in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(ii) Grounds that may not be waived

The following provisions of section 1182(a) of this title may not be waived by the Attorney General under clause (i):

(I) Paragraphs (2)(A) and (2)(B) (relating to criminals).

(II) Paragraph (2)(C) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(III) Paragraph (3) (relating to security and related grounds).

(IV) Paragraph (4) (relating to aliens likely to become public charges) insofar as it relates to an application for adjustment to permanent residence.

Subclause (IV) (prohibiting the waiver of section 1182(a)(4) of this title) shall not apply to an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act [42 U.S.C. 1382c(a)(1)]).

(iii) Special rule for determination of public charge

An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 1182(a)(4) of this title if the alien demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance.

(C) Medical examination

The alien shall be required, at the alien's expense, to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.

(e) Temporary stay of deportation and work authorization for certain applicants

(1) Before application period

The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(A) 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 legalization officer of the Service but had the application and fee refused by that officer.

(g) Implementation of section

(1) Regulations

The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate, shall prescribe—

(A) regulations establishing a definition of the term ''resided continuously'', as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

(B) such other regulations as may be necessary to carry out this section.

(2) Considerations

In prescribing regulations described in paragraph (1)(A)—

(A) Periods of continuous residence

The Attorney General shall specify individual periods, and aggregate periods, of absence from the United States which will be considered to break a period of continuous residence in the United States and shall take into account absences due merely to brief and casual trips abroad.

(B) Absences caused by deportation or advanced parole

The Attorney General shall provide that—

(i) an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation, and

(ii) any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this section.

(C) Waivers of certain absences

The Attorney General may provide for a waiver, in the discretion of the Attorney General, of the periods specified under subparagraph (A) in the case of an absence from the United States due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(D) Use of certain documentation

The Attorney General shall require that—

(i) continuous residence and physical presence in the United States must be established through documents, together with independent corroboration of the information contained in such documents, and

(ii) the documents provided under clause (i) be employment-related if employment-related documents with respect to the alien are available to the applicant.

(3) Interim final regulations

Regulations prescribed under this section may be prescribed to take effect on an interim 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)(ii) 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 subdivision providing for a program of financial assistance) to be permanently residing in the United States under color of law.

(2) Exceptions

Paragraph (1) shall not apply—

(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96–422 [8 U.S.C. 1255 note], as in effect on April 1, 1983), or

(B) in the case of assistance (other than assistance under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.]) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act [42 U.S.C. 1382c(a)(1)]).

(3) Restricted medicaid benefits

(A) Clarification of entitlement

Subject to the restrictions under subparagraph (B), for the purpose of providing aliens with eligibility to receive medical assistance—

(i) paragraph (1) shall not apply,

(ii) aliens who would be eligible for medical assistance but for the provisions of paragraph (1) shall be deemed, for purposes of title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], to be so eligible, and

(iii) aliens lawfully admitted for temporary residence under this section, such status not having changed, shall be considered to be permanently residing in the United States under color of law.

(B) Restriction of benefits

(i) Limitation to emergency services and services for pregnant women

Notwithstanding any provision of title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (including subparagraphs (B) and (C) of section 1902(a)(10) of such Act [42 U.S.C. 1396a(a)(10)(B), (C)]), aliens who, but for subparagraph (A), would be ineligible for medical assistance under paragraph (1), are only eligible for such assistance with respect to—

(I) emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act [42 U.S.C. 1396*o*(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 (i) shall not apply to aliens who are described in paragraph (2) or who are under 18 years of age.

(C) Definition of medical assistance

In this paragraph, the term ''medical assistance'' refers to medical assistance under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(4) Treatment of certain programs

Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):

(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[1] Carl D. Perkins Career and Technical Education Act of 2006 [20 U.S.C. 2301 et seq.].

(D) Title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

(E) The Headstart-Follow Through Act [42 U.S.C. 2921 et seq.].

(F) Title I of the Workforce Innovation and Opportunity Act [29 U.S.C. 3111 et seq.].

(G) Title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq.].

(H) The Public Health 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 Social Security Amendments of 1972).

(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 adjustment of status under this section.

