1965—Subsec. (a). Pub. L. 89–236 restated requirement of an unexpired visa and passport for every immigrant arriving in United States to conform to the changes with respect to the classification of immigrant visas.

Subsec. (b). Pub. L. 89–236 substituted “returning resident immigrants, defined in section 1101(a)(27)(B) of this title, who are otherwise admissible”, for “otherwise admissible aliens lawfully admitted for permanent residence who depart from the United States temporarily”.

Subsec. (c). Pub. L. 89–236 repealed subsec. (c) which gave Attorney General discretionary authority to admit aliens who arrive in United States with defective visas under specified conditions.

Subsec. (d). Pub. L. 89–236 repealed subsec. (d) which imposed restrictions on exercise of Attorney General’s discretion to admit aliens arriving with defective visas.

Subsec. (e). Pub. L. 89–236 repealed subsec. (e) which required every alien making application for admission as an immigrant to present the documents required under regulations issued by Attorney General.

Statutory Notes and Related Subsidiaries

Effective Date of 1990 Amendment

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

Effective Date of 1980 Amendment


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.

§ 1182. Inadmissible aliens

(a) Classes of aliens ineligble for visas or admission

Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

1 Health-related grounds

(A) In general

Any alien—

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance;\(^1\)

(ii) except as provided in subparagraph (C), who seeks admission as an immigrant, or who seeks adjustment of status to the

\(^1\)So in original. The semicolon probably should be a comma.

status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices,

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict,

is inadmissible.

(B) Waiver authorized

For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

(C) Exception from immunization requirement for adopted children 10 years of age or younger

Clause (ii) of subparagraph (A) shall not apply to a child who—

(i) is 10 years of age or younger;

(ii) is described in subparagraph (F) or (G) of section 1101(b)(1) of this title;\(^1\) and

(iii) is seeking an immigrant visa as an immediate relative under section 1151(b) of this title,

if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the provisions of subparagraph (A)(ii) and will ensure that, within 30 days of the child’s admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in such subparagraph.

(2) Criminal and related grounds

(A) Conviction of certain crimes

(i) In general

Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—
(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21), is inadmissible.

(ii) Exception
Clause (i)(I) shall not apply to an alien who committed only one crime if—
(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or
(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) Multiple criminal convictions
Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

(C) Controlled substance traffickers
Any alien who the consular officer or the Attorney General knows or has reason to believe—
(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 802 of title 21), or is or has been a knowing aider, abettor, or assister, conspirator, or co-conspirator with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or
(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(D) Prostitution and commercialized vice
Any alien who—
(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,
(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or
(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution, is inadmissible.

(E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution
Any alien—
(i) who has committed in the United States at any time a serious criminal offense (as defined in section 1101(h) of this title),
(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,
(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and
(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense, is inadmissible.

(F) Waiver authorized
For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).

(G) Foreign government officials who have committed particularly severe violations of religious freedom
Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 6402 of title 22, is inadmissible.

(H) Significant traffickers in persons
(i) In general
Any alien who commits or conspires to commit human trafficking offenses in the United States or outside the United States, or who the consular officer, the Secretary of Homeland Security, the Secretary of State, or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or co-conspirator with such a trafficker in severe forms of trafficking in persons, as defined in the section 7102 of title 22, is inadmissible.

(ii) Beneficiaries of trafficking
Except as provided in clause (iii), any alien who the consular officer or the At-
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(3) Security and related grounds

(i) Money laundering

Any alien—
(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage solely, principally, or incidentally in—

(i) any activity (I) to violate any law of the United States relating to espionage or sabotage or (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other unlawful activity, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is inadmissible.

(B) Terrorist activities

(i) In general

Any alien who—
(I) has engaged in a terrorist activity; (II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reason to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv)); (III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity; (IV) is a representative (as defined in clause (vi)) of—

(aa) a terrorist organization (as defined in clause (vi)); or

(bb) a political, social, or other group that endorses or espouses terrorist activity;

(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

(VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or

(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years,

is inadmissible. An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this chapter, to be engaged in a terrorist activity.

(ii) Exception

Subclause (IX) of clause (i) does not apply to a spouse or child—
(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.

(iii) “Terrorist activity” defined

As used in this chapter, the term “terrorist activity” means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18) or upon the liberty of such a person.
(IV) An assassination.
(V) The use of any—
   (a) biological agent, chemical agent, or nuclear weapon or device, or
   (b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain),
with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.
(VI) A threat, attempt, or conspiracy to do any of the foregoing.

(iv) “Engage in terrorist activity” defined
As used in this chapter, the term “engage in terrorist activity” means, in an individual capacity or as a member of an organization—
   (I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;
   (II) to prepare or plan a terrorist activity;
   (III) to gather information on potential targets for terrorist activity;
   (IV) to solicit funds or other things of value for—
       (aa) a terrorist activity;
       (bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or
       (cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;
   (V) to solicit any individual—
       (aa) to engage in conduct otherwise described in this subsection;
       (bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or
       (cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;
   (VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—
       (aa) for the commission of a terrorist activity;
       (bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;
       (cc) to a terrorist organization described in subclause (I) or (II) of clause (vi) or to any member of such an organization; or
       (dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.

(v) “Representative” defined
As used in this paragraph, the term “representative” includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

(vi) “Terrorist organization” defined
As used in this section, the term “terrorist organization” means an organization—
   (I) designated under section 1189 of this title;
   (II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv); or
   (III) that is a group of two or more individuals whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).

(C) Foreign policy
(i) In general
An alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is inadmissible.

(ii) Exception for officials
An alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office during the period immediately preceding the election for that office, shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) solely because of the alien’s past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States.

(iii) Exception for other aliens
An alien, not described in clause (ii), shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) because of the alien’s past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States, unless the Secretary of State personally deter-
mine that the alien’s admission would compromise a compelling United States foreign policy interest.

(iv) Notification of determinations

If a determination is made under clause (iii) with respect to an alien, the Secretary of State must notify on a timely basis the chairman of the Committees on the Judiciary and Foreign Affairs of the House of Representatives and of the Committees on the Judiciary and Foreign Relations of the Senate of the identity of the alien and the reasons for the determination.

(D) Immigrant membership in totalitarian party

(i) In general

Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.

(ii) Exception for involuntary membership

Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that the membership or affiliation is involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.

(iii) Exception for past membership

Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that—

(I) the membership or affiliation terminated at least—

(a) 2 years before the date of such application, or

(b) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and

(II) the alien is not a threat to the security of the United States.

(iv) Exception for close family members

The Attorney General may, in the Attorney General’s discretion, waive the application of clause (i) in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son, or daughter of an alien lawfully admitted for permanent residence for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the immigrant is not a threat to the security of the United States.

(E) Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing

(i) Participation in Nazi persecutions

Any alien who, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(I) the Nazi government of Germany,

(II) any government in any area occupied by the military forces of the Nazi government of Germany,

(III) any government established with the assistance or cooperation of the Nazi government of Germany, or

(IV) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion is inadmissible.

(ii) Participation in genocide

Any alien who ordered, incited, assisted, or otherwise participated in genocide, as defined in section 1091(a) of title 18, is inadmissible.

(iii) Commission of acts of torture or extrajudicial killings

Any alien who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of—

(I) any act of torture, as defined in section 2340 of title 18; or

(II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note),

is inadmissible.

(F) Association with terrorist organizations

Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.

(G) Recruitment or use of child soldiers

Any alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18 is inadmissible.

(4) Public charge

(A) In general

Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

(B) Factors to be taken into account

(i) In determining whether an alien is inadmissible under this paragraph, the con-
cular officer or the Attorney General shall at a minimum consider the alien’s—

(I) age;
(II) health;
(III) family status;
(IV) assets, resources, and financial status; and
(V) education and skills.

(ii) In addition to the factors under clause (i), the consular officer or the Attorney General may also consider any affidavit of support under section 1183a of this title for purposes of exclusion under this paragraph.

(C) Family-sponsored immigrants

Any alien who seeks admission or adjustment of status under a visa number issued under section 1151(b)(2) or 1153(a) of this title is inadmissible under this paragraph unless—

(i) the alien has obtained—
(I) status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 1154(a)(1)(A) of this title;
(II) classification pursuant to clause (ii) or (iii) of section 1154(a)(1)(B) of this title; or
(III) classification or status as a VAWA self-petitioner;

(ii) the person petitioning for the alien’s admission (and any additional sponsor required under section 1153(a)(3)(A) of this title or any alternative sponsor permitted under paragraph (5)(B) of such section) has executed an affidavit of support described in section 1183a of this title with respect to such alien.

(D) Certain employment-based immigrants

Any alien who seeks admission or adjustment of status under a visa number issued under section 1153(b) of this title by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is inadmissible under this paragraph unless such relative has executed an affidavit of support described in section 1183a of this title with respect to such alien.

(E) Special rule for qualified alien victims

Subparagraphs (A), (B), and (C) shall not apply to an alien who—

(i) is a VAWA self-petitioner;

(ii) is an applicant for, or is granted, nonimmigrant status under section 1101(a)(15)(U) of this title; or

(iii) is a qualified alien described in section 1641(c) of this title.

(5) Labor certification and qualifications for certain immigrants

(A) Labor certification

(i) In general

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(ii) Certain aliens subject to special rule

For purposes of clause (i)(I), an alien described in this clause is an alien who—

(I) is a member of the teaching profession, or

(II) has exceptional ability in the sciences or the arts.

(iii) Professional athletes

(I) In general

A certification made under clause (i) with respect to a professional athlete shall remain valid with respect to the athlete after the athlete changes employer, if the new employer is a team in the same sport as the team which employed the athlete when the athlete first applied for the certification.

(II) “Professional athlete” defined

For purposes of subclause (I), the term “professional athlete” means an individual who is employed as an athlete by—

(aa) a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed $10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(bb) any minor league team that is affiliated with such an association.

(iv) Long delayed adjustment applicants

A certification made under clause (i) with respect to an individual whose petition is covered by section 1154(j) of this title shall remain valid with respect to a new job accepted by the individual after the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the certification was issued.

(B) Unqualified physicians

An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien (I) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health
and Human Services) and (ii) is competent in oral and written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C) Uncertified foreign health-care workers

Subject to subsection (c), any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is inadmissible unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that—

(i) the alien's education, training, license, and experience—

(I) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application; (II) are comparable with that required for an American health-care worker of the same type; and (III) are authentic and, in the case of a license, unencumbered;

(ii) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and (iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test or has passed such an examination.

For purposes of clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review.

(D) Application of grounds

The grounds for inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 1153(b) of this title.

(6) Illegal entrants and immigration violators

(A) Aliens present without admission or parole

(i) In general

An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

(ii) Exception for certain battered women and children

Clause (i) shall not apply to an alien who demonstrates that—

(I) the alien is a VAWA self-petitioner; (II)(a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or (b) the alien's child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and (III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States.

(B) Failure to attend removal proceeding

Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

(C) Misrepresentation

(i) In general

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

(ii) Falsely claiming citizenship

(I) In general

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter (including section 1324a of this title) or any other Federal or State law is inadmissible.

(II) Exception

In the case of an alien making a representation described in subclause (I), if
each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

(iii) Waiver authorized
For provision authorizing waiver of clause (i), see subsection (i).

(D) Stowaways
Any alien who is a stowaway is inadmissible.

(E) Smugglers

(i) In general
Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

(ii) Special rule in the case of family reunification
Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien’s spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) Waiver authorized
For provision authorizing waiver of clause (i), see subsection (d)(11).

(F) Subject of civil penalty

(i) In general
An alien who is the subject of a final order for violation of section 1324c of this title is inadmissible.

(ii) Waiver authorized
For provision authorizing waiver of clause (i), see subsection (d)(12).

(G) Student visa abusers
An alien who obtains the status of a nonimmigrant under section 1101(a)(15)(F)(i) of this title and who violates a term or condition of such status under section 1184(f) of this title is inadmissible until the alien has been outside the United States for a continuous period of 5 years after the date of the violation.

(7) Documentation requirements

(A) Immigrants

(i) In general
Except as otherwise specifically provided in this chapter, any immigrant at the time of application for admission—

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181(a) of this title, or

(II) whose visa has been issued without compliance with the provisions of section 1153 of this title, is inadmissible.

(ii) Waiver authorized
For provision authorizing waiver of clause (i), see subsection (k).

(B) Nonimmigrants

(i) In general
Any nonimmigrant who—

(I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien’s admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period, or

(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission, is inadmissible.

(ii) General waiver authorized
For provision authorizing waiver of clause (i), see subsection (d)(4).

(iii) Guam and Northern Mariana Islands visa waiver
For provision authorizing waiver of clause (i) in the case of visitors to Guam or the Commonwealth of the Northern Mariana Islands, see subsection (l).

(iv) Visa waiver program
For authority to waive the requirement of clause (i) under a program, see section 1187 of this title.

(8) Ineligible for citizenship

(A) In general
Any immigrant who is permanently ineligible to citizenship is inadmissible.

(B) Draft evaders
Any person who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national...
emergency is inadmissible, except that this subparagraph shall not apply to an alien who at the time of such departure was a non-immigrant and who is seeking to reenter the United States as a non-immigrant.  

(9) Aliens previously removed  

(A) Certain aliens previously removed  

(i) Arriving aliens  

Any alien who has been ordered removed under section 1225(b)(1) of this title or at the end of proceedings under section 1229a of this title initiated upon the alien’s arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.  

(ii) Other aliens  

Any alien not described in clause (i) who—  

(I) has been ordered removed under section 1229a of this title or any other provision of law, or  

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien’s departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.  

(iii) Exception  

Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien’s reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien’s reapplying for admission.  

(B) Aliens unlawfully present  

(i) In general  

Any alien (other than an alien lawfully admitted for permanent residence) who—  

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) of this title or section 1229a of this title, and again seeks admission within 3 years of the date of such alien’s departure or removal, or  

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien’s departure or removal from the United States, is inadmissible.  

(ii) Construction of unlawful presence  

For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.  

(iii) Exceptions  

(I) Minors  

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).  

(II) Asylees  

No period of time in which an alien has a bona fide application for asylum pending under section 1158 of this title shall be taken into account in determining the period of unlawful presence in the United States under clause (i).  

(III) Family unity  

No period of time in which the alien is a beneficiary of family unity protection pursuant to section 301 of the Immigration Act of 1990 shall be taken into account in determining the period of unlawful presence in the United States under clause (i).  

(IV) Battered women and children  

Clause (i) shall not apply to an alien who demonstrates that the severe form of trafficking (as that term is defined in section 7102 of title 22) was at least one central reason for the alien’s unlawful presence in the United States.  

(iv) Tolling for good cause  

In the case of an alien who—  

(I) has been lawfully admitted or paroled into the United States,  

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and  

(III) has not been employed without authorization in the United States before or during the pendency of such application, the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

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3So in original. Probably should be a reference to section 1229c of this title.
(v) Waiver

The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

(C) Aliens unlawfully present after previous immigration violations

(i) In general

Any alien who—
(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
(II) has been ordered removed under section 1229a(b)(1) of this title, section 1229a of this title, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception

Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien’s last departure from the United States if, prior to the alien’s departure, the alien consented to the alien being reembarked at a place outside the United States or attempt to be reembarked from the United States if, prior to the alien’s last departure from the United States, reentry or reentries into the United States were permitted to return to the United States or such person’s place of residence.

(iii) Waiver

The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between—
(I) the alien’s battering or subjection to extreme cruelty; and
(II) the alien’s removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

(10) Miscellaneous

(A) Practicing polygamists

Any immigrant who is coming to the United States to practice polygamy is inadmissible.

(B) Guardian required to accompany helpless alien

Any alien—
(I) who is accompanying another alien who is inadmissible and who is certified to be helpless from sickness, mental or physical disability, or infancy pursuant to section 1222(c) of this title, and
(II) whose protection or guardianship is determined to be required by the alien described in clause (i), is inadmissible.

(C) International child abduction

(i) In general

Except as provided in clause (ii), any alien who, after entry of an order by a court in the United States granting custody to a person of a United States citizen child who detains or retains the child, or withholds custody of the child, outside the United States from the person granted custody by that order, is inadmissible until the child is surrendered to the person granted custody by that order.

(ii) Aliens supporting abductors and relatives of abductors

Any alien who—
(I) is known by the Secretary of State to have intentionally assisted an alien in the conduct described in clause (i),
(II) is known by the Secretary of State to be intentionally providing material support or safe haven to an alien described in clause (i), or
(III) is a spouse (other than the spouse who is the parent of the abducted child), child (other than the abducted child), parent, sibling, or agent of an alien described in clause (i), if such person has been designated by the Secretary of State at the Secretary’s sole and unreviewable discretion, is inadmissible until the child described in clause (i) is surrendered to the person granted custody by the order described in that clause, and such person and child are permitted to return to the United States or such person’s place of residence.

(iii) Exceptions

Clauses (i) and (ii) shall not apply—
(I) to a government official of the United States who is acting within the scope of his or her official duties;
(II) to a government official of any foreign government if the official has been designated by the Secretary of State at the Secretary’s sole and unreviewable discretion; or
(III) so long as the child is located in a foreign state that is a party to the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.

(D) Unlawful voters

(i) In general

Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible.

(ii) Exception

In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturaliza-
§ 1182

(1) Subject to paragraphs (2) and (3), if an alien’s application for a visa, for admission to the United States, or for adjustment of status is denied by an immigration or consular officer because the officer determines the alien to be inadmissible under subsection (a), the officer shall provide the alien with a timely written notice that —

(A) states the determination, and

(B) lists the specific provision or provisions of law under which the alien is inadmissible or adjustment of status.

(2) The Secretary of State may waive the requirements of paragraph (1) with respect to a particular alien or any class or classes of inadmissible aliens.