(i) Dissemination of information on legalization program

Beginning not later than the date designated by the Attorney General under subsection (a)(1)(A), 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, § 245A, as added Pub. L. 99–603, title II, § 201(a)(1), Nov. 6, 1986, 100 Stat. 3394; amended Pub. L. 100–525, § 2(h)(1), Oct. 24, 1988, 102 Stat. 2611; Pub. L. 101–649, title VI, § 603(a)(13), title VII, § 703, Nov. 29, 1990, 104 Stat. 5083, 5086; Pub. L. 102–140, title I, Oct. 28, 1991, 105 Stat. 785; Pub. L. 102–232, title III, § 307(*l*)(6), Dec. 12, 1991, 105 Stat. 1756; Pub. L. 103–382, title III, § 394(g), Oct. 20, 1994, 108 Stat. 4028; Pub. L. 103–416, title I, § 108(b), title II, § 219(*l*)(1), Oct. 25, 1994, 108 Stat. 4310, 4317; Pub. L. 104–132, title IV, § 431(a), Apr. 24, 1996, 110 Stat. 1273; Pub. L. 104–193, title I, § 110(s)(2), Aug. 22, 1996, 110 Stat. 2175; Pub. L. 104–208, div. C, title III, §§ 308(g)(2)(B), (5)(A)(iii), 377(a), 384(d)(1), title VI, § 623(a), Sept. 30, 1996, 110 Stat. 3009–622, 3009–623, 3009–649, 3009–653, 3009–696; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(4), (f)(4)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419, 2681–430; Pub. L. 105–332, § 3(a), Oct. 31, 1998, 112

[1] So in original.

[2] So in original. Probably should be ''(Public Law 96–422)''.

Stat. 3125; Pub. L. 106–78, title VII, § 752(b)(5), Oct. 22, 1999, 113 Stat. 1169; Pub. L. 109–270, § 2(a), Aug. 12, 2006, 120 Stat. 746; Pub. L. 110–234, title IV, § 4002(b)(1)(B), (2)(J), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110–246, § 4(a), title IV, § 4002(b)(1)(B), (2)(J), June 18, 2008, 122 Stat. 1664, 1857, 1858; Pub. L. 113–128, title V, § 512(q), July 22, 2014, 128 Stat. 1712.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (a)(4)(D), is act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to chapter 49 (§ 3801 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

Public Law 96–422, referred to in subsecs. (a) and (h)(2)(A), (5), is Pub. L. 96–422, Oct. 10, 1980, 94 Stat. 1799, as amended, which is known as the Refugee Education Assistance Act of 1980, and is set out as a note under section 1522 of this title.

Public Law 89–732, referred to in subsec. (c)(2)(B), is Pub. L. 89–732, Nov. 2, 1966, 80 Stat. 1161, as amended, which is set out as a note under section 1255 of this title.

Public Law 95–145, referred to in subsec. (c)(2)(B), is Pub. L. 95–145, Oct. 28, 1977, 91 Stat. 1223, as amended. Title I of Pub. L. 95–145 is set out as a note under section 1255 of this title. Title II of Pub. L. 95–145 amended Pub. L. 94–23, which was set out as a note under section 2601 of Title 22, Foreign Relations and Intercourse, and was repealed by Pub. L. 96–212, title III, § 312(c), Mar. 17, 1980, 94 Stat. 117.

Section 404 of the Immigration Reform and Control Act of 1986, referred to in subsec. (c)(5)(A)(i), is section 404 of Pub. L. 99–603 which is set out as a note below.

Section 1105a of this title, referred to in subsec. (f)(4)(A), was repealed by Pub. L. 104–208, div. C, title III, § 306(b), Sept. 30, 1996, 110 Stat. 3009–612.

The Social Security Act, referred to in subsec. (h)(1)(A), (2)(B), (3)(A)(ii), (B)(i), (C), (4)(I), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts A, B, D, and E of title IV of the Social Security Act are classified generally to parts A (§ 601 et seq.), B (§ 620 et seq.), D (§ 651 et seq.), and E (§ 670 et seq.), respectively, of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Titles I, V, X, XIV, XVI, XIX, and XX of the Social Security Act are classified generally to subchapters I (§ 301 et seq.), V (§ 701 et seq.), X (§ 1201 et seq.), XIV (§ 1351 et seq.), XVI (§ 1381 et seq.), XIX (§ 1396 et seq.), and XX (§ 1397 et seq.), respectively, of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 301 of the Social Security Amendments of 1972, referred to in subsec. (h)(4)(I), is section 301 of Pub. L. 92–603, title III, Oct. 30, 1972, 86 Stat. 1465, which enacted sections 1381 to 1382e and 1383 to 1383c of Title 42.

The Food and Nutrition Act of 2008, referred to in subsec. (h)(1)(A)(iii), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Richard B. Russell National School Lunch Act, referred to in subsec. (h)(4)(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, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

The Child Nutrition Act of 1966, referred to in subsec. (h)(4)(B), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) 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 1771 of Title 42 and Tables.