(3) Paragraph (1) does not apply to any alien inadmissible under paragraph (2) or (3) of subsection (a).


(d) Temporary admission of nonimmigrants

(1) The Attorney General shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(S) of this title. The Attorney General, in the Attorney General’s discretion, may waive the application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 1101(a)(15)(S) of this title, if the Attorney General considers it to be in the national interest to do so. Nothing in this section shall be regarded as prohibiting the Immigration and Naturalization Service from instituting removal proceedings against an alien admitted as a nonimmigrant under section 1101(a)(15)(S) of this title for conduct committed after the alien’s admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien’s admission as a nonimmigrant under section 1101(a)(15)(S) of this title.


(3)(A) Except as provided in this subsection, an alien (i) who is applying for a nonimmigrant visa and is known or believed by the consular officer to be ineligible for such visa under subsection (a) (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), may, after approval by the Attorney General of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General, or (ii) who is inadmissible under subsection (a) (other than paragraphs (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and clauses (i) and (ii) of paragraph (3)(E) of such subsection), but who is in possession of appropriate documents or is granted a waiver thereof and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant in the discretion of the Attorney General. The Attorney General shall prescribe conditions, including the scope of such bonds as may be necessary, to control and regulate the admission and return of inadmissible aliens applying for temporary admission under this paragraph.

(B)(i) The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may determine in such Secretary’s sole discretion that subsection (a)(3)(B) shall not apply with respect to an alien within the scope of that subsection or that subsection (a)(3)(B)(vi) shall not apply to a group within the scope of that subsection, except that no such waiver may be extended to an alien who is within the scope of subsection (a)(3)(B)(vi), no such waiver may be extended to an alien who is a member or representative of, has voluntarily and knowingly engaged in or endorsed or espoused or persuaded others to endorse or espouse support terrorist activity on behalf of, or has voluntarily and knowingly received military-type training from a terrorist organization that is described in subsection (a)(3)(B)(vi), and no such waiver may be extended to a group that has engaged terrorist activity against the United States or another democratic country or that has purposefully engaged in a pattern or practice of terrorist activity that is directed at civilians. Such a determination shall neither prejudice the ability of the United States Government to commence criminal or civil proceedings involving a beneficiary of such a determination or any other person, nor create any substantive or procedural right or benefit for a beneficiary of such a determination or any other person. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 361 and 1651 of such title, no court shall have jurisdiction to review such a determination or revocation except in a proceeding for review of a final order of removal pursuant to section 1252 of this title, and review shall be limited to the extent provided in section 1229a(a)(2)(D). The Secretary of State may not exercise the discretion provided in this clause with respect to an alien at any time during which the alien is the subject of pending removal proceedings under section 1229a of this title.
(ii) Not later than 90 days after the end of each fiscal year, the Secretary of State and the Secretary of Homeland Security shall each provide to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on International Relations of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Homeland Security of the House of Representatives a report on the aliens to whom such Secretary has applied clause (i). Within one week of applying clause (i) to a group, the Secretary of State or the Secretary of Homeland Security shall provide a report to such Committees.

(4) Either or both of the requirements of paragraph (7)(B)(i) of subsection (a) may be waived by the Attorney General and the Secretary of State acting jointly (A) on the basis of unforeseen emergency in individual cases, or (B) on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals, or (C) in the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in section 1223(c) of this title.

(5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 1157 of this title.


(7) The provisions of subsection (a) (other than paragraph (7)) shall be applicable to any alien who shall leave Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States. The Attorney General shall by regulations provide a method and procedure for the temporary admission to the United States of the aliens described in this proviso. Any alien described in this paragraph, who is denied admission to the United States, shall be immediately removed in the manner provided by section 1231(c) of this title.

(8) Upon a basis of reciprocity accredited officials of foreign governments, their immediate families, attendants, servants, and personal employees may be admitted in immediate and continuous transit through the United States without regard to the provisions of this section except paragraphs (3)(A), (3)(B), (3)(C), and (7)(B) of subsection (a) of this section.


(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 1182(b) of this title and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 1153(a) of this title (other than paragraph (4) thereof). If the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien’s spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(12) The Attorney General may, in the discretion of the Attorney General for humanitarian purposes or to assure family unity, waive application of clause (i) of subsection (a)(6)(F)—

(A) in the case of an alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation or removal and who is otherwise admissible to the United States as a returning resident under section 1182(b) of this title, and

(B) in the case of an alien seeking admission or adjustment of status under section 1151(b)(2)(A) of this title or under section 1153(a) of this title, if no previous civil money penalty was imposed against the alien under section 1324c of this title and the offense was committed solely to assist, aid, or support the alien’s spouse or child (and not another individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this paragraph.

(13)(A) The Secretary of Homeland Security shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(T) of this title, except that the ground for inadmissibility described in subsection (a)(4) shall not apply with respect to such a nonimmigrant.

(B) In addition to any other waiver that may be available under this section, in the case of a nonimmigrant described in section 1101(a)(15)(T) of this title, if the Secretary of Homeland Security considers it to be in the national interest to do so, the Secretary of Homeland Security, in the Attorney General’s discretion, may waive the application of—

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So in original. Probably should be “Secretary’s”.

So in original.
(i) subsection (a)(1); and
(ii) any other provision of subsection (a) (excluding paragraphs (3), (4), (10)(C), and (10)(E)) if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 1101(a)(15)(T)(i)(I) of this title.

(14) The Secretary of Homeland Security shall determine whether a ground of inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(U) of this title. The Secretary of Homeland Security, in the Attorney General’s discretion, may waive the application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 1101(a)(15)(U) of this title, if the Secretary of Homeland Security considers it to be in the public interest to do so.

(e) Educational visitor status; foreign residence requirement; waiver

No person admitted under section 1101(a)(15)(J) of this title or acquiring such status after admission (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or last residence, (ii) who at the time of admission or acquisition of status under section 1101(a)(15)(J) of this title was a national or resident of a country which the Director of the United States Information Agency, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 1101(a)(15)(H) or section 1101(a)(15)(L) of this title until it is established that such person has resided and been physically present in the country of his nationality or last residence for at least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien’s spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States Government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 1184(b) of this title: and provided further, That, except in the case of an alien described in clause (iii), the Attorney General may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien’s nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

(f) Suspension of entry or imposition of restrictions by President

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he deems necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate. Whenever the Attorney General finds that a commercial airline or airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.

(g) Bond and conditions for admission of alien inadmissible on health-related grounds

The Attorney General may waive the application of—

(1) subsection (a)(1)(A)(i) in the case of any alien who—

(A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa,

(B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; or

(C) is a VAWA self-petitioner,

in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe;

(2) subsection (a)(1)(A)(ii) in the case of any alien—

(A) who receives vaccination against the vaccine-preventable disease or diseases for which the alien has failed to present documentation of previous vaccination,

(B) for whom a civil surgeon or medical officer, or panel physician (as those terms are defined by section 34.2 of title 42 of the Code of Federal Regulations) certifies, according to such regulations as the Secretary of
Health and Human Services may prescribe, that such vaccination would not be medically appropriate, or

(C) under such circumstances as the Attorney General provides by regulation, with respect to whom the requirement of such a vaccination would be contrary to the alien’s religious beliefs or moral convictions; or

(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

(h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E)

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if—

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that—

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien’s application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien’s denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; or

(C) the alien is a VAWA self-petitioner; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien’s applying or re-applying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture.

No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

(i) Admission of immigrant inadmissible for fraud or willful misrepresentation of material fact

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien’s United States citizen, lawful permanent resident, or qualified alien parent or child.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

(j) Limitation on immigration of foreign medical graduates

(1) The additional requirements referred to in section 1101(a)(15)(J) of this title for an alien who is coming to the United States under a program under which he will receive graduate medical education or training are as follows:

(A) A school of medicine or of one of the other health professions, which is accredited by a body or bodies approved for the purpose by the Secretary of Education, has agreed in writing to provide the graduate medical education or training under the program for which the alien is coming to the United States or to assume responsibility for arranging for the provision thereof by an appropriate public or nonprofit private institution or agency, except that, in the case of such an agreement by a school of medicine, any one or more of its affiliated hospitals which are to participate in the provision of the graduate medical education or training must join in the agreement. (B) Before making such agreement, the accredited school has been satisfied that the alien (i) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States); or (ii)(I) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services), (II) has competency in oral and written English (III) will be able to adapt to the educational and cultural environment in which he will be receiving his education or training, and (IV) has adequate prior education and training to participate satisfactorily in the program for which he is coming to the United States. For the purposes of this subparagraph, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners exami-
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in the Federation of State Medical Boards of the United States or an equivalent examination as determined by the Secretary of Health and Human Services, and

(ii)(i) has competency in oral and written English or (II) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States).

(3) Omitted.

(k) Attorney General’s discretion to admit otherwise inadmissible aliens who possess immigrant visas

Any alien, inadmissible from the United States under paragraph (5)(A) or (7)(A)(i) of subsection (a), who is in possession of an immigrant visa may, if otherwise admissible, be admitted in the discretion of the Attorney General if the Attorney General is satisfied that inadmissibility was not known to, and could not have been ascertained by the exercise of reasonable diligence by, the immigrant before the time of departure of the vessel or aircraft from the last port outside the United States and outside foreign contiguous territory or, in the case of an immigrant coming from foreign contiguous territory, before the time of the immigrant’s application for admission.

(f) Guam and Northern Mariana Islands visa waiver program

(1) In general

The requirement of subsection (a)(7)(B)(i) may be waived by the Secretary of Homeland Security, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay in Guam or the Commonwealth of the Northern Mariana Islands for a period not to exceed 45 days, if the Secretary of Homeland Security, after consultation with the Secretary of the Interior, the Secretary of State, the Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands, determines that—

(A) an adequate arrival and departure control system has been developed in Guam and the Commonwealth of the Northern Mariana Islands; and

(B) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.

(2) Alien waiver of rights

An alien may not be provided a waiver under this subsection unless the alien has waived any right—

(A) to review or appeal under this chapter an immigration officer’s determination as to the admissibility of the alien at the port of entry into Guam or the Commonwealth of the Northern Mariana Islands; or

(B) to contest, other than on the basis of an application for withholding of removal under section 1221(b)(3) of this title or under the Convention Against Torture, or an application for asylum if permitted under section 1158 of this title, any action for removal of the alien.
(3) Regulations
All necessary regulations to implement this subsection shall be promulgated by the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State, on or before the 180th day after May 8, 2008. The promulgation of such regulations shall be considered a foreign affairs function for purposes of section 553(a) of title 5. At a minimum, such regulations should include, but not necessarily be limited to—

(A) a listing of all countries whose nationals may obtain the waiver also provided by this subsection, except that such regulations shall provide for a listing of any country from which the Commonwealth has received a significant economic benefit from the number of visitors for pleasure within the one-year period preceding May 8, 2008, unless the Secretary of Homeland Security determines that such country’s inclusion on such list would represent a threat to the welfare, safety, or security of the United States or its territories; and

(B) any bonding requirements for nationals of some or all of those countries who may present an increased risk of overstays or other potential problems, if different from such requirements otherwise provided by law for nonimmigrant visitors.

(4) Factors
In determining whether to grant or continue providing the waiver under this subsection to nationals of any country, the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State, shall consider all factors that the Secretary deems relevant, including electronic travel authorizations, procedures for reporting lost and stolen passports, repatriation of aliens, rates of refusal for nonimmigrant visitor visas, overstays, exit systems, and information exchange.

(5) Suspension
The Secretary of Homeland Security shall monitor the admission of nonimmigrant visitors to Guam and the Commonwealth of the Northern Mariana Islands under this subsection. If the Secretary determines that such admissions have resulted in an unacceptable number of visitors from a country remaining unlawfully in Guam or the Commonwealth of the Northern Mariana Islands, unlawfully obtaining entry to other parts of the United States, or seeking withholding of removal or asylum, or that visitors from a country pose a risk to law enforcement or security interests of Guam or the Commonwealth of the Northern Mariana Islands or of the United States (including the interest in the enforcement of the immigration laws of the United States), the Secretary shall suspend the admission of nationals of such country under this subsection. The Secretary of Homeland Security may in the Secretary’s discretion suspend the Guam and Northern Mariana Islands visa waiver program at any time, on a country-by-country basis, for other good cause.

(6) Addition of countries
The Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands may request the Secretary of the Interior and the Secretary of Homeland Security to add a particular country to the list of countries whose nationals may obtain the waiver provided by this subsection, and the Secretary of Homeland Security may grant such request after consultation with the Secretary of the Interior and the Secretary of State, and may promulgate regulations with respect to the inclusion of that country and any special requirements the Secretary of Homeland Security, in the Secretary’s sole discretion, may impose prior to allowing nationals of that country to obtain the waiver provided by this subsection.

(m) Requirements for admission of nonimmigrant nurses
(1) The qualifications referred to in section 1301(a)(15)(H)(i)(c) of this title, with respect to an alien who is coming to the United States to perform nursing services for a facility, are that the alien—

(A) has obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education or has received nursing education in the United States;

(B) has passed an appropriate examination (recognized in regulations promulgated in consultation with the Secretary of Health and Human Services) or has a full and unrestricted license under State law to practice professional nursing in the State of intended employment; and

(C) is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed by the facility.

(2)(A) The attestation referred to in section 1301(a)(15)(H)(i)(c) of this title, with respect to a facility for which an alien will perform services, is an attestation as to the following:

(i) The facility meets all the requirements of paragraph (6).

(ii) The employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed.

(iii) The alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility.

(iv) The facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses.

(v) There is not a strike or lockout in the course of a labor dispute, the facility did not lay off and will not lay off a registered nurse employed by the facility within the period be-
tion under subparagraph (A)—

of the following shall be considered a significant condition of subparagraph (A)(iv). Nothing in clause (iv) shall be construed as requiring a facility to meet conditions attested to or a facility's misrepresentation of a material fact in an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary). The Secretary shall conduct an investigation under this clause if there is reasonable cause to believe that a facility fails to meet conditions attested to. Subject to the time limits established under this clause, this subparagraph shall apply regardless of whether an attestation is expired or unexpired at the time a complaint is filed.

(iii) Under such process, the Secretary shall provide, within 180 days after the date such a complaint is filed, for a determination as to whether or not a basis exists to make a finding described in clause (iv). If the Secretary determines that such a basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint within 60 days of the date of the determination.

(iv) If the Secretary of Labor finds, after notice and opportunity for a hearing, that a facility for which an attestation is made has failed to meet a condition attested to or that there was a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties) in an amount not to exceed $1,000 per nurse per violation, with the total penalty not to exceed $10,000 per violation) as the Secretary determines to be appropriate. Upon receipt of such notice, the Attorney General shall not approve petitions filed with respect to a facility during a period of at least one year for nurses to be employed by the facility.

(v) In addition to the sanctions provided for under clause (iv), if the Secretary of Labor finds,
after notice and an opportunity for a hearing, that a facility has violated the condition attested to under subparagraph (A)(iii) (relating to payment of registered nurses at the prevailing wage rate), the Secretary shall order the facility to provide for payment of such amounts of back pay as may be required to comply with such condition.

(F)(i) The Secretary of Labor shall impose on a facility filing an attestation under subparagraph (A) a filing fee, in an amount prescribed by the Secretary based on the costs of carrying out the Secretary's duties under this subsection, but not exceeding $250.

(ii) Fees collected under this subparagraph shall be deposited in a fund established for this purpose in the Treasury of the United States.

(iii) The collected fees in the fund shall be available to the Secretary of Labor, to the extent and in such amounts as may be provided in appropriations Acts, to cover the costs described in clause (i), in addition to any other funds that are available to the Secretary to cover such costs.

(3) The period of admission of an alien under section 1101(a)(15)(H)(i)(c) of this title shall be 3 years.

(4) The total number of nonimmigrant visas issued pursuant to petitions granted under section 1101(a)(15)(H)(i)(c) of this title in each fiscal year shall not exceed 500. The number of such visas issued for employment in each State in each fiscal year shall not exceed the following:

(A) For States with populations of less than 9,000,000, based upon the 1990 decennial census of population, 25 visas.

(B) For States with populations of 9,000,000 or more, based upon the 1990 decennial census of population, 50 visas.

(C) If the total number of visas available under this paragraph for a fiscal year quarter exceeds the number of qualified nonimmigrants who may be issued such visas during those quarters, the visas made available under this paragraph shall be issued without regard to the numerical limitation under subparagraph (A) or (B) of this paragraph during the last fiscal year quarter.

(5) A facility that has filed a petition under section 1101(a)(15)(H)(i)(c) of this title to employ a nonimmigrant to perform nursing services for the facility—

(A) shall provide the nonimmigrant a wage rate and working conditions commensurate with those of nurses similarly employed by the facility;

(B) shall require the nonimmigrant to work hours commensurate with those of nurses similarly employed by the facility; and

(C) shall not interfere with the right of the nonimmigrant to join or organize a union.

(6) For purposes of this subsection and section 1101(a)(15)(H)(i)(c) of this title, the term "facility" means a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act [42 U.S.C. 1395ww(d)(1)(B)]) that meets the following requirements:

(A) As of March 31, 1997, the hospital was located in a health professional shortage area (as defined in section 254e of title 42).

(B) Based on its settled cost report filed under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] for its cost reporting period beginning during fiscal year 1994—

(i) the hospital has not less than 190 licensed acute care beds;

(ii) the number of the hospital's inpatient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of such title [42 U.S.C. 1395c et seq.] is not less than 35 percent of the total number of such hospital's acute care inpatient days for such period; and

(iii) the number of the hospital's inpatient days for such period which were made up of patients who (for such days) were eligible for medical assistance under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], is not less than 28 percent of the total number of such hospital's acute care inpatient days for such period.