The Carl D. Perkins Career and Technical Education Act of 2006, referred to in subsec. (h)(4)(C), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 109–270, § 1(b), Aug. 12, 2006, 120 Stat. 683, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (h)(4)(D), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Headstart-Follow Through Act, referred to in subsec. (h)(4)(E), is title V of Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 527, as amended, which was classified generally to subchapter V (§ 2921 et seq.) of chapter 34 of Title 42, The Public Health and Welfare, prior to repeal by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

The Workforce Innovation and Opportunity Act, referred to in subsec. (h)(4)(F), is Pub. L. 113–128, July 22, 2014, 128 Stat. 1425. Title I of the Act is classified generally to subchapter I (§ 3111 et seq.) of chapter 32 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 29 and Tables.

The Higher Education Act of 1965, referred to in subsec. (h)(4)(G), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Public Health Service Act, referred to in subsec. (h)(4)(H), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) 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 201 of Title 42 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 1255a, Pub. L. 85–316, § 9, Sept. 11, 1957, 71 Stat. 641, provided for adjustment of status of certain resident aliens to that of a person admitted for permanent residence, the recording by Attorney General of alien's lawful admission for permanent residence, and for granting of nonquota status to spouse and children, prior to repeal, eff. 180 days after Sept. 26, 1961, by Pub. L. 87–301, § 24(a)(5), (b), Sept. 26, 1961, 75 Stat. 657.

AMENDMENTS

2014—Subsec. (h)(4)(F). Pub. L. 113–128 substituted ''Title I of the Workforce Innovation and Opportunity Act'' for ''Title I of the Workforce Investment Act of 1998''.

2008—Subsec. (h)(1)(A)(iii). Pub. L. 110–246, § 4002(b)(1)(B), (2)(J), substituted ''Food and Nutrition Act of 2008'' for ''Food Stamp Act of 1977''.

2006—Subsec. (h)(4)(C). Pub. L. 109–270 substituted ''The Carl D. Perkins Career and Technical Education Act of 2006'' for ''Carl D. Perkins Vocational and Technical Education Act of 1998''.

1999—Subsec. (h)(4)(A). Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act''.

1998—Subsec. (h)(4)(C). Pub. L. 105–332 substituted ''Carl D. Perkins Vocational and Technical Education Act of 1998'' for ''Vocational Education Act of 1963''.

Subsec. (h)(4)(F). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(4)], substituted ''Title I'' for ''The Job Training Partnership Act or title I''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(4)], substituted ''The Job Training Partnership Act or title I of the Workforce Investment Act of 1998.'' for ''The Job Training Partnership Act.''

1996—Subsec. (a)(1)(B). Pub. L. 104–208, § 308(g)(5)(A)(iii), inserted ''(as in effect before October 1, 1996)'' after ''section 1252 of this title''.

Subsec. (c)(5). Pub. L. 104–208, § 623(a), amended heading and text of par. (5) generally, substituting subpars. (A) to (E) for former par. consisting of introductory and concluding provisions and subpars. (A) to (C), relating to confidentiality of information.

Pub. L. 104–208, § 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(a)(2), which directed the insertion of ''and'' and cl. (ii) after ''Title 13'', was executed by making the insertion after ''title 13'' in concluding provisions to reflect the probable intent of Congress. Cl. (ii) read as follows: ''may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used—

''(I) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated; or

''(II) for criminal law enforcement purposes against the alien whose application is to be disclosed.''

Pub. L. 104–132, § 431(a)(1), which directed amendment by inserting ''(i)'' after ''except the Attorney General'', was executed by making the insertion after ''except that the Attorney General'' in concluding provisions to reflect the probable intent of Congress.

Subsec. (f)(4)(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)(4)(C). Pub. L. 104–208, § 377(a), added subpar. (C).

Subsec. (h)(1)(A)(i). Pub. L. 104–193, § 110(s)(2)(A), substituted ''State program of assistance'' for ''program of aid to families with dependent children''.

Subsec. (h)(2)(B). Pub. L. 104–193, § 110(s)(2)(B), substituted ''assistance under a State program funded under part A of title IV of the Social Security Act'' for ''aid to families with dependent children''.

1994—Subsec. (b)(1)(D)(i)(I), (iii). Pub. L. 103–416, § 108(b), substituted ''1423(a)'' for ''1423''.

Subsec. (c)(7)(C). Pub. L. 103–416, § 219(*l*)(1), realigned margins and substituted ''subparagraph (B)'' for ''subsection (B)''.

Subsec. (h)(4)(D). Pub. L. 103–382 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''Chapter 1 of the Education Consolidation and Improvement Act of 1981.''

1991—Subsec. (c)(7)(C). Pub. L. 102–140, which directed the addition ''after subsection (B)'' of ''a new subsection'' (C), was executed by adding subpar. (C) after subpar. (B) to reflect the probable intent of Congress.