(7) For purposes of paragraph (2)(A)(v), the term "lay off", with respect to a worker—

(A) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract; but

(B) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

Nothing in this paragraph is intended to limit an employee's or an employer's rights under a collective bargaining agreement or other employment contract.

(n) Labor condition application

(1) No alien may be admitted or provided status as an H–1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

(A) The employer—

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status as an H–1B nonimmigrant wages that are at least—

(1) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

(2) the prevailing wage level for the occupational classification in the area of employment,

whichever is greater, based on the best information available as of the time of filing the application, and

(ii) will provide working conditions for such a nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

(B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.
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The employer, at the time of filing the application—

(i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer’s employees in the occupational classification and area for which aliens are sought, or

(ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which H–1B nonimmigrants are sought.

(D) The application shall contain a specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.

(E)(i) In the case of an application described in clause (ii), the employer did not displace and will not displace a United States worker (as defined in paragraph (4)) employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application.

(ii) An application described in this clause is an application filed on or after the date final regulations are first promulgated to carry out an application filed on or after the date final regulations are promulgated for the occupation described in the application.

(F) In the case of an application described in subparagraph (E)(ii), subject to clause (ii), the employer, prior to filing the application—

(i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer’s employees in the occupational classification and area for which aliens are sought, or

(ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which H–1B nonimmigrants are sought.

(G)(i) In the case of an application described in subparagraph (E)(ii), subject to clause (ii), the employer, prior to filing the application—

(I) has taken good faith steps to recruit, in the United States using procedures that meet industry-wide standards and offering compensation that is at least as great as that required to be offered to H–1B nonimmigrants under subparagraph (A), United States workers for the job for which the nonimmigrant or nonimmigrants is or are sought; and

(II) has offered the job to any United States worker who applies and is equally or better qualified for the job for which the nonimmigrant or nonimmigrants is or are sought.

(H) The conditions described in clause (i) shall not apply to an application filed with respect to the employment of an H–1B nonimmigrant who is described in subparagraph (A), (B), or (C) of section 1153(b)(1) of this title.

The employer shall make available for public examination, within one working day after the date on which an application under this paragraph is filed, at the employer’s principal place of business or worksite, a copy of each such application (and such accompanying documents as are necessary). The Secretary shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under this subsection. Such list shall include the wage rate, number of aliens sought, period of intended employment, and date of need. The Secretary shall make such list available for public examination in Washington, D.C. The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall provide the certification described in section 1101(a)(15)(H)(i)(b) of this title within 7 days of the date of the filing of the application. The application form shall include a clear statement explaining the liability under subparagraph (F) of a placing employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph. Nothing in subparagraph (G) shall be construed to prohibit an employer from using legitimate selection criteria relevant to the job that are normal or customary to the type of job involved, so long as such criteria are not applied in a discriminatory manner.

(A) Subject to paragraph (5)(A), the Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner’s failure to meet a condition specified in an application submitted under paragraph (1) or a petitioner’s misrepresentation of material facts in such an application. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively. The Secretary shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

(B) Under such process, the Secretary shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make

*So in original.
a finding described in subparagraph (C). If the Secretary determines that such a reasonable basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, within 60 days after the date of the determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary may consolidate the hearings under this subparagraph on such complaints.

(C)(i) If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), (1)(E), or (1)(F), a substantial failure to meet a condition of paragraph (1)(C), (1)(D), or (1)(G)(i)(I), or a misrepresentation of material fact in an application—

(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation) as the Secretary determines to be appropriate; and

(II) the Attorney General shall not approve petitions filed with respect to that employer under section 1154 or 1184(c) of this title during a period of at least 1 year for aliens to be employed by the employer.

(ii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an application, or a violation of clause (iv)—

(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 per violation) as the Secretary determines to be appropriate; and

(II) the Attorney General shall not approve petitions filed with respect to that employer under section 1154 or 1184(c) of this title during a period of at least 2 years for aliens to be employed by the employer.

(iii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1) or a willful misrepresentation of material fact in an application, in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application—

(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $35,000 per violation) as the Secretary determines to be appropriate; and

(II) the Attorney General shall not approve petitions filed with respect to that employer under section 1154 or 1184(c) of this title during a period of at least 3 years for aliens to be employed by the employer.

(iv) It is a violation of this clause for an employer who has filed an application under this subsection to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this clause, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer’s compliance with the requirements of this subsection or any rule or regulation pertaining to this subsection.

(v) The Secretary of Labor and the Attorney General shall devise a process under which an H-1B nonimmigrant who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

(vi)(I) It is a violation of this clause for an employer who has filed an application under this subsection to require an H-1B nonimmigrant to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer. The Secretary shall determine whether a required payment is a penalty (and not liquidated damages) pursuant to relevant State law.

(II) It is a violation of this clause for an employer who has filed an application under this subsection to require an alien who is the subject of a petition filed under section 1184(c)(1) of this title, for which a fee is imposed under section 1184(c)(9) of this title, to reimburse, or otherwise compensate, the employer for part or all of the cost of such fee. It is a violation of this clause for such an employer otherwise to accept such reimbursement or compensation from such an alien.

(III) If the Secretary finds, after notice and opportunity for a hearing, that an employer has committed a violation of this clause, the Secretary may impose a civil monetary penalty of $1,000 for each such violation and issue an administrative order requiring the return to the nonimmigrant of any amount paid in violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.

(vii)(I) It is a failure to meet a condition of paragraph (1)(A) for an employer, who has filed an application under this subsection and who places an H-1B nonimmigrant designated as a full-time employee on the petition filed under section 1184(c)(1) of this title by the employer with respect to the nonimmigrant, after the nonimmigrant has entered into employment with the employer, in nonproductive status due to a decision by the employer (based on factors such as lack of work), or due to the nonimmigrant’s lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such nonproductive time.
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(II) It is a failure to meet a condition of paragraph (1)(A) for an employer, who has filed an application under this subsection and who places an H–1B nonimmigrant designated as a part-time employee on the petition filed under section 1184(c) of this title by the employer with respect to the nonimmigrant, after the nonimmigrant has entered into employment with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated on such petition consistent with the rate of pay identified on such petition.

(III) In the case of an H–1B nonimmigrant who has not yet entered into employment with an employer who has had approved an application under this subsection, and a petition under section 1184(c)(1) of this title, with respect to the nonimmigrant, the provisions of subclauses (I) and (II) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States pursuant to the petition, or 60 days after the date the nonimmigrant becomes eligible to work for the employer (in the case of a nonimmigrant who is present in the United States on the date of the approval of the petition).

(IV) This clause does not apply to a failure to pay wages to an H–1B nonimmigrant for nonproductive time due to non-work-related factors, such as the voluntary request of the nonimmigrant for an absence or circumstances rendering the nonimmigrant unable to work.

(V) This clause shall not be construed as prohibiting an employer that is a school or other educational institution from applying to an H–1B nonimmigrant an established salary practice of the employer, under which the employer pays to H–1B nonimmigrants and United States workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, if—

(aa) the nonimmigrant agrees to the compressed annual salary payments prior to the commencement of the employment; and

(bb) the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to violate any condition of the nonimmigrant’s authorization under this chapter to remain in the United States.

(VI) This clause shall not be construed as superseding clause (viii).

(viii) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an application under this subsection to fail to offer to an H–1B nonimmigrant, during the nonimmigrant’s period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and noncash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers to United States workers.

(D) If the Secretary finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified under the application and required under paragraph (I), the Secretary shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (I), whether or not a penalty under subparagraph (C) has been imposed.

(E) If an H–1B-dependent employer places a nonexempt H–1B nonimmigrant with another employer as provided under paragraph (1)(F) and the other employer has displaced or displaces a United States worker employed by such other employer during the period described in such paragraph, such displacement shall be considered for purposes of this paragraph a failure, by the placing employer, to meet a condition specified in an application submitted under paragraph (1); except that the Attorney General may impose a sanction described in subclause (II) of subparagraph (C)(i), (C)(ii), or (C)(iii) only if the Secretary of Labor found that such placing employer—

(i) knew or had reason to know of such displacement at the time of the placement of the nonimmigrant with the other employer; or

(ii) has been subject to a sanction under this subparagraph based upon a previous placement of an H–1B nonimmigrant with the same other employer.

(F) The Secretary may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date (on or after October 21, 1998) on which the employer is found by the Secretary to have committed a willful failure to meet a condition of paragraph (1) (or has been found under paragraph (5) to have committed a willful failure to meet the condition of paragraph (1)(G)(i)(II)) or to have made a willful misrepresentation of material fact in an application. The preceding sentence shall apply to an employer regardless of whether or not the employer is an H–1B-dependent employer. The authority of the Secretary under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

(G) The Secretary of Labor may initiate an investigation of any employer that employs nonimmigrants described in section 1101(a)(15)(H)(i)(b) of this title if the Secretary of Labor has reasonable cause to believe that the employer is not in compliance with this subsection. In the case of an investigation under this clause, the Secretary of Labor (or the acting Secretary in the case of the absence of the ability of the Secretary of Labor) shall personally certify that reasonable cause exists and shall approve commencement of the investigation. The investigation may be initiated for reasons other than completeness and obvious inaccuracies by the employer in complying with this subsection.

(ii) If the Secretary of Labor receives specific credible information from a source who is likely to have knowledge of an employer’s practices or employment conditions, or an employer’s compliance with the employer’s labor condition application under paragraph (1), and whose identity is known to the Secretary of Labor, and

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such information provides reasonable cause to believe that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary of Labor may conduct an investigation into the alleged failure or failures. The Secretary of Labor may withhold the identity of the source from the employer, and the source’s identity shall not be subject to disclosure under section 552 of title 5.

(iii) The Secretary of Labor shall establish a procedure for any person desiring to provide to the Secretary of Labor information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the information in writing on a form developed and provided by the Secretary of Labor and completed by or on behalf of the person. The person may not be an officer or employee of the Department of Labor; unless the information satisfies the requirement of clause (iv)(II) (although an officer or employee of the Department of Labor may complete the form on behalf of the person).

(iv) Any investigation initiated or approved by the Secretary of Labor under clause (ii) shall be based on information that satisfies the requirements of such clause and that—

(I) originates from a source other than an officer or employee of the Department of Labor; or

(II) was lawfully obtained by the Secretary of Labor in the course of lawfully conducting another Department of Labor investigation under this chapter of any other Act.

(v) The receipt by the Secretary of Labor of information submitted by an employer to the Attorney General or the Secretary of Labor for purposes of securing the employment of a nonimmigrant described in section 1101(a)(15)(H)(i)(b) of this title shall not be considered a receipt of information for purposes of clause (ii).

(vi) No investigation described in clause (ii) (or hearing described in clause (vii) based on such investigation) may be conducted with respect to information about a failure to meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months after the date of the alleged failure.

(vii) The Secretary of Labor shall provide notice to an employer with respect to whom there is reasonable cause to initiate an investigation described in clauses (i) or (ii), prior to the commencement of an investigation under such clauses, of the intent to conduct an investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary of Labor is not required to comply with this clause if the Secretary of Labor determines that to do so would interfere with an effort by

the Secretary of Labor to secure compliance by the employer with the requirements of this section. There shall be no judicial review of a determination by the Secretary of Labor under this clause.

(viii) An investigation under clauses (i) or (ii) may be conducted for a period of up to 60 days. If the Secretary of Labor determines after such an investigation that a reasonable basis exists to make a finding that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing in accordance with section 556 of title 5 within 120 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 120 days after the date of the hearing.

(H)(i) Except as provided in clauses (ii) and (iii), a person or entity is considered to have complied with the requirements of this subsection, notwithstanding a technical or procedural failure to meet such requirements, if there was a good faith attempt to comply with the requirements.

(ii) Clause (i) shall not apply if—

(I) the Department of Labor (or another enforcement agency) has explained to the person or entity the basis for the failure;

(II) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure; and

(III) the person or entity has not corrected the failure voluntarily within such period.

(iii) A person or entity that, in the course of an investigation, is found to have violated the prevailing wage requirements set forth in paragraph (1)(A), shall not be assessed fines or other penalties for such violation if the person or entity can establish that the manner in which the prevailing wage was calculated was consistent with recognized industry standards and practices.

(iv) Clauses (i) and (iii) shall not apply to a person or entity that has engaged in or is engaging in a pattern or practice of willful violations of this subsection.

(I) Nothing in this subsection shall be construed as superseding or preempting any other enforcement-related authority under this chapter (such as the authorities under section 122b of this title), or any other Act.

(3)(A) For purposes of this subsection, the term "H–1B-dependent employer" means an employer that—

(i) (I) has 25 or fewer full-time equivalent employees who are employed in the United States; and (II) employs more than 7 H–1B nonimmigrants;

(ii) (I) has at least 26 but not more than 50 full-time equivalent employees who are employed in the United States; and (II) employs more than 12 H–1B nonimmigrants; or

(iii) (I) has at least 51 full-time equivalent employees who are employed in the United States; and (II) employs more than 12 H–1B nonimmigrants; or

(4) Nothing in this section shall be construed as affecting the enforcement or administration of any other Act.
States; and (II) employs H–1B nonimmigrants in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.

(B) For purposes of this subsection—

(i) the term ‘‘exempt H–1B nonimmigrant’’ means an H–1B nonimmigrant who—

(II) has attained a master’s or higher degree (or its equivalent) in a specialty related to the intended employment; and

(ii) the term ‘‘nonexempt H–1B nonimmigrant’’ means an H–1B nonimmigrant who is not an exempt H–1B nonimmigrant.

(C) For purposes of subparagraph (A)—

(i) in computing the number of full-time equivalent employees and the number of H–1B nonimmigrants, exempt H–1B nonimmigrants shall not be taken into account during the longer of—

(II) the period beginning on October 21, 1998, and ending on the date final regulations are issued to carry out this paragraph; and

(ii) any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of title 26 shall be treated as a single employer.

(4) For purposes of this subsection:

(A) The term ‘‘area of employment’’ means the area within normal commuting distance of the worksite or physical location where the work of the H–1B nonimmigrant is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

(B) In the case of an application with respect to one or more H–1B nonimmigrants by an employer, the employer is considered to ‘‘displace’’ a United States worker from a job if the employer lays off the worker from a job that is substantially equivalent to the job for which the nonimmigrant or nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

(C) The term ‘‘H–1B nonimmigrant’’ means an alien admitted or provided status as a nonimmigrant described in section 1101(a)(15)(H)(i)(b) of this title.

(D) (i) The term ‘‘lays off’’, with respect to a worker—

(II) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer or, in the case of a placement of a worker with another employer under paragraph (1)(F), with either employer described in such paragraph) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

(ii) Nothing in this subparagraph is intended to limit an employee’s rights under a collective bargaining agreement or other employment contract.

(E) The term ‘‘United States worker’’ means an employee who—

(i) is a citizen or national of the United States; or

(ii) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 1156a of this title, is granted asylum under section 1158 of this title, or is an immigrant otherwise authorized, by this chapter or by the Attorney General, to be employed.

(5)(A) This paragraph shall apply instead of subparagraphs (A) through (E) of paragraph (2) in the case of a violation described in subparagraph (B), but shall not be construed to limit or affect the authority of the Secretary or the Attorney General with respect to any other violation.

(B) The Attorney General shall establish a process for the receipt, initial review, and disposition in accordance with this paragraph of complaints respecting an employer’s failure to meet the condition of paragraph (1)(G)(i)(II) or a petitioner’s misrepresentation of material facts with respect to such condition. Complaints may be filed by an aggrieved individual who has submitted a resume or otherwise applied in a reasonable manner for the job that is the subject of the condition. No proceeding shall be conducted under this paragraph on a complaint concerning such condition. The Attorney General determines that the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively.

(C) If the Attorney General finds that a complaint has been filed in accordance with subparagraph (B) and there is reasonable cause to believe that such a failure or misrepresentation described in such complaint has occurred, the Attorney General shall initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from the roster of arbitrators maintained by such Service. The procedure and rules of such Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings. The Attorney General shall pay the fee and expenses of the arbitrator.

(D)(i) The arbitrator shall make findings respecting whether a failure or misrepresentation described in subparagraph (B) occurred. If the arbitrator concludes that failure or misrepresentation was willful, the arbitrator shall make a...
finding to that effect. The arbitrator may not find such a failure or misrepresentation (or that such a failure or misrepresentation was willful) unless the complainant demonstrates such a failure or misrepresentation (or its willful character) by clear and convincing evidence. The arbitrator shall transmit the findings in the form of a written opinion to the parties to the arbitration and the Attorney General. Such findings shall be final and conclusive, and, except as provided in this subparagraph, no official or court of the United States shall have power or jurisdiction to review any such findings.

(ii) The Attorney General may review and reverse or modify the findings of an arbitrator only on the same bases as an award of an arbitrator may be vacated or modified under section 10 or 11 of title 9.

(iii) With respect to the findings of an arbitrator, a court may review only the actions of the Attorney General under clause (ii) and may set aside such actions only on the grounds described in subparagraph (A), (B), or (C) of section 706(a)(2) of title 5. Notwithstanding any other provision of law, such judicial review may only be brought in an appropriate United States court of appeals.

(E) If the Attorney General receives a finding of an arbitrator under this paragraph that an employer has failed to meet the condition of paragraph (1)(G)(i)(II) or has misrepresented a material fact with respect to such condition, unless the Attorney General reverses or modifies the finding under subparagraph (D)(ii)—

(i) the Attorney General may impose administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation or $5,000 per violation in the case of a willful failure or misrepresentation) as the Attorney General determines to be appropriate; and

(ii) the Attorney General is authorized to not approve petitions filed, with respect to that employer and for aliens to be employed by the employer, under section 1154 or 1184(c) of this title—

(I) during a period of not more than 1 year; or

(II) in the case of a willful failure or willful misrepresentation, during a period of not more than 2 years.

(F) The Attorney General shall not delegate, to any other employee or official of the Department of Justice, any function of the Attorney General under this paragraph, until 60 days after the Attorney General has submitted a plan for such delegation to the Committees on the Judiciary of the United States House of Representatives and the Senate.

(o) Omitted

(p) Computation of prevailing wage level

(1) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) in the case of an employee of—

(A) an institution of higher education (as defined in section 1001(a) of title 20), or a related or affiliated nonprofit entity; or

(B) a nonprofit research organization or a Governmental research organization, the prevailing wage level shall only take into account employees at such institutions and organizations in the area of employment.

(2) With respect to a professional athlete (as defined in subsection (a)(5)(A)(iii)(II)) when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules or regulations shall be considered as not adversely affecting the wages of United States workers similarly employed and be considered the prevailing wage.

(3) The prevailing wage required to be paid pursuant to subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) shall be 100 percent of the wage determined pursuant to those sections.

(4) Where the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision. Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels, adding the quotient thus obtained to the first level and subtracting that quotient from the second level.

(q) Academic honoraria

Any alien admitted under section 1101(a)(15)(B) of this title may accept an honorarium payment and associated incidental expenses for a usual academic activity or activities (lasting not longer than 9 days at any single institution), as defined by the Attorney General in consultation with the Secretary of Education, if such payment is offered by an institution or organization described in subsection (p)(1) and is made for services conducted for the benefit of that institution or entity and if the alien has not accepted such payment or expenses from more than 5 institutions or organizations in the previous 6-month period.

(r) Exception for certain alien nurses

Subsection (a)(5)(C) shall not apply to an alien who seeks to enter the United States for the purpose of performing labor as a nurse who presents to the consular officer (or in the case of an adjustment of status, the Attorney General) a certified statement from the Commission on Graduates of Foreign Nursing Schools (or an equivalent independent credentialing organization) approved for the certification of nurses under subsection (a)(5)(C) by the Attorney General in consultation with the Secretary of Health and Human Services) that—

(1) the alien has a valid and unrestricted license as a nurse in a State where the alien intends to be employed and such State verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(2) the alien has passed the National Council Licensure Examination (NCLEX);

(3) the alien is a graduate of a nursing program—

(A) in which the language of instruction was English;

(B) located in a country—

(i) designated by such commission not later than 30 days after November 12, 1999,
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(1) No alien may be admitted or provided status as a nonimmigrant under section 1101(a)(15)(E)(iii) of this title wages that are

(i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer’s employees in the occupational classification and area for which aliens are sought; or

(ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which non-immigrants are sought

(2)(A) The employer shall make available for public examination within one working day after the date on which an attestation under this subsection is filed, at the employer’s principal place of business or worksite, a copy of each such attestation (and such accompanying documents as are necessary).

(B)(i) The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the attestations filed under this subsection. Such list shall include, with respect to each attestation, the wage rate, number of aliens sought, period of intended employment, and date of need.

(ii) The Secretary of Labor shall make such list available for public examination in Washington, D.C.

(C) The Secretary of Labor shall review an attestation filed under this subsection only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that an attestation is incomplete or obviously inaccurate, the Secretary of Labor shall provide the certification described in section 1101(a)(15)(H)(i)(b1) of this title within 7 days of the date of the filing of the attestation.

(3)(A) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting the failure of an employer to meet a condition specified in an attestation submitted under this subsection or misrepresentation by the employer of material facts in such an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

(B) Under the process described in subparagraph (A), the Secretary of Labor shall provide, within 30 days after the date a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding de-
scribed in subparagraph (C). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

(C)(i) If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), a substantial failure to meet a condition of paragraph (1)(C) or (1)(D), or a misrepresentation of material fact in an attestation—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 1154, 1184(c), 1101(a)(15)(H)(i)(b1), or 1101(a)(15)(E)(iii) of this title during a period of at least 1 year for aliens to be employed by the employer.

(ii) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an attestation, or a violation of clause (iv)—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 1154, 1184(c), 1101(a)(15)(H)(i)(b1), or 1101(a)(15)(E)(iii) of this title during a period of at least 2 years for aliens to be employed by the employer.

(iii) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1) or a willful misrepresentation of material fact in an attestation, in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition or application supported by the attestation—

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $35,000 per violation) as the Secretary of Labor determines to be appropriate; and

(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 1154, 1184(c), 1101(a)(15)(H)(i)(b1), or 1101(a)(15)(E)(iii) of this title during a period of at least 3 years for aliens to be employed by the employer.

(iv) It is a violation of this clause for an employer who has filed an attestation under this subsection to intimidate, threaten, coerce, blacken, discharge, or in any other manner discriminate against an employee (which term, for purposes of this clause, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer’s compliance with the requirements of this subsection or any rule or regulation pertaining to this subsection.

(v) The Secretary of Labor and the Secretary of Homeland Security shall devise a process under which a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

(vi)(I) It is a violation of this clause for an employer who has filed an attestation under this subsection to require a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

(II) The Secretary of Labor and the Secretary of Homeland Security shall devise a process under which a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

(II) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an employer has committed a violation of this clause, the Secretary of Labor may impose a civil monetary penalty of $1,000 for each such violation and issue an administrative order requiring the return to the nonimmigrant of any amount paid in violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.

(vii)(I) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title designated as a
full-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status due to a decision by the employer (based on factors such as lack of work), or due to the nonimmigrant’s lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such nonproductive time.

(II) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title designated as a part-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated on the attestation consistent with the rate of pay identified on the attestation.

(III) In the case of a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title who has not yet entered into employment with an employer who has had approved an attestation under this subsection with respect to the nonimmigrant, the provisions of subclauses (I) and (II) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States, or 60 days after the date the nonimmigrant becomes eligible to work for the employer in the case of a nonimmigrant who is present in the United States on the date of the approval of the attestation filed with the Secretary of Labor.

(IV) This clause does not apply to a failure to pay wages to a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title for nonproductive time due to non-work-related factors, such as the voluntary request of the nonimmigrant for an absence or circumstances rendering the nonimmigrant unable to work.

(V) This clause shall not be construed as prohibiting an employer that is a school or other educational institution from applying to a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title an established salary practice of the employer, under which the employer pays to nonimmigrants under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title and United States workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, if—

(aa) the nonimmigrant agrees to the compressed annual salary payments prior to the commencement of the employment; and

(bb) the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to violate any condition of the nonimmigrant’s authorization under this chapter to remain in the United States.

(VI) This clause shall not be construed as superseding clause (viii). (viii) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection to fail to offer to a nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title, during the nonimmigrant’s period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and non-cash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers to United States workers.

(D) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified in the attestation and required under paragraph (1), the Secretary of Labor shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed.

(E) The Secretary of Labor may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date on which the employer is found by the Secretary of Labor to have committed a willful failure to meet a condition of paragraph (1) or to have made a willful misrepresentation of material fact in an attestation. The authority of the Secretary of Labor under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

(F) Nothing in this subsection shall be construed as superseding or preempting any other enforcement-related authority under this chapter (such as the authorities under section 1324b of this title), or any other Act.

(4) For purposes of this subsection:

(A) The term “area of employment” means the area within normal commuting distance of the worksite or physical location where the work of the nonimmigrant under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

(B) In the case of an attestation with respect to one or more nonimmigrants under section 1101(a)(15)(H)(i)(b1) of this title or section 1101(a)(15)(E)(iii) of this title by an employer, the employer is considered to “displace” a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the job for which the nonimmigrant or nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

(C)(i) The term “lays off”, with respect to a worker—

(I) means to cause the worker’s loss of employment, other than through a discharge for inadequate performance, violation of
workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract; but

(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, an employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

(ii) Nothing in this subparagraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

(D) The term “United States worker” means an employee who—

(i) is a citizen or national of the United States; or

(ii) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 1157 of this title, is granted asylum under this chapter until it is established that—

A. departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or an alien lawfully admitted for permanent residence); or

B. the admission of the alien is in the public interest or the national interest of the United States.

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So in original. Two subsecs. (t) have been enacted.
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TITLE 8—ALIENS AND NATIONALITY

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AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 108–77, see Effective and Termination Dates of 2003 Amendment note below.

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original, ‘‘this Act’’, meaning act June 27, 1952, ch. 477, 66 Stat. 165, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Section 3(a) of the Torture Victim Protection Act of 1991, referred to in subsec. (a)(3)(E)(ii)(II), is section 3(a) of Pub. L. 102–256, which is set out as a note under section 1350 of Title 28, Judiciary and Judicial Procedure.


CODIFICATION

Subsection (j)(3), which required the Director of the United States Information Agency to transmit an annual report to Congress on aliens submitting affidavits described in subsection (j)(1)(D) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 193 of House Document No. 103–7.

AMENDMENTS


2010—Subsec. (a)(1)(C)(ii). Pub. L. 111–289 substituted ‘‘subparagraph (F) or (G) of section 1101(b)(1) of this title’’ for ‘‘subsection (a)(1)(C) of this title’’.

2009—Subsec. (a)(3)(E)(ii). Pub. L. 111–122 struck out ‘‘conduct outside the United States that would, if committed in the United States or by a United States national, be before ‘genocide’’.’’

2008—Subsec. (a)(1)(A)(i). Pub. L. 110–293 substituted a semicolon for ‘‘, which shall include infection with the etiologic agent for acquired immune deficiency syndrome’’.

Subsec. (a)(2)(H)(i). Pub. L. 110–457 substituted ‘‘who commits or conspires to commit human trafficking offenses in the United States or outside the United States, or who consulates the officer, the Secretary of Homeland Security, the Secretary of State, for ‘‘who is listed in a report submitted pursuant to section 7108(b) of title 22, or who the consular officer’’.


Subsec. (a)(7)(B)(iii). Pub. L. 110–229, § 702(b)(2), amended cl. (iii) generally. Prior to amendment, text read as follows: ‘‘For provision authorizing waiver of clause (i) in the case of visitors to Guam, see subsection (l) of this section.’’

Subsec. (d)(7). Pub. L. 110–229, § 702(d), inserted ‘‘the Commonwealth of the Northern Mariana Islands,’’ after ‘‘Guam.’’.


Subsec. (d)(3)(B)(i). Pub. L. 110–161, § 691(a), amended cl. (I) generally. Prior to amendment, cl. (I) read as follows: ‘‘The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may conclude in such Secretary’s sole unreviewable discretion that subsection (a)(3)(B)(i)(IV)(bb) or (a)(3)(B)(i)(VII) of this section shall not apply to an alien, that subsection (a)(3)(B)(i)(IV)(VI) of this section shall not apply with respect to any material support an alien afforded to an organization or individual that has engaged in a terrorism activity, or that subsection (a)(3)(B)(i)(VIII) of this section shall not apply to a group solely by virtue of having a subgroup within the scope of that subsection. The Secretary of State may not, however, exercise discretion under this clause with respect to an alien once removal proceedings against the alien are instituted under section 222a of this title.’’

2006—Subsec. (a)(4)(C)(i)(I). Pub. L. 109–271, § 6(b)(1)(A)(i), which directed the amendment of subsection (a)(4)(C)(i)(I) by substituting ‘‘in the case of an alien once removal proceedings against the alien are instituted under section 222a of this title’’ for ‘‘the Alien Registration Date of the alien to whom the Attorney General has granted classification under subsection (a)(9)(A)(i) of this section in the case of an alien once removal proceedings against the alien are instituted under section 222a of this title’’.


Subsec. (a)(9)(C)(ii). Pub. L. 109–271, § 6(b)(1)(C), substituted ‘‘the Secretary of Homeland Security has consented to the alien’s reapplying for admission.’’ for ‘‘the Attorney General has consented to the alien’s reapplying for admission.’’

The Attorney General in the Attorney General’s discretion may waive the provisions of subsection (a)(9)(C)(i) of this section in the case of an alien to whom the Attorney General has granted classification under clause (ii), (iii), or (iv) of section 1154a(a)(1) of this title, or classification under clause (ii), (iii), or (iv) of section 1154a(a)(1) of this title, in any case in which there is a connection between—

‘‘(1) the alien’s having been battered or subjected to extreme cruelty; and

‘‘(2) the alien’s having been subjected to torture or cruel, inhuman, or degrading treatment or punishment;’’
"(2) the alien's—
(A) removal;
(B) departure from the United States;
(C) reentry or reentries into the United States; or
(D) attempted reentry into the United States."


Subsec. (g)(1)(C). Pub. L. 109–271, § 806(b)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "(C) organization—
(i) the term 'terrorist organization' means any organization—
(I) designated under section 1189 of this title;
(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General, as a terrorist organization, after finding that the organization engages in the activities described in subsection (a)(3)(E)(i), (ii), (iii), or (iv) of section 1154(a)(1)(A) of this title or engages in terrorist activity generally," which was redesignated former subpar. (H) as (I) and redesignated former subpar. (H) as (I).

Subsec. (a)(3)(E)(ylinder):, Pub. L. 108–458, § 5501(a)(1), substituted "ordered, incited, assisted, or otherwise participated in conduct outside the United States that would, if committed in the United States or by a United States national, be genocide, as defined in section 1091(a) of title 18, is inadmissible" for "has engaged in conduct that is defined as genocide for purposes of the International Convention on the Prevention and Punishment of Genocide is inadmissible".


Subsec. (d)(3)(A). Pub. L. 108–458, § 5503, substituted "and clauses (i) and (ii) of paragraph (3)(E)" for "and (3)(E)".


Subsec. (p). Pub. L. 108–449, § 1(b)(2)(A), which directed redesignation of subsec. (p), relating to consideration of benefits received as battered alien in determination of inadmissibility as likely to become public charge, as (a), could not be executed because of the previous temporary redesignation by Pub. L. 108–77, § 402(b)(1). See 2003 Amendment note below.

Subsec. (q). Pub. L. 108–449, § 1(b)(2)(A), which directed redesignation of subsec. (q), relating to consideration of benefits received as battered alien in determination of inadmissibility as likely to become public charge, as (a), could not be executed because of the previous redesignation by Pub. L. 108–77, § 402(b)(1). See 2003 Amendment note below.


2003—Subsec. (d)(13). Pub. L. 108–193, § 8(a)(2), redesignated par. (13), relating to Attorney General's determination whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(U) of this title, as (14).

Subsec. (d)(13)(A). Pub. L. 108–193, § 4(b)(4)(A), inserted "except that the ground for inadmissibility described in subsection (a)(4) shall not apply with respect to such a nonimmigrant" before period at end.

Subsec. (d)(13)(B)(i). Pub. L. 108–193, § 4(b)(4)(B)(i), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "paragraphs (1) and (4) of subsection (a) of this section; and", which was redesignated former subsec. (a) of this section; and


Subsec. (d)(14). Pub. L. 108–193, § 8(a)(2), redesignated par. (13), relating to Attorney General's determination whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(U) of this title, as (14).
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TITLE 8—ALIENS AND NATIONALITY

Subsec. (p). Pub. L. 106–77, §§ 107(c), 402(b)(1), temporarily redesignated subsec. (p), relating to consideration of benefits received as battered alien in determination of inadmissibility as likely to become public charge, as (s). See Effective and Termination Dates of 2003 Amendment note below.


Subsec. (p)(2). Pub. L. 106–77, §§ 107(c), 402(b)(1), temporarily redesignated subsec. (p), relating to consideration of benefits received as battered alien in determination of inadmissibility as likely to become public charge, as (s). See Effective and Termination Dates of 2003 Amendment note below.


2002—Subsec. (a)(4)(C)(ii). Pub. L. 107–150 substituted “and any additional sponsor required under section 1183a(f)” for “any additional sponsor required under section 1183a(f)”.

Subsec. (e). Pub. L. 107–273 substituted “section 1184(f)” for “section 1184(k)”.


Subsec. (a)(3)(B)(i)(IV). Pub. L. 107–56, § 411(a)(1)(A)(i), amended subcl. (IV) generally. Prior to amendment, subcl. (IV) read as follows: “is a representative (as defined in clause (iv) of a foreign terrorist organization, as designated by the Secretary under section 1189 of this title, or”.


Subsec. (m). Pub. L. 106–95, §2(b), amended subsec. (m) generally, adding provisions providing that no more than 33 percent of a facility's workforce may be nonimmigrant aliens and making issuance of visas dependent upon State populations, and revising period of admission from a maximum of 6 years to 3 years.


Subsec. (a)(10)(C)(ii). Pub. L. 105–277, §222(b)(a), added cls. (ii) and (iii) and struck out heading and text of former cl. (i). Text read as follows: "Clause (i) shall not apply so long as the child is located in a foreign state that is a party to the Hague Convention on the Civil Aspects of International Child Abduction."


Pub. L. 105–277, §412(a)(2)(3), inserted at end "The application form shall include a clear statement explaining the liability under subparagraph (F) of a placing employer if the other employer described in such subparagraph displaces a United States worker described in such subparagraph. Nothing in subparagraph (G) shall be construed to prohibit an employer from using legitimate selection criteria relevant to the job that are normal or customary to the type of job involved, so long as such criteria are not applied in a discriminatory manner."


Subsec. (n)(1)(C)(ii). Pub. L. 105–277, §412(c), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "If there is no such bargaining representative, has posted notice of filing in conspicuous locations at the place of employment, Subsec. (n)(1)(E) to (G). Pub. L. 105–277, §412(a)(1), added subpars. (E) to (G).