Subsec. (d)(2)(B)(ii). Pub. L. 102–232, substituted ''Subclause (IV)'' for ''Subclause (II)'' in last sentence, added subcl. (III), redesignated former subcl. (III) as (II) and former subcl. (II) as (IV), and struck out former subcl. (IV) which read as follows: ''Paragraphs (3) (relating to security and related grounds), other than subparagraph (E) thereof.''

1990—Subsec. (b)(1)(A). Pub. L. 101–649, § 703(a)(1), substituted ''2-year period'' for ''one-year period''.

Subsec. (b)(2)(C). Pub. L. 101–649, § 703(a)(2), substituted ''43rd'' for ''thirty-first''.

Subsec. (c)(7)(A). Pub. L. 101–649, § 703(b), inserted at end ''The Attorney General shall provide for an additional fee for filing an application for adjustment under subsection (b)(1) of this section after the end of the first year of the 2-year period described in subsection (b)(1)(A) of this section.''

Subsec. (d)(2)(A). Pub. L. 101–649, § 603(a)(13)(A), substituted ''(5) and (7)(A)'' for ''(14), (20), (21), (25), and (32)''.

Subsec. (d)(2)(B)(ii). Pub. L. 101–649, § 603(a)(13)(G), substituted ''1182(a)(4)'' for ''1182(a)(15)'' in last sentence.

Subsec. (d)(2)(B)(ii)(I). Pub. L. 101–649, § 603(a)(13)(B), substituted ''Paragraphs (2)(A) and (2)(B)'' for ''Paragraphs (9) and (10)''.

Subsec. (d)(2)(B)(ii)(II). Pub. L. 101–649, § 603(a)(13)(C), substituted ''(4)'' for ''(15)''.

Subsec. (d)(2)(B)(ii)(III). Pub. L. 101–649, § 603(a)(13)(D), substituted ''(2)(C)'' for ''(23)''.

Subsec. (d)(2)(B)(ii)(IV). Pub. L. 101–649, § 603(a)(13)(E), substituted ''(3) (relating to security and related grounds), other than subparagraph (E) thereof'' for ''(27), (28), and (29) (relating to national security and members of certain organizations)''.

Subsec. (d)(2)(B)(ii)(V). Pub. L. 101–649, § 603(a)(13)(F), struck out subcl. (V) which referred to par. (33).

Subsec. (d)(2)(B)(iii). Pub. L. 101–649, § 603(a)(13)(H), substituted ''1182(a)(4)'' for ''1182(a)(15)''.

1988—Subsec. (a)(1)(B). Pub. L. 100–525, § 2(h)(1)(A), substituted ''12-month'' for ''18-month''.

Subsec. (b)(1)(D)(ii). Pub. L. 100–525, § 2(h)(1)(B), inserted references to developmentally disabled in heading and text.

Subsec. (c)(1). Pub. L. 100–525, § 2(h)(1)(C), amended closing provisions generally without change.

Subsec. (c)(5). Pub. L. 100–525, § 2(h)(1)(D)(ii), substituted semicolon for period at end of first sentence and inserted ''except that 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.''

Subsec. (c)(5)(A). Pub. L. 100–525, § 2(h)(1)(D)(i), inserted ''or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986'' after ''paragraph (6)''.

Subsec. (d)(2)(B)(ii). Pub. L. 100–525, § 2(h)(1)(E)(ii), inserted at end ''Subclause (II) (prohibiting the waiver of section 1182(a)(15) of this title) shall not apply to an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).''

Subsec. (d)(2)(B)(ii)(II). Pub. L. 100–525, § 2(h)(1)(E)(i), struck out ''by an alien other than an alien who is eligible for benefits under title XVI of the Social Security Act or section 212 of Public Law 93–66 for the month in which such alien is granted lawful temporary residence status under subsection (a) of this section'' after ''permanent residence''.

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 3101 of Title 29, Labor.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(B), (2)(J) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(4)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment

by section 101(f) [title VIII, § 405(f)(4)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

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.

Pub. L. 104–208, div. C, title III, § 377(b), Sept. 30, 1996, 110 Stat. 3009–649, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as if included in the enactment of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603].''

Amendment by section 384(d)(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 1160 of this title.

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 219(*l*)(1) of Pub. L. 103–416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 219(dd) of Pub. L. 103–416, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–232, title III, § 307(*l*), Dec. 12, 1991, 105 Stat. 1756, provided that the amendment made by section 307(*l*) is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 603(a)(13) of Pub. L. 101–649 applicable to applications for adjustment of status made on or after June 1, 1991, see section 601(e)(2) of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99–603, see section 2(s) of Pub. L. 100–525, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

REPORT ON CITIZENSHIP OF CERTAIN LEGALIZED ALIENS

Pub. L. 103–416, 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

Pub. L. 101–649, title III, § 301, Nov. 29, 1990, 104 Stat. 5029, as amended by Pub. L. 101–649, title VI, § 603(a)(23), Nov. 29, 1990, 104 Stat. 5084; Pub. L. 103–416, title II, § 206(a), Oct. 25, 1994, 108 Stat. 4311; Pub. L. 104–208, div. C, title III, §§ 308(d)(4)(R), (e)(2)(H), (16), (g)(1), (7)(E)(ii), 383(a), Sept. 30, 1996, 110 Stat. 3009–619 to 3009–622, 3009–624, 3009–652, provided that:

''(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 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 who was provided—

''(A) temporary or permanent residence status under section 210 of the Immigration and Nationality Act [8 U.S.C. 1160],

''(B) temporary or permanent residence status under section 245A of the Immigration and Nationality Act [8 U.S.C. 1255a], or

''(C) permanent residence status under section 202 of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603, set out below].

''(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(h) or 210(f), respectively, of the Immigration and Nationality Act [8 U.S.C. 1255a(h), 1160(f)].

''(e) EXCEPTION FOR CERTAIN ALIENS.—An alien is not eligible for the benefits of this section if the Attorney General finds that—

''(1) the alien has been convicted of a felony or 3 or more misdemeanors in the United States,

''(2) the alien is described in section 208(b)(2)(A) of the Immigration and Nationality Act [8 U.S.C. 1158(b)(2)(A)], or

''(3) [the alien] has committed an act of juvenile delinquency which if committed by an adult would be classified as—

''(A) a felony crime of violence that has an element the use or attempted use of physical force against another individual, or

''(B) 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.

''(f) 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 obtain benefits under this section.

''(g) 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.''

[Pub. L. 104–208, div. C, title III, § 383(b), Sept. 30, 1996, 110 Stat. 3009–652, provided that: ''The amendments made by subsection (a) [amending section 301 of Pub. L. 101–649, set out above] shall apply to benefits granted or extended after the date of the enactment of this Act [Sept. 30, 1996].'']

[Pub. L. 103–416, title II, § 206(b), Oct. 25, 1994, 108 Stat. 4312, provided that: ''The amendment made by subsection (a) [amending section 301 of Pub. L. 101–649, set out above] shall be deemed to have become effective as of October 1, 1991.'']

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 245A(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)(6), (d), (f), (g), (h), and (i) of section 245A of the Immigration and Nationality Act (8 U.S.C. 1255a) shall apply to aliens provided temporary residence under subsection (a) in the same manner as they apply to aliens provided lawful temporary residence status under section 245A(a) of such Act.''

Similar provisions were contained in Pub. L. 100–202, § 101(a) [title IX, §§ 901, 902], Dec. 22, 1987, 101 Stat. 1329, 1329–43.

PROCEDURES FOR PROPERTY ACQUISITION OR LEASING

Pub. L. 99–603, 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 sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) 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 expend 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. 99–603, which enacted this section and amended sections 602, 672, and 673 of Title 42, The Public Health and Welfare.

USE OF RETIRED FEDERAL EMPLOYEES

Pub. L. 99–603, title II, § 201(c)(2), Nov. 6, 1986, 100 Stat. 3403, as amended by Pub. L. 100–525, § 2(h)(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 602, 672, and 673 of Title 42, The Public Health and Welfare]. The 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. 99–603, title II, § 202, Nov. 6, 1986, 100 Stat. 3404, as amended by Pub. L. 100–525, § 2(i), 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

Pub. L. 99–603, title II, § 204, Nov. 6, 1986, 100 Stat. 3405, as amended by Pub. L. 100–525, § 2(k), Oct. 24, 1988, 102 Stat. 2612; Pub. L. 101–166, title II, Nov. 21, 1989, 103 Stat. 1174; Pub. L. 101–238, § 6(a), Dec. 18, 1989, 103 Stat. 2104; Pub. L. 101–517, title II, Nov. 5, 1990, 104 Stat. 2206; Pub. L. 102–170, title II, Nov. 26, 1991, 105 Stat. 1124; Pub. L. 102–394, title II, Oct. 6, 1992, 106 Stat. 1808; Pub. L. 103–333, title II, Sept. 30, 1994, 108 Stat. 2558; Pub. L. 103–416, title II, § 219(cc), Oct. 25, 1994, 108 Stat. 4319; Pub. L. 104–208, div. C, title VI, § 671(b)(9), (d)(2), Sept. 30, 1996, 110 Stat. 3009–722, 3009–723, related to State legalization impact-assistance grants and appropriation of funds, prior to repeal by Pub. L. 105–220, title I, § 199(a)(1), Aug. 7, 1998, 112 Stat. 1058.