Subsec. (n)(2)(A). Pub. L. 105–277, §413(b)(2), substituted "Subject to paragraph (5)(A), the Secretary" for "The Secretary" in first sentence.

Subsec. (n)(2)(C). Pub. L. 105–277, §413(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), a substantial failure to meet a condition of paragraphs (1)(C) or (1)(D), a willful failure to meet a condition of paragraph (1)(A), or a misrepresentation of material fact in an application—"

"(i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose monetary penalties in an amount not to exceed $1,000 per violation) as the Secretary determines to be appropriate, and"

"(ii) the Attorney General shall not approve petitions filed with respect to that employer under section 1154 or 1184(c) of this title during a period of at least 1 year for aliens to be employed by the employer."


Subsec. (a). Pub. L. 104–208, §308(d)(1)(C), substituted "is inadmissible" for "is excludable" wherever appearing in pars. (1) to (5), (6)(C) to (E), (G), (7), (8), (10)(A), (C)(i), (D)(i) and (E).

Pub. L. 104–208, §308(d)(1)(B), substituted "aliens ineligible for visas or admission" for "excludable aliens" in heading and substituted "Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:"

"Except as otherwise provided in this chapter, the following describes classes of excludable aliens who are ineligible to receive visas and who shall be excluded from admission into the United States:" in introductory provisions.

Subsec. (a)(1)(A)(i) to (iv). Pub. L. 104–208, §341(a), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.


Pub. L. 104–132, §413(b)(1), inserted "is engaged in or after section 1325(a)(1) of this title, which the alien knows or should have known is a terrorist organization" after "1189 of this title,".


Pub. L. 104–132, §411(c), added subcl. (III).

Subsec. (a)(3)(B)(iv). Pub. L. 104–208, §355, inserted "which the alien knows or should have known is a terrorist organization" after "1189 of this title,".


Pub. L. 104–132, §411(c), added subcl. (IV).


Subsec. (a)(4). Pub. L. 104–208, §531(a), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: "Any alien who, in the opinion of the consular officer at the time of application of a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is excludable."

Pub. L. 104–208, §305(c), which directed amendment of par. (4) by substituting "1227(a)(5)(B)" for "1231(a)(5)(B)" each place it appears, could not be executed because "1231(a)(5)(B)" did not appear in par. (4).


Pub. L. 104–208, §308(d)(1)(D), substituted "inadmissible" for "exclusion".

Subsec. (a)(5)(D). Pub. L. 104–208, §393(1), redesignated subpar. (C) as (D).

Subsec. (a)(6)(A). Pub. L. 104–208, §301(c)(1), amended heading and text generally. Prior to amendment, text read as follows: "Any alien who—"

"(i) has not been admitted to the United States or been readmitted and deported,"

"(ii) has fallen into distress and has been removed pursuant to this chapter or any prior Act,
“(iii) has been removed as an alien enemy, or

“(iv) has been removed at Government expense in lieu of deportation pursuant to section 1252(b) of this title, and (a) who seeks admission within 5 years of the date of such deportation or removal, or (b) who seeks admission within 20 years in the case of an alien convicted of an aggravated felony, is excludable, unless before the date of the alien’s embarkation or reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory the Attorney General has consented to the alien’s applying or reapplying for admission.”


Subsec. (a)(6)(F). Pub. L. 104–208, §348(a)(1), amended heading and text of subpar. (F) generally. Prior to amendment, text read as follows: “An alien who is the subject of a final order for violation of section 1326(c) of this title is excludable.”


Subsec. (a)(10). Pub. L. 104–208, §301(b)(1), redesignated par. (9) as (10).

Subsec. (a)(10)(B). Pub. L. 104–208, §308(c)(2)(B), amended heading and text of subpar. (B) generally. Pub. L. 104–208, §348(a)(4), designated former cl. (B) as (C) and redesignated former cl. (C) as (B). Text of amendment, text read as follows: “Any alien accompanying another alien ordered to be excluded and deported and certified to be helpless from sickness or mental or physical disability or infancy pursuant to section 1227(e) of this title, whose protection or guardianship is required by the alien ordered excluded and deported, is excludable.”


Subsec. (b). Pub. L. 104–208, §308(d)(1)(E), which directed amendment of par. (2) by striking “or ineligble for entry”, was executed by striking the language in par. (1)(B) before “or adjustment”, to reflect the probable intent of Congress and the intervening redesignation of par. (2) as par. (1)(B) by Pub. L. 104–132, §1421(c).

See below.


Pub. L. 104–132, §412, designated existing provisions as par. (1), substituted “Subject to paragraphs (2) and (3), if” for “If”, redesignated former paras. (1) and (2) as subs. (A) and (B), respectively, realigned margins, and added paras. (2) and (3).

Subsec. (c). Pub. L. 104–208, §308(b), struck out subsec. (c) which read as follows: “Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of subsection (a) of this section (other than paragraphs (3) and (9)(C)). Nothing contained in this subsection shall limit the authority of the Attorney General to exercise the discretion vested in him under section 1181(b) of this title. This subsection shall not apply to an alien who is deportable by reason of having committed any criminal offense covered in section 1227(a)(2)(A)(ii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 1227(a)(2)(A)(i) of this title,” for “has been convicted of one or more aggravated felonies and has served for such felony or felonies a term of imprisonment of at least 5 years.”

Pub. L. 104–132, §410(d)(1), substituted “This” for “The first sentence of this” in third sentence.


Pub. L. 104–208, §308(d)(1)(D), substituted “inadmissibility” for “exclusion”.


Subsec. (d)(4). Pub. L. 104–208, §308(g)(1), substituted “section 1229(c)” for “‘section 1229(b)’”.

Subsec. (d)(5)(A). Pub. L. 104–208, §302(a), substituted “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit” for “for emergent reasons or for reasons deemed strictly in the public interest.”

Subsec. (d)(7). Pub. L. 104–208, §308(g)(4)(B), substituted “section 1231(c)” for “section 1227(a)”.

Pub. L. 104–208, §308(e)(2)(A), substituted “removed” for “deported”.

Pub. L. 104–208, §308(d)(1)(G), substituted “admitted” for “excluded from admission”.


Pub. L. 104–208, §351(a), substituted “an individual who at the time of such action was” after “aided only”.

Pub. L. 104–208, §308(e)(1)(C), substituted “removal” for “deportation”.


Subsec. (e). Pub. L. 104–208, §622(b), inserted “or in the case of a waiver requested by an interested United States Government agency on behalf of an alien described in clause (iii),” before “the waiver shall be subject to”.

Subsec. (f). Pub. L. 104–208, §124(b)(1), inserted at end “Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.”

Subsec. (g). Pub. L. 104–208, §341(b), substituted a semicolon for “,” and “at” of end of par. (1)(B), inserted “in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe,” as par. (1) concluding provisions, and substituted pars. (2) and (3) for former par. (2) and concluding provisions which read as follows:

“(2) subsection (a)(1)(A)(ii) of this section in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in his discretion after consultation with the Secretary of Health and Human Services, may by regulation prescribe.”

Subsec. (h). Pub. L. 104–208, §348(a), inserted at end of concluding provisions “No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.”

Pub. L. 104–208, §308(g)(10)(A), which directed substitution of “paragraphs (1) and (2) of section 1229(b) of
this title” for “subsection (c) of this section”, could not be executed because the language “subsection (c) of this section” did not appear.


Subsec. (i). Pub. L. 104–208, §349, amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: “The Attorney General may, in his discretion, waive application of clause (i) of subsection (a)(6)(C) of this section—

“(1) in the case of an alien who is the spouse, parent, or son or daughter of a United States citizen or of an immigrant lawfully admitted for permanent residence or

“(2) if the fraud or misrepresentation occurred at least 10 years before the date of the immigrant’s application for a visa, entry, or adjustment of status and it is established to the satisfaction of the Attorney General that the admission to the United States of such immigrant would not be contrary to the national welfare, safety, or security of the United States.”


Pub. L. 104–208, §308(d)(1)(D), substituted “inadmissibility” for “exclusion”.


1994—Subsec. (a)(2)(A)(i). Pub. L. 103–416, §203(a)(1), inserted “or attempt or conspiracy to commit such a crime after ‘offense’”.


Subsec. (d)(11). Pub. L. 103–316, §219(e), substituted “voluntarily” for “voluntary”.

Subsec. (e). Pub. L. 103–416, §220(a), in first proviso, inserted “or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent” after “interested United States Government agency” and “except that in the case of a waiver request by a State Department of Public Health, or its equivalent the waiver shall be subject to the requirements of section 1184(k) of this title” after “public interest”.

Subsec. (h). Pub. L. 103–416, §203(a)(3), inserted before period at end “or an attempt or conspiracy to commit murder or a criminal act involving torture”.


Subsec. (o). Pub. L. 103–317, §306(a), (c), temporarily added subsec. (o) which read as follows: “An alien who has been physically present in the United States shall not be eligible to receive an immigrant visa within ninety days following departure therefrom unless—

“(1) the alien was maintaining a lawful nonimmigrant status at the time of such departure, or

“(2) the alien is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 1101 or 1255a of this title or section 202 of the Immigration Reform and Control Act of 1986 at any date, when—

“(A) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 1101 or 1255a of this title or section 202 of the Immigration Reform and Control Act of 1986; “

“(B) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

“(C) applied for benefits under section 302 of the Immigration Act of 1990.”

See Effective and Termination Dates of 1994 Amendment note below.

1993—Subsec. (a)(1)(A)(i). Pub. L. 103–43 inserted at end “which shall include infection with the etiologic agent for acquired immune deficiency syndrome,”.


Subsec. (a)(5)(C). Pub. L. 102–232, §307(a)(6), as amended by Pub. L. 103–416, §218(a)(5), substituted “immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 1153(b) of this title” for “preference immigrant aliens described in paragraph (3) or (6) of section 1153(a) of this title and non-preference immigrant aliens described in section 1153(a)(7) of this title”.

Subsec. (a)(6)(B). Pub. L. 102–232, §307(a)(7), in closing provisions, substituted “(a) who seeks for who seeks” “(b) or who seeks admission for ‘(or,’ and “(c) for “(dyl.”


Subsec. (a)(9)(C)(ii). Pub. L. 102–232, §307(a)(9)(A), substituted “an order by a court in the United States granting custody to a person of a United States citizen child who detains or retains the child, or withholding custody of the child, outside the United States from the person granted custody by that order, is excludable until the child is surrendered to the person granted custody by that order” for “a court order granting custody to a citizen of the United States of a child having a lawful claim to United States citizenship, detains, retains, or withholds custody of the child outside the United States from the United States citizen granted custody, is excludable until the child is surrendered to such United States citizen”.

Subsec. (a)(9)(C)(ii). Pub. L. 102–232, §307(a)(10)(B), substituted “so long as the child is located in a foreign state that is a party” for “to an alien who is a national of a foreign state that is a party”.


Subsec. (c). Pub. L. 102–232, §307(b), substituted “paragraphs (3) and (9)(C)” for “subparagraphs (A), (B), (C), or (E) of paragraph (3)”.

Pub. L. 102–232, §306(a)(10), substituted “one or more aggravated felonies and has served for such felony or felonies” for “an aggravated felony and has served”.


Subsec. (d)(11). Pub. L. 102–232, §307(d), inserted “and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 1153(a) of this title” (other than paragraph 4 thereof) after “section 1181(b) of this title”.


Subsec. (h). Pub. L. 102–232, §307(f), struck out “in the case of an immigrant who is the spouse, parent, or son, daughter of a citizen of the United States or
alien lawfully admitted for permanent residence” after “marijuana” in introductory provisions.

Subsec. (h)(1). Pub. L. 102–232, §307(h)(2), designated existing provisions as subpars. as redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, struck out “and” at end of cl. (i), substituted “subpar.” for “and” at end of cl. (ii), and added subpar. (B).

Subsec. (i). Pub. L. 102–232, §307(g), substituted “immigrant” and “immigrant’s” for “alien” and “alien’s”, respectively, wherever appearing.


Subsec. (j)(2). Pub. L. 102–232, §308(a)(5)(B), added par. (2) and struck out former par. (2) which related to inapplicability of par. (1)(A) and (B)(i)(I) requirements between effective date of subsec. and Dec. 31, 1983.


Subsec. (m)(2)(A). Pub. L. 102–232, §302(e)(9), inserted, after first sentence of closing provisions, sentence relating to attestation that facility will not replace nurse with nonimmigrant for period of one year after layoff.

Subsec. (n)(1). Pub. L. 102–232, §303(a)(7)(B)(ii), (iii), redesignated mater after first sentence of subpar. (D) as closing provisions of par. (1), substituted “and such accompanying documentation” for “and necessary”, and inserted last two sentences providing for review and certification by Secretary of Labor.

Subsec. (n)(1)(A)(i). Pub. L. 102–232, §303(a)(7)(B)(i), as amended by Pub. L. 103–146, §219(2)(1), in introductory provisions substituted “admitted or provided status as a nonimmigrant described in section 1101(a)(15)(B)(i)(b) of this title” for “and to other individuals employed in the occupational classification and in the area of employment”, in closing provisions substituted “based on the best information available” for “determined”, and amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: “the actual wage level for the occupational classification at the place of employment, or”.

Subsec. (n)(1)(A)(ii). Pub. L. 102–232, §303(a)(6), substituted “for such a nonimmigrant” for “for such aliens”.


Subsec. (n)(2)(C). Pub. L. 102–232, §303(a)(7)(B)(iv), substituted “of paragraph (B)” for “of paragraph (A), a substantial failure to meet a condition of paragraphs (1)(C) or (1)(D), a willful failure to meet a condition of paragraph (1)(A), or a misrepresentation” for “or a substantial failure in the case of a condition described in subparagraph (C) or (D) of paragraph (1) or misrepresentation”.

Subsec. (n)(2)(D). Pub. L. 102–232, §303(a)(7)(B)(v), (vi), substituted “if” for “in addition to the sanctions provided under subparagraph (C), if” and inserted before period at end “whether or not a penalty under subparagraph (C) has been imposed”.

1990—Subsec. (a). Pub. L. 101–649, §601(a), amended subsec. (a) generally, decreasing number of classes of excludable aliens from 34 to 9 by broadening descriptions of such classes.


Pub. L. 101–649, §162(e)(1), which provided that par. (5) is amended in subpar. (A), by striking “Any alien who seeks admission or status as an immigrant under paragraph (2) or (3) of section 1158(b) of this title, in paragraphs (2)(B), by inserting “or admission or status as an immigrant under paragraph (2) or (3) of section 1158(b) of this title” after “An alien” the first place it appears, and by striking subpar. (C), was repealed by Pub. L. 102–232, §302(e)(6). See Construction of 1990 Amendment note below.

Pub. L. 101–246, §131(a), added par. (34) which read as follows: “Any alien who has committed in the United States any serious criminal offense, as defined in section 1101(h) of this title, for whom immunity from criminal jurisdiction was exercised with respect to that offense, who as a consequence of the offense and the exercise of immunity has departed the United States, and who has not subsequently submitted fully to the jurisdiction of the court in the United States with jurisdiction over the offense.”

Subsec. (b). Pub. L. 101–649, §601(b), added subsec. (b) and struck out former subsec. (b) which related to non-applicability of subsec. (a)(25).

Subsec. (c). Pub. L. 101–649, §601(d)(1), substituted “subsection (a) of this section (other than subparagraphs (A), (B), (C), or (E) of paragraph (3))” for “paragraph (1) through (20) and paragraphs (30) and (31) of subsection (a) of this section”.

Pub. L. 101–649, §511(a), inserted at end “The first sentence of this subsection shall not apply to an alien who has been convicted of an aggravated felony and has served a term of imprisonment of at least 5 years.”

Subsec. (d)(1). Pub. L. 101–649, §601(d)(2)(A), struck out pars. (1) and (2) which related to applicability of subsec. (a)(11), (25), and (26).

Subsec. (d)(2). Pub. L. 101–649, §601(d)(2)(B), substituted “under subsection (a) (other than paragraphs (26)(A), (33)(C), and (33)(D) of such subsection)” for “under one or more of the paragraphs enumerated in subsection (a) (other than paragraphs (27), (29), and (33))” wherever appearing, and inserted at end “The Attorney General shall prescribe conditions, including exacting of such bonds as may be necessary, to control and regulate the admission and return of excludable aliens applying for temporary admission under this paragraph.”


Subsec. (d)(4)(A). Pub. L. 101–649, §202(b), inserted “in section 118(f) of this title” after “except as provided in subparagraph (B)”.


Subsec. (d)(7). Pub. L. 101–649, §601(d)(2)(D), substituted “other than paragraph (7)” for “of this section, except paragraphs (20), (21), and (29)”.

Subsec. (d)(8). Pub. L. 101–649, §601(d)(2)(E), substituted “(3)(A), (3)(B), (3)(C), and (7)(B)” for “(26), (27), and (29)”.

Subsec. (d)(9). Pub. L. 101–649, §601(d)(2)(A), struck out pars. (9) and (10) which related to applicability of pars. (7) and (15), respectively, of subsec. (a).


Subsec. (g). Pub. L. 101–649, §601(d)(3), amended subsec. (g) generally, substituting provisions relating to waiver of application for provisions relating to admission of mentally retarded, tubercular, and mentally ill aliens.


Pub. L. 101–246, §131(c), substituted “(12), or (34)” for “(12)”.


Subsec. (k). Pub. L. 101–649, §601(d)(6), substituted “paragraph (5)(A) or (7)(A)(i)” for “paragraph (14), (20), or (21)”.


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Subsec. (m)(2)(A). Pub. L. 101–649, §162(c)(2)(B), in opening provision, struck out ‘‘, with respect to a facility for which an alien will perform services, before ‘‘is” and redesigning former par. (2)(A), redesigning former par. (2)(B) and redesigning former par. (2)(C) respectively.