APPLICATION OF CERTAIN STATE ASSISTANCE PROVISIONS

Pub. L. 99–603, title III, § 303(c), Nov. 6, 1986, 100 Stat. 3431, defined ''eligible legalized alien'' relative to State legalization assistance, prior to repeal by Pub. L. 100–525, § 2(n)(3), Oct. 24, 1988, 102 Stat. 2613.

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 relating to second report described in section 404(c) delegated to Secretary of Labor by sections 1(c) and 2(c) of Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, set out as a note under section 1364 of this title.]

§ 1255b. Adjustment of status of certain nonimmigrants to that of persons admitted for permanent residence

Notwithstanding any other provision of law—

(a) Application

Any alien admitted to the United States as a nonimmigrant under the provisions of either section 101(a)(15)(A)(i) or (ii) or 101(a)(15)(G)(i) or (ii) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(A)(i), (ii), (G)(i), (ii)], who has failed to maintain a status under any of those provisions, may apply to the Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.

(b) Record of admission

If, after consultation with the Secretary of State, it shall appear to the satisfaction of the Attorney General that the alien has shown compelling reasons demonstrating both that the alien is unable to return to the country represented by the government which accredited the alien or the member of the alien's immediate family and that adjustment of the alien's status to that of an alien lawfully admitted for permanent residence would be in the national interest, that the alien is a person of good moral character, that he is 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 the quota of the quota area to which the alien is chargeable under section 202 of the Immigration and Nationality Act [8 U.S.C. 1152] for the fiscal year then current or the next following year in which a quota is available. No quota shall be so reduced by more than 50 per centum in any fiscal year.

(d) Limitations

The number of aliens who may be granted the status of aliens lawfully admitted for permanent residence in any fiscal year, pursuant to this section, shall not exceed fifty.

(Pub. L. 85–316, §13, Sept. 11, 1957, 71 Stat. 642; Pub. L. 97–116, §17, Dec. 29, 1981, 95 Stat. 1619; Pub. L. 100–525, §9(kk), Oct. 24, 1988, 102 Stat. 2622; Pub. L. 103–416, title II, §207, Oct. 25, 1994, 108 Stat. 4312; Pub. L. 104–208, div. C, title VI, §671(b)(4), Sept. 30, 1996, 110 Stat. 3009–721.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (b), is act June 27, 1952, ch. 477, 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.

CODIFICATION

Section was not enacted as a part of the Immigration and Nationality Act which comprises this chapter.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–208 made technical amendment to directory language of Pub. L. 103–416, §207(2). See 1994 Amendment note below.

1994—Subsec. (c). Pub. L. 103–416, §207(1), struck out after second sentence ''If, during the session of the Congress at which a case is reported, or prior to the close of the session of Congress next following the session at which a case is reported, either the Senate or the House of Representatives passes a resolution stating in substance that it does not favor the adjustment of status of such alien, the Attorney General shall thereupon require the departure of such alien in the manner provided by law.''

Pub. L. 103–416, §207(2), as amended by Pub. L. 104–208, substituted ''The'' for ''If neither the Senate nor the House of Representatives passes such a resolution within the time above specified, the''.

1988—Subsec. (b). Pub. L. 100–525 struck out ''of'' after ''as of the date''.

1981—Subsec. (b). Pub. L. 97–116 inserted provision requiring that the alien has shown compelling reasons demonstrating both that the alien is unable to return to the country represented by the government which accredited the alien or the member of the alien's immediate family and that adjustment of the alien's status to that of an alien lawfully admitted for permanent residence would be in the national interest.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective as if included in the enactment of the Immigration and Nationality Technical Corrections 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.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97–116, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

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. Rescission of adjustment of status; effect upon naturalized citizen

(a) If, at any time within five years after the status of a person has been otherwise adjusted under the provisions of section 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.

(June 27, 1952, ch. 477, title II, ch. 5, § 246, 66 Stat. 217; Pub. L. 103–416, title II, § 219(m), Oct. 25, 1994, 108 Stat. 4317; Pub. L. 104–208, div. C, title III, §§ 308(e)(1)(H), 378(a), Sept. 30, 1996, 110 Stat. 3009–619, 3009–649.)

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 be subject to all provisions of this chapter to the same extent as if the adjustment of status had not been made.''

EFFECTIVE DATE OF 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

Pub. L. 103–416, title II, § 219(m), Oct. 25, 1994, 108 Stat. 4317, provided that the amendment made by section 219(m) is effective as of 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.