1988—Subsec. (a)(17). Pub. L. 100–690 substituted ‘‘Secretary of Education’’ for ‘‘Commissioner of Education’’ in cl. (ii) inserted ‘‘Secretary of Education’’ after ‘‘The alien’’, and inserted at end ‘‘In the case of an alien for whom an employer has filed an attestation for the worksite as may be appropriate in order to avoid duplicative attestations, in cases of temporary, emergency circumstances, with respect to information not within the knowledge of the attestor, or for other good cause.’’


Subsec. (b). Pub. L. 100–255, §9(a)(4), substituted ‘‘paragraph (5)’’ for ‘‘paragraph 9’’.


Subsec. (d). Pub. L. 100–255, §9(c)(3), substituted ‘‘Secretary of Health and Human Services’’ for ‘‘Secretary of Health, Education, and Welfare’’.

Subsec. (e). Pub. L. 100–255, §9(c)(2), substituted ‘‘Director of the United States Information Agency’’ for ‘‘Secretary of State’’ the first place appearing, and ‘‘Director of the United States Information Agency’’ for ‘‘Secretary of State’’ each subsequent place appearing.

Subsec. (g). Pub. L. 100–255, §9(d)(3), substituted ‘‘Secretary of Health and Human Services’’ for ‘‘Secretary of Health, Education, and Welfare’’.


Subsec. (l). Pub. L. 100–255, §9(c)(3), added Pub. L. 99–639, §6(b), as added by Pub. L. 100–525, §7(c)(3), inserted ‘‘or other benefit under this chapter’’ after ‘‘United States.’’

Subsec. (b). Pub. L. 100–255, §7(d)(2), as added by Pub. L. 100–525, §7(c)(3), inserted ‘‘Secretary of Education’’ for ‘‘Secretary of Education’’ for ‘‘Secretary of Health and Human Services’’ for ‘‘Secretary of Health, Education, and Welfare’’.

Subsec. (m). Pub. L. 100–255, §9(a)(1), amended subsec. (m) generally, designating existing provisions as par. (1) and redesignating former paras. (1) and (2) as paras. (A) and (B), respectively, inserting in par. (1) as so redesignated reference to consultation with the Governor of Guam, inserting in subpar. (B) as so redesignated reference to the welfare, safety, and security of the territories and commonwealths of the United States, and adding paras. (2) and (3).

Subsec. (a)(9). Pub. L. 98–473 amended last sentence generally. Prior to amendment, last sentence read as follows: ‘‘Any alien who would be excludable because of a conviction of a misdemeanor classifiable as a petty offense under the provisions of section 182 of title 18, by reason of the punishment actually imposed, or who would be excludable as one who admits the commission of an offense that is classifiable as a misdemeanor under the provisions of section 182 of title 18, by reason of the punishment which might have been imposed upon him, may be granted a visa and admitted to the United States if otherwise admissible: Provided, That the alien has committed only one such offense, or admits the commission of acts which constitute the essential elements of only one such offense:’’.


1981—Subsec. (a)(17). Pub. L. 97–116, §4(1), inserted ‘‘and who seek admission within five years of the date of such deportation or removal,’’ after ‘‘section 1225(b) of this title’’.


Subsec. (d)(6). Pub. L. 97–116, §4(2), struck out provision that the Attorney General make a detailed report to Congress in any case in which he exercises his authority under par. (3) of this subsection on behalf of any alien excludable under subsec. (a)(9), (10), and (28) of this section.

Subsec. (b). Pub. L. 97–116, §4(3), substituted ‘‘paragraphs (9), (10), or (12) of subsection (a) of this section, or any other paragraph or section of this title’’ for ‘‘the department or the alien or any other such provision or section of this title’’.

Subsec. (k)(1). Pub. L. 97–116, §6(b)(1), inserted ‘‘as follows after ‘training are’’’.


Subsec. (k)(1)(B). Pub. L. 97–116, §5(a)(2), (b)(3), (7)(A), (B), substituted ‘‘Secretary of Education’’ for ‘‘Commissioner of Education’’, ‘‘II’’ for ‘‘I’’, and ‘‘Secretary of Health and Human Services’’ for ‘‘Secretary of Health, Education, and Welfare’’, inserted ‘‘before ‘has competency’, ‘III’ before ‘will be able to adapt’, and ‘IV’ before ‘has adequate prior edu-
tion"; and inserted provision that for purposes of this
paragraph an alien who is a graduate of a medical
school be considered to have passed parts I and II of the
National Board of Medical Examiners examination
for the purpose by the Commissioner of Education regardless of
whether such school of medicine is in the United States
after "graduates of a medical school" in first sentence and struck out second sentence exclusion of
aliens provision with respect to application to special
immigrants defined in section 1101(a)(27)(A) of this title
(other than the parents, spouses, or children of the
United States citizens or of aliens lawfully admitted for
dependent residence).

cl. (i) and designated existing provisions as cl. (ii).

stituted "that there is a need in that country for per-
sons with the skills the alien will acquire in such edu-
cation or training" for "that upon such completion and
return, he will be appointed to a position in which he
will fully utilize the skills acquired in such education
or training in the government of that country or in an
educational or other appropriate institution or agency
in that country".

Subsec. (j)(1)(D). Pub. L. 95–83, § 307(q)(2)(C), sub-
stituted "at the written request of the alien, and
struck out cl. (i) such government provides a written
assurance, satisfactory to the Secretary of Health,
Education, and Welfare, that the alien will, at the end
of such extension, be appointed to a position in which
he will fully utilize the skills acquired in such edu-
cation or training in the government of that country or
in an educational or other appropriate institution or agency
in that country," and redesignated as cls. (i) and
(ii) former cl. (ii) and (iii).

stituted "(A) and (B)" for "(A)" and added (C).

par. (14), inserted in cl. (A) "(or equally qualified in the
case of aliens who are members of the teaching profes-
sion who have exceptional ability in the sciences or
the arts)" and struck out "in the United States" after "sufficient workers" and "destined" before "to per-
f orm" and introductory provision of last sentence mak-
ing exclusion of aliens under par. (14) applicable to
special immigrants defined in former provision of section
1101(a)(27)(A) of this title (other than the parents,
spouses, or children of United States citizens or
aliens lawfully admitted to the United States for per-
manent residence).

Subsec. (j)(2)(D). Pub. L. 94–971, § 7(d), substituted in
parenthetical text "section 1101(a)(27)(A) of this title
and aliens born in the Western Hemisphere" for "sec-
tion 1101(a)(27)(A) and (B) of this title".

par. (3).

Subsec. (j)(4)(A). Pub. L. 95–83, § 307(q)(2)(C), de-
leted cl. (ii) and redesignated existing provisions as subpar. (A), inserted provision excepting
subpar. (B), and added subpar. (B).

"(A)" and ",(B)" for "(A) and (B)" and struck out last
sentence.


1976—Subsec. (d)(9)(A). Pub. L. 94–994, § 601(c), substituted "(ii) whose", for "whose (i) residence (ii) for "resi-
dence, or (ii)," inserted "or (iii) who came to the
United States or acquired such status in order to re-
ceive graduate medical education or training," before
shall be eligible", and inserted "except in the case of an
alien described in clause (iii)," in second proviso.


1975—Subsec. (e). Pub. L. 91–225 inserted cls. (i) and
(ii) and reference to eligibility for nonimmigrant visa
under section 1101(a)(15)(L) of this title, provided for
waiver of requirement of two-year foreign residence
abroad where alien cannot return to the country of his
nationality or last residence because he would be sub-
ject to persecution on account of race, religion, or po-
itical opinion or where the foreign country of alien's
nationality or last residence has furnished a written
statement that it has no objection to such waiver for
such alien, and struck out alternative provision for res-
idence and physical presence in another foreign coun-
try and former first and final provisos which read as
follows: "Provided, That such residence in another for-
country shall be considered to have satisfied the
requirements of this subsection if the Secretary of
State determines that it has served the purpose and the
intent of the Mutual Educational and Cultural Ex-
change Act of 1961 and provided further, That
the provisions of this subchapter shall apply also to
those persons who acquired exchange visitor status
under the United States Information and Educational
Exchange Act of 1948, as amended in such ed.

"mentally retarded" for "feebleminded".

Subsec. (a)(4). Pub. L. 89–236, § 15(b), substituted "or
sexual deviation" for "epilepsy".

Subsec. (a)(14). Pub. L. 89–238, § 10(a), inserted require-
ment that Secretary of Labor make an affirmative
finding that any alien seeking to enter the United States as a worker, skilled or otherwise, will not replace a worker in the United States nor will the employment of the alien adversely affect the wages and working conditions of individuals in the United States similarly employed, and made the requirement applicable to special immigrants (other than the parents, spouses, and minor children of U.S. citizens or permanent resident aliens), preference immigrants described in sections 115(a)(3) and 115(a)(6) of this title, and nonpreference immigrants.

Subsec. (a)(20). Pub. L. 89–236, §10(b), substituted "1181(a)(4)" for "1181(e)".  
Subsec. (a)(21). Pub. L. 89–236, §10(c), struck out "quota" before "immigrant".

Subsec. (a)(24). Pub. L. 89–236, §10(d), substituted "other than aliens described in section 1101(a)(27)(A) and (B)" for "other than those aliens who are nativeborn citizens of countries enumerated in section 1101(a)(27) of this title and aliens described in section 1101(a)(27)(B) of this title".

Subsec. (g). Pub. L. 89–236, §15(c), redesignated subsec. (f) of sec. 212 of the Immigration and Nationality Act as subsec. (g) thereof, which for purposes of codification had already been designated as subsec. (g) of this section and granted the Attorney General authority to admit any alien who is the spouse, unmarried son or daughter, minor adopted child, or parent of a citizen or lawful permanent resident and who is mentally retarded or has a past history of mental illness under the same conditions as authorized in the case of such close relatives afflicted with tuberculosis.

Subsecs. (h), (i). Pub. L. 89–236, §15(c), redesignated subsecs. (g) and (h) of sec. 212 of the Immigration and Nationality Act as subsecs. (h) and (i) respectively thereof which for purposes of codification had already been designated as subsecs. (h) and (i) of this section.


Subsec. (a)(9). Pub. L. 87–301, §13, authorized admission of aliens who would be excluded because of conviction of a violation classifiable as an offense under section 1(3) of title 18, by reason of punishment actually imposed, or who admit commission of an offense classifiable as a misdemeanor under section 1(2) of title 18, by reason of punishment which might have been imposed, if otherwise admissible and provided the alien has committed, or admits to commission of, only one such offense.

Subsecs. (e), (f). Pub. L. 87–256 added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (g). Pub. L. 87–301, §§12, 14, 15, added subsec. (f) to (h), which for purposes of codification have been designated as subsecs. (g) to (i).


1959—Subsec. (d). Pub. L. 86–3 struck out provisions from cl. (7) which related to aliens who left Hawaii and to persons who were admitted to Hawaii under section 8(a)(1) of the act of March 23, 1914, or as nationals of the United States.


1956—Subsec. (a)(23). Act July 18, 1956, included conspiracy to violate a narcotic law, and the illicit possession of narcotics, as additional grounds for exclusion.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 111–122, §3(c), Dec. 22, 2009, 123 Stat. 3481, provided that: "The amendments made by subsections (b), (c), and (d) of the Child Soldiers Accountability Act of 2008 (Public Law 110–340) [probably means subsections (b) to (d) of section 2 of Public Law 110–340, amending this section and section 1227 of this title] shall apply to offenses committed before, on, or after the date of enactment of the Child Soldiers Accountability Act of 2008 [Oct. 3, 2008]."

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

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–161, div. J, title VI, §691(f), Dec. 26, 2007, 121 Stat. 1286, provided that: "The amendments made by this section [amending this section] shall take effect on the date of enactment of this section [Dec. 26, 2007], and these amendments and sections 212(a)(3)(B) and 212(d)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B) and 1182(d)(3)(B)), as amended by these sections, shall apply to—  
"(1) removal proceedings instituted before, on, or after the date of enactment of this section; and  
"(2) acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after such date."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–13, div. B, title I, §103(d), May 11, 2005, 119 Stat. 308, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this division [May 11, 2005], and these amendments, and section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)), as amended by this section, shall apply to—  
"(1) removal proceedings instituted before, on, or after the date of enactment of this section; and  
"(2) acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after such date."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–458, title V, §5501(c), Dec. 17, 2004, 118 Stat. 3740, provided that: "The amendments made by this section [amending this section and section 1227 of this title] shall apply to offenses committed before, on, or after the date of enactment of this Act [Dec. 17, 2004]."


"(a) IN GENERAL.—Except as provided in subsection (b), this subtitle [title VIII (§421–430) of title IV of div. J of Pub. L. 108–447, enacting section 1381 of this title, amending this section, sections 1184, and 1356 of this title, section 2915a of Title 29, Labor, and section 1090c of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and sections 1101 and 1104 of this title] and the amendments made by this subtitle shall take effect 90 days after the date of enactment of this Act [Dec. 8, 2004].

"(b) EXCEPTIONS.—The amendments made by sections 422(b), 426(a), and 427 [amending sections 1184 and 1356 of this title] shall take effect upon the date of enactment of this division.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and ceases to be effective on the date the Agreement ceases to be in force, see section 107 of Pub. L. 108–77, set out in a note under section 3805 of Title 19, Customs Duties.
amended with respect to a terrorist organization at any time when such organization was designated by the Secretary of State under section 219 of such Act—
or otherwise designated under section 212(a)(3)(B)(vi) of such Act (as so amended); or
“(ii) described in subclause (IV)(cc), (V)(cc), or (VI)(dd) of section 212(a)(3)(B)(iv) of such Act (as so amended) with respect to a terrorist organization described in section 212(a)(3)(B)(vi)(III) of such Act (as so amended).”

“EXCEPTION.—The Secretary of State, in consultation with the Attorney General, may determine that the amendments made by this section shall not apply with respect to actions by an alien taken outside the United States before the date of the enactment of this Act [Oct. 26, 2001] upon the recommendation of a consular officer who has concluded that there is no reasonable ground to believe that the alien knew or reasonably should have known that the actions would further a terrorist activity.”

[Another section 411(c) of Pub. L. 107–56 amended section 1189 of this title.]

**Effective Date of 2000 Amendment**

Pub. L. 106–385, title II, §201(b)(3), Oct. 30, 2000, 114 Stat. 1634, provided that: “The amendments made by this section shall apply to classification petitions filed for nonimmigrant status only during the period—
“(1) beginning on the date that interim or final regulations are first promulgated under subsection (d) [set out as a note above]; and
“(2) ending on the date that is 3 years after the date of the enactment of the Nursing Relief for Disadvantaged Areas Reauthorization Act of 2005 [Dec. 20, 2006].”

[Pub. L. 109–423, § 3, Dec. 20, 2006, 120 Stat. 2900, provided that: “The requirements of chapter 5 of title 5, United States Code (commonly referred to as the ‘Administrative Procedure Act’) or any other law relating to rulemaking, information collection or publication in the Federal Register, shall not apply to any action to implement the amendments made by section 2 [amending provisions set out as a note above] to the extent the Secretary Homeland of Security [sic], the Secretary of Labor, or the Secretary of Health and Human Services determines that compliance with any such requirement would impede the expeditious implementation of such amendments.”]


**Effective Date of 1999 Amendment**


**Effective and Termination Dates of 1998 Amendment**

section (a) [amending this section] shall apply to aliens seeking to enter the United States on or after the date of the enactment of this Act [Oct. 27, 1996].''


Pub. L. 105–277, div. C, title IV, §415(b), Oct. 21, 1998, 112 Stat. 2681–655, provided that: ‘‘The amendment made by subsection (a) [amending this section] applies to prevailing wage computations made—’’ (1) for applications filed on or after the date of the enactment of this Act [Oct. 21, 1998]; and

Pub. L. 105–277, div. C, title IV, §415(c), Oct. 21, 1998, 112 Stat. 2681–621, provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to applications for immigrant visas made by section 101(a)(15)(F) of the Immigration and Nationality Act [§ 1101(a)(15)(F)] after the end of the 60-day period beginning on the date of the enactment of this Act [Sept. 30, 1996], including aliens whose status as such a nonimmigrant is extended after the end of such period.’’

Pub. L. 104–208, div. C, title III, §347(c), Sept. 30, 1996, 110 Stat. 3009–639, provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply to aliens who obtain the status of a nonimmigrant under section 101(a)(15)(F) of the Immigration and Nationality Act [§ 1101(a)(15)(F)] after the end of the 60-day period beginning on the date of the enactment of this Act [Sept. 30, 1996], including aliens whose status as such a nonimmigrant is extended after the end of such period.’’

Pub. L. 104–208, div. C, title III, §348(b), Sept. 30, 1996, 110 Stat. 3009–639 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall be effective on the date of the enactment of this Act [Sept. 30, 1996] and shall apply in the case of any alien who is in exclusion or deportation proceedings as of such date unless a final administrative order in such proceedings has been entered as of such date.’’

Pub. L. 104–208, div. C, title III, §351(c), Sept. 30, 1996, 110 Stat. 3009–640, provided that: ‘‘The amendments made by this section [amending this section and section 1251 of this title] shall apply to applications for waivers filed before, on, or after the date of the enactment of this Act [Sept. 30, 1996], but shall not apply to such an application for which a final determination has been made as of the date of the enactment of this Act.’’

Pub. L. 104–208, div. C, title III, §352(b), Sept. 30, 1996, 110 Stat. 3009–641, provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to individuals who renounce United States citizenship on and after the date of the enactment of this Act [Sept. 30, 1996].’’


Pub. L. 104–208, div. C, title V, §531(b), Sept. 30, 1996, 110 Stat. 3009–675, provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to applications submitted on or after such date, not earlier than 30 days and not later than 60 days after the date the Attorney General promulgates under section 551(c)(2) of this division [set out as a note under section 1183a of this title] a standard form for an affidavit of support, as the Attorney General shall specify, and paragraphs (C) and (D) of section 212(i) of the Immigration and Nationality Act [§ 1182(a)(4)(C), (D)] as so amended, shall not apply to applications...''
with respect to which an official interview with an immigration officer was conducted before such effective date.

**Effective and Termination Dates of 1994 Amendment**


provisions of this section (amending this section and section 1101 of this title) shall apply to classification petitions filed for nonimmigrant status only during the 5-year period beginning on the first day of the 9th month beginning after the date of the enactment of this Act [Dec. 18, 1989]."

**Effective Date of 1988 Amendments**

Pub. L. 100–690, title VII, §7439(b), Nov. 18, 1988, 102 Stat. 4473, provided that: "The amendment made by subsection (a) [amending this section] shall apply to any alien convicted of an aggravated felony who seeks admission to the United States on or after the date of the enactment of this Act [Nov. 18, 1988]."

Pub. L. 100–525, §3, Oct. 24, 1988, 102 Stat. 2614, provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 98–301. Pub. L. 100–525, §7(d), Oct. 24, 1988, 102 Stat. 2617, provided that: "The amendments made by this section [amending this section, sections 1186a and 1255 of this title, and provisions set out as a note below] shall be effective as if they were included in the enactment of the Immigration Marriage Fraud Amendments of 1986 [Pub. L. 99–639]."


**Effective Date of 1986 Amendments**

Amendment by Pub. L. 99–639 applicable to visas issued, and admissions occurring, on or after Nov. 14, 1986, see section 23(a) of Pub. L. 99–639, set out as a note under section 1101 of this title.

Pub. L. 99–639, §6(c), formerly §6(b), Nov. 10, 1986, 100 Stat. 3307 as redesignated and amended by Pub. L. 100–525, §7(c)(2), Oct. 24, 1988, 102 Stat. 2616, provided that: "The amendment made by this section [amending this section] shall apply to the receipt of visas by, and the admission of, aliens occurring after the date of the enactment of this Act [Nov. 10, 1986] based on fraud or misrepresentations occurring before, on, or after such date."

Pub. L. 99–570, title I, §1751(c), Oct. 27, 1986, 100 Stat. 3207–47, provided that: "The amendments made by the [sic] subsections (a) and (b) of this section [amending this section and section 251 of this title] shall apply to convictions occurring before, on, or after the date of the enactment of this section [Oct. 27, 1986], and the amendments made by subsection (a) [amending this section] shall apply to aliens entering the United States after the date of the enactment of this section."

**Effective Date of 1984 Amendment**

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 225(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3561 of Title 18, Crimes and Criminal Procedure.

**Effective Date of 1981 Amendment**

Pub. L. 97–116, §8(c), Dec. 29, 1981, 95 Stat. 1614, provided that: "The amendments made by paragraphs (2), (5), and (6) of subsection (b) [striking out "including any extension of the duration thereof under subparagraph (D)" in subsec. (j)(1)(C) of this section, amending subsec. (j)(1)(D) of this section, and enacting subsec. (j)(1)(E) of this section] shall apply to aliens entering the United States as exchange visitors (or otherwise acquiring exchange visitor status) on or after January 10, 1978."


**Effective Date of 1980 Amendment**

Amendment by section 203(d) of Pub. L. 96–212 effective, except as otherwise provided, Apr. 1, 1980, and amendment by section 203(f) of Pub. L. 96–212 applicable, except as otherwise provided, to aliens paroled into the United States on or after the sixtieth day after Mar. 17, 1980, see section 204 of Pub. L. 96–212, set out as a note under section 1101 of this title.

**Effective Date of 1979 Amendment**

Pub. L. 96–70, effective Sept. 27, 1979, see section 3201(d)(1) of Pub. L. 96–70, set out as a note under section 1101 of this title.

Pub. L. 96–70, title III, §3201(d)(2), Sept. 27, 1979, 93 Stat. 497, provided that: "Paragraph (9) of section 212(d) of the Immigration and Nationality Act [subsec. (d)(9) of this section], as added by subsection (b) of this section, shall cease to be effective at the end of the transition period [midnight Mar. 31, 1982, see section 2101 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to section 3351 of Title 22, Foreign Relations and Intercourse]."

**Effective Date of 1976 Amendments**

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

Amendment by section 601(d) of Pub. L. 94–484 applicable only on and after Jan. 10, 1978, notwithstanding section 601(f) of Pub. L. 94–484, see section 602(d) of Pub. L. 94–484, as added by section 307(q)(3) of Pub. L. 95–83, set out as an Effective and Termination Dates of 1977 Amendment note under section 1101 of this title.

Pub. L. 94–484, title VI, §601(f), Oct. 12, 1976, 90 Stat. 2363, provided that: "The amendments made by this section [amending this section and section 1101 of this title] shall take effect ninety days after the date of enactment of this section [Oct. 12, 1976]."

**Effective Date of 1965 Amendment**

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

**Effective Date of 1956 Amendment**

Amendment by act July 18, 1956, effective July 19, 1956, see section 401 of act July 18, 1956.

**Construction of 1990 Amendment**

Pub. L. 102–232, title III, §302(e)(6), Dec. 12, 1991, 105 Stat. 1746, provided that: "Paragraph (1) of section 162(c) of the Immigration Act of 1990 [Pub. L. 102–140, amending this section] is repealed, and the provisions of law amended by such paragraph are restored as though such paragraph had not been enacted."

**Regulations**

Pub. L. 106–95, §2(d), Nov. 12, 1999, 113 Stat. 1316, provided that: "Not later than 90 days after the date of the enactment of this Act [Nov. 12, 1999], the Secretary of Labor (in consultation, to the extent required, with the Secretary of Health and Human Services) and the Attorney General shall promulgate final or interim final regulations to carry out section 212(m) of the Immigration and Nationality Act [8 U.S.C. 1182(m)] (as amended by subsection (b))." (Interim final regulations implementing subsec. (m) of this section were promulgated Aug. 22, 2000, 65 F.R. 51138, and effective Sept. 21, 2000.)

Pub. L. 105–277, div. C, title IV, §412(e), Oct. 21, 1998, 112 Stat. 2661–666, provided that: "In first promulgating regulations to implement the amendments made by this section [amending this section] in a timely manner, the Secretary of Labor and the Attorney General may reduce to not less than 30 days the period of public comment on proposed regulations."

eral shall first issue, in proposed form, regulations referred to in the second sentence of section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)), as added by the amendment made by paragraph (1), not later than 90 days after the date of the enactment of this Act [Sept. 30, 1996].”

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

ABOLITION OF IMMIGRATION AND NATIONALIZATION SERVICE AND TRANSFER OF FUNCTIONS
For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

PAROLE IN PLACE FOR MEMBERS OF THE ARMED FORCES AND CERTAIN MILITARY DEPENDENTS

“(a) IN GENERAL.—In evaluating a request from a covered individual for parole in place under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), the Secretary of Homeland Security shall consider, on a case-by-case basis, whether granting the request would enable military family unity that would constitute a significant public benefit.

“(b) SENSE OF CONGRESS.—It is the sense of Congress that:

“(1) parole in place reinforces the objective of military family unity;

“(2) except as required in furtherance of the missions of the Armed Forces, disruption to military family unity should be minimized in order to enhance military readiness and allow members of the Armed Forces to focus on the faithful execution of their military missions and objectives, with peace of mind regarding the well-being of their family members; and

“(3) the importance of the parole in place authority of the Secretary of Homeland Security is reaffirmed.

“(c) COVERED INDIVIDUAL DEFINED.—In this section, the term ‘covered individual’ means an alien who—

“(1) is a member of the Armed Forces;

“(2) is the spouse, son, or daughter of a member of the Armed Forces;

“(3) is the parent of a member of the Armed Forces who supports the request of such parent for parole in place; or

“(4) is the widow, widower, parent, son, or daughter of a deceased member of the Armed Forces.”

RECIPROCAL ACCESS TO TIBET

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Reciprocal Access to Tibet Act of 2018’.

“SEC. 2. FINDINGS.

“Congress finds the following:

“(1) The Government of the People’s Republic of China does not grant United States diplomats and other officials, journalists, and other citizens access to China on a basis that is reciprocal to the access that the Government of the United States grants Chinese diplomats and other officials, journalists, and citizens.

“(2) The Government of China imposes greater restrictions on travel to Tibetan areas than to other areas of China.

“(3) Officials of China have stated that Tibet is open to foreign visitors.

“(4) The Government of China is promoting tourism in Tibetan areas, and at the Sixth Tibet Work Forum in August 2015, Premier Li Keqiang called for Tibet to build ‘major world tourism destinations’.

“(5) The Government of China requires foreigners to obtain permission from the ‘Tibet Foreign and Overseas Affairs Office or from the Tibet Tourism Bureau to enter the Tibet Autonomous Region, a restriction that is not imposed on travel to any other provincial-level jurisdiction in China.

“(6) The Department of State reports that—

“(A) officials of the Government of the United States submitted 39 requests for diplomatic access to the Tibet Autonomous Region between May 2011 and July 2015, but only four were granted; and

“(B) when such requests are granted, diplomatic personnel are closely supervised and given few opportunities to meet local residents not approved by authorities.

“(7) The Government of China delayed United States consular access for more than 48 hours after an October 28, 2013, bus crash in the Tibet Autonomous Region, in which three citizens of the United States died and more than a dozen others, all from Walnut, California, were injured, undermining the ability of the Government of the United States to provide consular services to the victims and their families, and failing to meet China’s obligations under the Convention on Consular Relations, done at Vienna April 24, 1963 (21 UST 77).

“(8) Following a 2015 earthquake that trapped dozens of citizens of the United States in the Tibet Autonomous Region, the United States Consulate General in Chengdu faced significant challenges in providing emergency consular assistance due to a lack of consular access.

“(9) The Country Reports on Human Rights Practices for 2015 of the Department of State stated ‘With the exception of a few highly controlled trips, the Chinese government also denied multiple requests by foreign diplomats for permission to visit the TAR.

“(10) Tibetan-Americans, attempting to visit their homeland, report having to undergo a discriminatory visa application process, different from what is typically required, at the Chinese embassy and consulates in the United States, and often find their requests to travel denied.

“(11) The Country Reports on Human Rights Practices for 2015 of the Department of State stated ‘The few visits to the TAR by diplomats and journalists that were allowed were tightly controlled by local authorities.

“(12) A September 2016 article in the Washington Post reported that ‘The Tibet Autonomous Region . . . is harder to visit as a journalist than North Korea.

“(13) The Government of China has failed to respond positively to requests from the Government of the United States to open a consulate in Lhasa, Tibet Autonomous Region.

“(14) The Foreign Correspondents Club of China reports that—

“(A) 2008 rules prevent foreign reporters from visiting the Tibet Autonomous Region without prior permission from the Government of such Region; and

“(B) such permission has only rarely been granted; and

“(C) although the 2008 rules allow journalists to travel freely in other parts of China, Tibetan areas outside such Region remain ‘effectively off-limits to foreign reporters.

“(D) The Department of State reports that in addition to having to obtain permission to enter the Tibet Autonomous Region, foreign tourists—

“(A) must be accompanied at all times by a government-designated tour guide;

“(B) are rarely granted permission to enter the region by road;

“(C) are largely barred from visiting around the March anniversary of a 1959 Tibetan uprising; and

“(D) are banned from visiting the area where Larung Gar, the world’s largest center for the study of Tibetan Buddhism, and the site of a large-scale
campaign to expel students and demolish living quarters, is located.

"(18) Foreign visitors also face restrictions in their ability to travel freely in Tibetan areas outside the Tibet Autonomous Region.

"(17) The Government of the United States generally allows journalists and other citizens of China to travel freely within the United States. The Government of the United States requires diplomats from China to notify the Department of State of their travel plans, and in certain situations, the Government of the United States requires such diplomats to obtain approval from the Department of State before travel. However, where approval is required, it is almost always granted expeditiously.

"(16) Foreign visitors also face restrictions in their ability to travel freely within the United States. The Government of China restricts the ability of citizens of the United States to travel to Tibetan areas to gain their own perspective.

"(15) Chinese diplomats based in the United States generally avail themselves of the freedom to travel to United States cities and lobby city councils, mayors, and governors to refrain from passing resolutions, issuing proclamations, or making statements of concern on Tibet.

"(14) The Government of China characterizes statements made by officials of the United States about the situation in Tibetan areas as inappropriate interference in the internal affairs of China.

"SEC. 3. DEFINITIONS.

"In this Act:

"(1) a comparison with the level of access granted to other areas of China;

"(2) a description of the required permits and other measures that impede the freedom to travel in Tibetan areas.

"(3) a description of the level of access in the reporting year and the previous reporting year; and

"(4) a description of the required permits and other measures that impede the freedom to travel in Tibetan areas.

"(b) CONSOLIDATION.—After the issuance of the first report required by subsection (a), the Secretary of State is authorized to incorporate subsequent reports required by subsection (a) into other publicly available, annual reports produced by the Department of State, provided they are submitted to the appropriate congressional committees in a manner specifying that they are being submitted in fulfillment of the requirements of this Act.

"SEC. 5. INADMISSIBILITY OF CERTAIN ALIENS.

"(a) INELIGIBILITY FOR VISAS.—No individual whom the Secretary of State has determined to be substantially involved in the formulation or execution of policies related to access for foreigners to Tibetan areas may be eligible to receive a visa to enter the United States or admitted to the United States if the Secretary of State determines that—

"(1)(A) the requirement for specific official permission for foreigners to enter the Tibetan Autonomous Region remains in effect; and

"(B) such requirement has been replaced by a regulation that has a similar effect and requires foreign travelers to gain a level of permission to enter the Tibetan Autonomous Region that is not required for travel to other provinces in China; and

"(2) restrictions on travel by diplomats and other officials, journalists, and citizens of the United States to areas designated as 'Tibet Autonomous Areas' in the provinces of Sichuan, Qinghai, Yunnan, and Gansu of China are greater than any restrictions on travel by such officials and citizens to areas in such provinces that are not so designated.

"(b) CURRENT VISAS REVOKED.—The Secretary of State shall revoke, in accordance with section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1221(i)), the visa or other documentation to enter or be present in the United States issued for an alien who would be ineligible to receive such a visa or documentation under subsection (a).

"(c) REPORT TO CONGRESS.—Not later than one year after the date of the enactment of this Act (Dec. 19, 2018), and annually thereafter for the following five years, the Secretary of State shall provide to the appropriate congressional committees a report identifying the individuals who have had visas denied or revoked pursuant to this section during the preceding year, and to the extent practicable, a list of Chinese officials who were substantially involved in the formulation or execution of policies to restrict access of United States diplomats and other officials, journalists, and citizens of the United States to Tibetan areas. The report required by this subsection shall be submitted in unclassified form, but may include a classified annex.

"(d) WAIVER FOR NATIONAL INTEREST.—

"(1) IN GENERAL.—The Secretary of State may waive the application of subsection (a) or (b) in the case of an alien if the Secretary determines that such a waiver—

"(A) is necessary to permit the United States to comply with the Agreement Regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force November 21, 1947 (TIAS 1676), or any other applicable international obligation of the United States; or

"(B) is in the national interest of the United States.

"(2) NOTIFICATION.—Upon granting a waiver under paragraph (1), the Secretary of State shall submit to the appropriate congressional committees a document detailing the evidence and justification for the necessity of such waiver, including, if such waiver is granted pursuant to paragraph (1)(B), how such waiver relates to the national interest of the United States.
"§ 1182
132 Stat. 2083, provided that:
arenas.''
cess to parts of China, including the level of access af
omats and other officials from the United States ac
cessory to such diplomats and other officials to Tibetan

TREATMENT OF RWANDAN PATRIOTIC FRONT AND RWAN
ARMY UNDER IMMIGRATION AND NATIONALITY ACT
132 Stat. 2663, provided that:
(1) IN GENERAL.—Except as provided in paragraph
(2), the Rwandan Patriotic Front or the Rwandan Patrici
Army shall be excluded from the definition of terrorist orga
as defined in section 212(a)(3)(B)(vi)(III) of the Immigratio
of such section 212(a)(3)(B) for any period before Aug
1, 1994.
(2) EXCEPTION.—(A) The Secretary of State, in con
sultation with the Secretary of Homeland Security and the
Attorney General, may suspend the application of paragraph
1 for the Rwandan Patriotic Front or the Rwandan Patrici
Army in the sole and unreviewable discre
tion of such applicable Secretary.
(B) REPORT.—Not later than, or contemporaneously
with, a suspension of paragraph (1) under subparagraph (A), t
the Secretary of State or the Secretary of Homeland Secu
shall submit to the appropriate committees of Con
gress a report on the justification for such suspens
don.
(b) RELIEF FROM INADMISSIBILITY.—
(1) ACTIVITIES BEFORE AUGUST 1, 1994.—Section
212(a)(3)(B) of the Immigration and Nationality Act (8 U
S.C. 1182(a)(3)(B)) shall not apply to an alien with respect
to any activity undertaken by the alien in associa
tion with the Rwandan Patriotic Front or the Rwandan Patrici
Army before August 1, 1994.
(2) EXCEPTION.—(A) In general.—Paragraph (1) shall not apply if the Secreta
of State or the Secretary of Homeland Security, as applicable, determines in the sole
unreviewable discretion of such applicable Secretary that—
(i) in the totality of the circumstances, such an
alien—
(II) poses a threat to the safety and security of the United States; or
(ii) does not merit a visa, admission to the United States, or a grant of an immigration
benefit or protection; or
(iii) such alien committed, directed, assisted, or otherwise participated in the commis
of—
(II) an offense described in section 2441 of title 18, United States Code; or
(II) an offense described in President
Proclamation 6697, dated August 4, 2011 [set out under this section].
(B) IMPLEMENTATION.—Subparagraph (A) shall be
implemented by the Secretary of State and the Secretary of Homeland Security, in consultation with the
Attorney General.
(c) APPROPRIATE COMMITTEES OF CONGRESS DF
INED.—In this section, the term ‘appropriate commit
of Congress means—
(1) the Committee on the Judiciary, the Com
mittee on Foreign Relations, the Committee on
Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and
(2) the Committee on the Judiciary, the Com
mittee on Foreign Affairs, the Committee on Home
land Security, and the Committee on Appropriations of the House of Representatives.''