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, 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 subsection (a) shall not be applicable in the case of any alien who requests that he be permitted to retain his status as an immigrant and who, in such form as the Attorney General may require, executes and files with the Attorney General a written waiver of all rights, privileges, exemptions, and immunities under any law or any executive order which would otherwise accrue to him because of the acquisition of an occupational status entitling him to a nonimmigrant status under paragraph (15)(A), (E), or (G) of section 1101(a) of this title.

(June 27, 1952, ch. 477, title II, ch. 5, § 247, 66 Stat. 218; Pub. L. 104–208, div. C, title III, § 308(f)(1)(P), Sept. 30, 1996, 110 Stat. 3009–621.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208 substituted ''time of admission'' for ''time of entry''.

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.

§ 1258. Change of nonimmigrant classification

(a) The Secretary of Homeland Security may, under such conditions as he may prescribe, authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status and who is not inadmissible under section 1182(a)(9)(B)(i) of this title (or whose inadmissibility under such section is waived under section 1182(a)(9)(B)(v) of this title), except (subject to subsection (b)) in the case of—

(1) an alien classified as a nonimmigrant under subparagraph (C), (D), (K), or (S) of section 1101(a)(15) of this title,

(2) an alien classified as a nonimmigrant under subparagraph (J) of section 1101(a)(15) of this title who came to the United States or acquired such classification in order to receive graduate medical education or training,

(3) an alien (other than an alien described in paragraph (2)) classified as a nonimmigrant under subparagraph (J) of section 1101(a)(15) of this title who is subject to the two-year foreign residence requirement of section 1182(e) 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.

(June 27, 1952, ch. 477, title II, ch. 5, § 248, 66 Stat. 218; Pub. L. 87–256, § 109(d), Sept. 21, 1961, 75 Stat. 535; Pub. L. 97–116, § 10, Dec. 29, 1981, 95 Stat. 1617; Pub. L. 99–603, title III, § 313(d), Nov. 6, 1986, 100 Stat. 3439; Pub. L. 103–322, title XIII, § 130003(b)(3), Sept. 13, 1994, 108 Stat. 2025; Pub. L. 104–208, div. C, title III, § 301(b)(2), title VI, § 671(a)(2), Sept. 30, 1996, 110 Stat. 3009–578, 3009–721; Pub. L. 109–162, title VIII, § 821(c)(1), Jan. 5, 2006, 119 Stat. 3062.)

AMENDMENTS

2006—Pub. L. 109–162 designated existing provisions as subsec. (a), substituted ''Secretary of Homeland Security'' for ''Attorney General'', inserted ''(subject to subsection (b))'' after ''except'' in introductory provisions, and added subsec. (b).

1996—Pub. L. 104–208, § 301(b)(2), in introductory provisions, inserted ''and who is not inadmissible under section 1182(a)(9)(B)(i) of this title (or whose inadmissibility under such section is waived under section 1182(a)(9)(B)(v) of this title)'' after ''maintain that status''.

Par. (1). Pub. L. 104–208, § 671(a)(2), made technical amendment to directory language of Pub. L. 103–322, § 130003(b)(3). See 1994 Amendment note below.

1994—Par. (1). Pub. L. 103–322, § 130003(b)(3), as amended by Pub. L. 104–208, § 671(a)(2), substituted ''(K), or (S)'' for ''or (K)''.

1986—Par. (4). Pub. L. 99–603 added par. (4).

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.

Amendment by section 671(a)(2) of Pub. L. 104–208 effective as if included in the enactment of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, see section 671(a)(7) of Pub. L. 104–208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97–116, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

§ 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.

(June 27, 1952, ch. 477, title II, ch. 5, § 249, 66 Stat. 219; Pub. L. 85–616, Aug. 8, 1958, 72 Stat. 546; Pub. L. 89–236, § 19, Oct. 3, 1965, 79 Stat. 920; Pub. L. 99–603, title II, § 203(a), Nov. 6, 1986, 100 Stat. 3405; Pub. L. 100–525, § 2(j), Oct. 24, 1988, 102 Stat. 2612; Pub. L. 101–649, title VI, § 603(a)(14), Nov. 29, 1990, 104 Stat. 5083; Pub. L. 104–132, title IV, § 413(e), Apr. 24, 1996, 110 Stat. 1269; Pub. L. 104–208, div. C, title III, § 308(g)(10)(C), Sept. 30, 1996, 110 Stat. 3009–625.)

AMENDMENTS

1996—Par. (d). Pub. L. 104–208 substituted ''section 1227(a)(4)(B)'' for ''section 1251(a)(4)(B)''.

Pub. L. 104–132 inserted ''and is not deportable under section 1251(a)(4)(B) of this title'' after ''ineligible to citizenship''.

1990—Pub. L. 101–649 substituted ''1182(a)(3)(E)'' for ''1182(a)(33)''.

1988—Pub. L. 100–525 amended Pub. L. 99–603. See 1986 Amendment note below.

1986—Pub. L. 99–603, as amended by Pub. L. 100–525, inserted ''under section 1182(a)(33) of this title or'' in introductory provisions and substituted ''January 1, 1972'' for ''June 30, 1948'' in section heading and in par. (a).

1965—Pub. L. 89–236 substituted ''June 30, 1948'' for ''June 28, 1940''.

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 309 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

Amendment by Pub. L. 100–525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99–603, see section 2(s) of Pub. L. 100–525, 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.

APPLICABILITY OF NUMERICAL LIMITATIONS

Pub. L. 99–603, title II, § 203(c), Nov. 6, 1986, 100 Stat. 3405, provided that: ''The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act [8 U.S.C. 1151, 1152] shall not apply to aliens provided lawful permanent resident status under section 249 of that Act [8 U.S.C. 1259].''

§ 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 references, see note set out under section 1551 of this title.

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 thereof to deliver to an immigration officer at the port of arrival (1) a complete, true, and correct list containing the names of all aliens employed on such vessel or aircraft, the positions they respectively hold in the crew of the vessel or aircraft, when and where they were respectively shipped or engaged, and those to be paid off or discharged in the port of arrival; or (2) in the discretion of the Attorney General, such a list containing so much of such information, or such additional or supplemental information, as the Attorney General shall by regulations prescribe. In the case of a vessel engaged solely in traffic on the Great Lakes, Saint Lawrence River, and connecting waterways, such lists shall be furnished at such times as the Attorney General may require.

(b) Reports of illegal landings

It shall be the duty of any owner, agent, consignee, master, or commanding officer of any vessel or aircraft to report to an immigration officer, in writing, as soon as discovered, all cases in which any alien crewman has illegally landed in the United States from the vessel or aircraft, together with a description of such alien and any information likely to lead to his apprehension.

(c) Departure; submission of list; exceptions

Before the departure of any vessel or aircraft from any port in the United States, it shall be the duty of the owner, agent, consignee, master, or commanding officer thereof, to deliver to an immigration officer at that port (1) a list containing the names of all alien employees who were not employed thereon at the time of the arrival at that port but who will leave such port thereon at the time of the departure of such vessel or aircraft and the names of those, if any, who have been paid off or discharged, and of those, if any, who have deserted or landed at that port, or (2) in the discretion of the Attorney General, such a list containing so much of such information, or such additional or supplemental information, as the Attorney General shall by regulations prescribe. In the case of a vessel engaged solely in traffic on the Great Lakes, Saint Lawrence River, and connecting waterways, such lists shall be furnished at such times as the Attorney General may require.

(d) Violations

In case any owner, agent, consignee, master, or commanding officer shall fail to deliver complete, true, and correct lists or reports of aliens, or to report cases of desertion or landing, as required by subsections (a), (b), and (c), 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. No such vessel or aircraft shall be granted clearance from any port at which it arrives pending the determination of the question of the liability to the payment of such fine, and if such fine is imposed, while it remains unpaid. No such fine shall be remitted or refunded. Clearance may be granted prior to the determination of such question upon deposit of a bond or a sum sufficient to cover such fine.

(e) Regulations

The Attorney General is authorized to prescribe by regulations the circumstances under which a vessel or aircraft shall be deemed to be arriving in, or departing from the United States or any port thereof within the meaning of any provision of this part.

(June 27, 1952, ch. 477, title II, ch. 6, § 251, 66 Stat. 219; Pub. L. 101–649, title II, § 203(b), Nov. 29, 1990, 104 Stat. 5018; Pub. L. 102–232, title III, § 303(a)(3), Dec. 12, 1991, 105 Stat. 1746.)

AMENDMENTS

1991—Subsec. (d). Pub. L. 102–232 substituted ''consignee'' for ''charterer'' after ''the owner, agent,'' in second sentence.

1990—Subsec. (d). Pub. L. 101–649 substituted ''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 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, charterer, master, or commanding officer shall pay to the Commissioner the sum of $5,000, and such fine shall be a lien against the vessel.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 applicable to services performed on or after 180 days after Nov. 29, 1990, see section 203(d) of Pub. L. 101–649, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

INAPPLICABILITY OF AMENDMENT BY PUB. L. 101–649

Amendment by section 203(b) of Pub. L. 101–649 not to affect performance of longshore work in United States