TREATMENT OF KURDISTAN DEMOCRATIC PARTY AND PATRIOTIC UNION OF KURDISTAN UNDER THE IMMIGRATION AND NATIONALITY ACT
128 Stat. 3982, provided that:
(a) REMOVAL OF THE KURDISTAN DEMOCRATIC PARTY AND THE PATRIOTIC UNION OF KURDISTAN FROM TREATMENT AS TERRORIST ORGANIZATIONS.—
(1) IN GENERAL.—Except as provided in paragraph
(2), the Kurdistan Democratic Party and the Patri
otic Union of Kurdistan shall be excluded from the defi
of terrorist organization (as defined in section
of such section 212(a)(3)(B).
(2) EXCEPTION.—The Secretary of State, after con
sultation with the Secretary of Homeland Security and the Attorney General, or the Secretary of Home
land Security, after consultation with the Secretary of State and the Attorney General, may suspend the
application of paragraph (1) for either or both of the groups referred to in paragraph (1) in such Sec
racy’s sole and unreviewable discretion. Prior to or contemporaneous with such suspension, the Sec
racy of State or the Secretary of Homeland Secu
rity shall report their reasons for suspension to the Committees on Judiciary of the House of Representa
ive and of the Senate, the Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.
(b) RELIEF REGARDING ADMISSIBILITY OF NON
IMMIGRANT ALIENS ASSOCIATED WITH THE KURDISTAN
DEMOCRATIC PARTY AND THE PATRIOTIC UNION OF KURDISTAN.—
(1) FOR ACTIVITIES OPPOSING THE BA’TH REGIME.—Paragraph (3)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) shall not apply to an alien applying for a nonimmigrant visa, who
presents themselves for inspection to an immigration officer at a port of entry as a nonimmigrant, or who
is applying in the United States for nonimmigrant status, and who is a member of the Kurdistan Demo
cratic Party or the Patriotic Union of Kurdistan and currently serves or has previously served as a senior
official (such as Prime Minister, Deputy Prime Min
ister, Minister, Deputy Minister, President, Vice
President, Member of Parliament, provincial Gover
or or member of the National Security Council of the
Kurdish Regional Government or the federal government of the Republic of Iraq.
(2) FOR MEMBERSHIP IN THE KURDISTAN DEMOCRATIC
PARTY AND PATRIOTIC UNION OF KURDISTAN.—Paragraph
(3)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) shall not apply to an alien applying for a nonimmigrant visa, who
presents themselves for inspection to an immigration officer at a port of entry as a nonimmigrant, or who
is applying in the United States for nonimmigrant status, who is a member of the Kurdistan Demo
cratic Party or the Patriotic Union of Kurdistan and currently serves or has previously served as a senior
official (such as Prime Minister, Deputy Prime Min
ister, Minister, Deputy Minister, President, Vice
President, Member of Parliament, provincial Gover
or or member of the National Security Council of the
Kurdish Regional Government or the federal government of the Republic of Iraq.
(3) EXCEPTION.—Neither paragraph (1) nor para
(2) shall apply if the Secretary of State or the Secretary of Homeland Security (or a designee of one of
such Secretaries) determine in their sole
unreviewable discretion that such alien poses a threat to the safety and security of the United States, or does not warrant a visa, admission to the United States, or a grant of an immigration
benefit
or protection, in the totality of the circumstances. This provision shall be implemented by the Secretary of State and the Secretary of Homeland Security in consultation with the Attorney General.

"(c) PROHIBITION ON JUDICIAL REVIEW.—Notwithstanding any other provision of law (whether statutory or nonstatutory), section 242 of the Immigration and Nationality Act (8 U.S.C. 1252), sections 161 and 1651 of title 28, United States Code, section 2241 of such title, and any other habeas corpus provision of law, no court shall have jurisdiction to review any determination made pursuant to this section."

AFRICAN NATIONAL CONGRESS: WAIVER OF CERTAIN INADMISSIBILITY GROUNDS

Pub. L. 110–257, §§2, 3, July 1, 2008, 122 Stat. 2426, provided that:

"SEC. 2. RELIEF FOR CERTAIN MEMBERS OF THE AFRICAN NATIONAL CONGRESS REGARDING ADMISSIBILITY.

"(a) Exemption Authority.—The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may determine, in such Secretary’s sole and unreviewable discretion, that paragraphs (2)(A)(i)(I), (2)(B), and (3)(B) (other than clause (1)(II)) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply to an alien with respect to activities undertaken in association with the African National Congress in opposition to apartheid rule in South Africa.

"(b) Sense of Congress.—It is the sense of the Congress that the Secretary of State and the Secretary of Homeland Security should immediately exercise in appropriate instances the authority in subsection (a) to exempt the anti-apartheid activities of aliens who are current or former officials of the Government of the Republic of South Africa.

"SEC. 3. REMOVAL OF CERTAIN AFFECTED INDIVIDUALS FROM CERTAIN UNITED STATES GOVERNMENT DATABASES.

"The Secretary of State, in coordination with the Attorney General, the Secretary of Homeland Security, the Director of the Federal Bureau of Investigation, and the Director of National Intelligence, shall take all necessary steps to ensure that databases used to determine admissibility to the United States are updated so that they are consistent with the exemptions provided under section 2."

AVAILABILITY OF OTHER NONIMMIGRANT PROFESSIONALS

Pub. L. 110–229, title VII, §702(k), May 8, 2008, 122 Stat. 867, provided that: "The requirements of section 212(m)(6)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(m)(6)(B)) shall not apply to a facility in Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands."

REPORT ON DURESS WAIVERS

Pub. L. 110–161, div. J, title VI, §691(e), Dec. 26, 2007, 121 Stat. 2865, provided that: "The Secretary of Homeland Security shall provide to the Committees on the Judiciary of the United States Senate and House of Representatives a report, not less than 180 days after the enactment of this Act (Dec. 26, 2007) and every year thereafter, which may include a classified annex, if applicable, describing—

"(1) the number of individuals subject to removal from the United States for having provided material support to a terrorist group who allege that such support was provided under duress;

"(2) a breakdown of the types of terrorist organizations to which the individuals described in paragraph (1) have provided material support;

"(3) a description of the factors that the Department of Homeland Security considers when evaluating duress waivers; and

"(4) any other information that the Secretary believes that the Congress should consider while overseeing the Department’s application of duress waivers."

INADMISSIBILITY OF FOREIGN OFFICIALS AND FAMILY MEMBERS INVOLVED IN KLEPTOCRACY OR HUMAN RIGHTS VIOLATIONS


"(1) INELIGIBILITY.—

"(A) Officials of foreign governments and their immediate family members about whom the Secretary of State has credible information have been involved, directly or indirectly, in significant corruption, including corruption related to the extraction of natural resources, or a gross violation of human rights, including the wrongful detention of locally employed staff of a United States diplomatic mission or a United States citizen or national, shall be ineligible for entry into the United States.

"(B) The Secretary shall also publicly or privately designate or identify the officials of foreign governments and their immediate family members about whom the Secretary has such credible information without regard to whether the individual has applied for a visa.

"(2) Exception.—Individuals shall not be ineligible for entry into the United States pursuant to paragraph (1) if such entry would further important United States law enforcement objectives or is necessary to permit the United States to fulfill its obligations under the United Nations Headquarters Agreement: Provided, That nothing in paragraph (1) shall be construed to derogate from United States Government obligations under applicable international agreements.

"(3) Waiver.—The Secretary may waive the application of paragraph (1) if the Secretary determines that the waiver would serve a compelling national interest or that the circumstances which caused the individual to be ineligible have changed sufficiently.

"(4) Report.—Not later than 30 days after enactment of this Act [titles I to VII of div. K of Pub. L. 115–260, approved Dec. 27, 2017], and every 90 days thereafter until September 30, 2021, the Secretary of State shall submit a report, including a classified annex if necessary, to the appropriate congressional committees (Committees on Appropriations and Foreign Relations of the Senate and the Committees on Appropriations and Foreign Affairs of the House of Representatives) and the Committees on the Judiciary describing the information related to corruption or violation of human rights concerning each of the individuals found ineligible in the previous 12 months pursuant to paragraph (1) as well as the individuals who the Secretary designated or identified pursuant to paragraph (1), or who would be ineligible but for the application of paragraph (2), a list of any waivers provided under paragraph (3), and the justification for each waiver.

"(5) Posting of Report.—Any unclassified portion of the report required under paragraph (4) shall be posted on the Department of State website.

"(6) Classification.—For purposes of paragraphs (1), (4), and (5), the records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall not be considered confidential."

Similar provisions were contained in the following prior acts:


Money Laundering Watchlist

Pub. L. 107–56, title X, §1006(b), Oct. 26, 2001, 115 Stat. 394, provided that: “Not later than 90 days after the date of the enactment of this Act [Oct. 26, 2001], the Secretary of State shall develop and coordinate with the Attorney General, the Secretary of the Treasury, and the Director of Central Intelligence or the Director of the Central Intelligence Agency a money laundering watchlist, which identifies individuals, worldwide who are known or suspected of money laundering, which is readily accessible to, and shall be checked by, a consular or other Federal official prior to the issuance of a visa or admission to the United States. The Secretary of State shall develop and continually update the watchlist in cooperation with the Attorney General, the Secretary of the Treasury, and the Director of Central Intelligence.”

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency.

Recommendations for Alternative Remedy for Nursing Shortage

Pub. L. 106–95, §§3, Nov. 12, 1999, 113 Stat. 1317, provided that: “Not later than the last day of the 4-year period described in section 2(b) [set out as a note above], the Secretary of Health and Human Services and the Secretary of Labor shall jointly submit to the Congress recommendations (including legislative specifications) with respect to the following:

(1) A program to eliminate the dependence of facilities described in section 212(m)(6) of the Immigration and Nationality Act [8 U.S.C. 1182(m)(6)] (as amended by section 2(b)) on nonimmigrant registered nurses by providing for a permanent solution to the shortage of registered nurses who are United States citizens or aliens lawfully admitted for permanent residence.

(2) A method of enforcing the requirements imposed on facilities under sections 101(a)(15)(H)(i)(I) and 212(m) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(i)(I), 1182(m)] (as amended by section 2) that would be more effective than the process described in section 212(m)(2)(E) of such Act [8 U.S.C. 1182(m)(2)(E)] (as so amended).”

Issuance of Certified Statements

Pub. L. 106–95, §4(c), Nov. 12, 1999, 113 Stat. 1318, provided that: “The Commission on Graduates of Foreign Nursing Schools, or any equivalent independent credentialing organization, shall issue certified statements pursuant to the amendment under subsection (a) [amending this section] not more than 35 days after the receipt of a complete application for such a statement.”

Extension of Authorized Period of Stay for Certain Nurses


(1) In general.—Notwithstanding any other provision of law, the authorized period of stay in the United States of any nonimmigrant described in paragraph (2) is hereby extended through September 30, 1997.

(2) Nonimmigrant described.—A nonimmigrant described in this paragraph is a nonimmigrant—


(B) who was within the United States on or after September 1, 1990, and who is within the United States on the date of the enactment of this Act [Oct. 11, 1996]; and

(C) whose period of authorized stay has expired or would expire before September 30, 1997 but for the provisions of this section.

(3) Limitations.—Nothing in this section may be construed to extend the validity of any visa issued to a nonimmigrant described in section 101(a)(15)(H)(i)(a) of the Immigration and Nationality Act or to authorize the re-entry of any person outside the United States on the date of the enactment of this Act.

(4) Regulations.—Not later than 30 days after the date of the enactment of this Act, the Attorney General shall issue regulations to carry out the provisions of this section.

(5) Interim Treatment.—A nonimmigrant whose authorized period of stay is extended by operation of this section, and the spouse and child of such nonimmigrant, shall be considered as having continued to maintain lawful status as a nonimmigrant through September 30, 1997.”

References to Inadmissible Deemed to Include Excludable and References to Order of Removal Deemed to Include Order of Exclusion and Deportation

For purposes of carrying out this chapter, any reference in subsection (a)(15)(A) of this section to “inadmissible” is deemed to include a reference to “excludable”, and any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation.

Annual Report on Aliens Paroled into United States

Pub. L. 104–208, div. C, title VI, §602(b), Sept. 30, 1996, 110 Stat. 3009–689, provided that: “Not later than 90 days after the end of each fiscal year, the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate describing the number and categories of aliens paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act [8 U.S.C. 1182(d)(5)]. Each such report shall provide the total number of aliens paroled into and residing in the United States and shall contain information and data for each country of origin concerning the number and categories of aliens paroled, the duration of parole, the current status of aliens paroled, and the number and categories of aliens returned to the custody from which they were paroled during the preceding fiscal year.”

Assistance to Drug Traffickers

sonable steps provided by law to ensure that the immediate relatives of any individual described in section 487(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2292(a)), and the business partners of any such individual or of any entity described in such section, are not permitted entry into the United States, consistent with the provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

**Processing of Visas for Admission to United States**


"(1)(A) Beginning 24 months after the date of the enactment of this Act [Apr. 30, 1994], whenever a United States consular officer issues a visa for admission to the United States, that official shall certify, in writing, that a check of the Automated Visa Lookout System, or any other system or list which maintains information about the excludability of aliens under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), has been made and that there is no basis under such system for the exclusion of such alien.

"(B) If, at the time an alien applies for an immigrant or nonimmigrant visa, the alien's name is included in the Automated Visa Lookout System and the consular officer to whom the application is made fails to follow the procedures in processing the application required by the inclusion of the alien's name in such system, the consular officer's failure shall be made a matter of record and shall be considered as a serious negative factor in the officer's annual performance evaluation.

"(2) If an alien to whom a visa was issued as a result of a failure described in paragraph (1)(B) is admitted to the United States and there is thereafter probable cause to believe that the alien was a participant in a terrorist act causing serious injury, loss of life, or significant destruction of property in the United States, the Secretary of State shall convene an Accountability Review Board under the authority of title III of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 [22 U.S.C. 4831 et seq.]."

**Access to Interstate Identification Index of National Crime Information Center; Fingerprint Checks**


"(1) Subject to paragraphs (2) and (3), the Department of State, Consolidated Immigrant Visa Processing Center shall have on-line access, without payment of any fee or charge, to the Interstate Identification Index of the National Crime Information Center solely for the purpose of determining whether a visa applicant has a criminal history record indexed in such Index. Such access does not entitle the Department of State to obtain the full content of automated records through the Interstate Identification Index. To obtain the full content of a criminal history record, the Department shall submit a separate request to the Identification Records Section of the Federal Bureau of Investigation, and shall pay the appropriate fee as provided for in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990 [Public Law 101–162] [110 Stat. 988, 996].

"(2) The Department of State shall be responsible for all one-time start-up and recurring incremental non-personnel costs of establishing and maintaining the access authorized in paragraph (1).

"(3) The individual primarily responsible for the day-to-day implementation of paragraph (1) shall be an employee of the Federal Bureau of Investigation selected by the Department of State, and detailed to the Department on a fully reimbursable basis.

"(e) Fingerprint Checks.

"(1) Effective not later than March 31, 1995, the Secretary of State shall in the ten countries with the highest volume of immigrant visa issuance for the most recent fiscal year for which data are available require the fingerprinting of applicants over sixteen years of age for immigrant visas. The Department of State shall submit records of such fingerprints to the Federal Bureau of Investigation in order to ascertain whether such applicants previously have been convicted of a felony under State or Federal law in the United States, and shall pay all appropriate fees.

"(2) The Secretary shall prescribe and publish such regulations as may be necessary to implement the requirements of this subsection, and to avoid undue processing costs and delays for eligible immigrants and the United States Government.

"(f) Not later than December 31, 1996, the Secretary of State and the Director of the Federal Bureau of Investigation shall jointly submit to the Committee on Foreign Affairs, the Committee on the Judiciary of the House of Representatives, and the Committee on Foreign Relations and the Committee on the Judiciary of the Senate, a report on the effectiveness of the procedures authorized in subsections (d) and (e).

"(g) Subsections (d) and (e) shall cease to have effect after May 1, 1998.

**Visa Lookout Systems**

Pub. L. 103–236, title I, §140(b), Apr. 30, 1994, 108 Stat. 399, provided that: "Not later than 18 months after the date of the enactment of this Act [Apr. 30, 1994], the Secretary of State shall implement an upgrade of all overseas visa lookout operations to computerized systems with automated multiple-name search capabilities."


"(a) Visas.—The Secretary of State may not include in the Automated Visa Lookout System, or in any other system or list which maintains information about the inadmissibility of aliens under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the name of any alien who is not inadmissible from the United States under the Immigration and Nationality Act, subject to the provisions of this section.

"(b) Correction of Lists.—Not later than 3 years after the date of enactment of this Act [Oct. 28, 1991], the Secretary of State shall:

"(1) correct the Automated Visa Lookout System, or any other system or list which maintains information about the inadmissibility of aliens under the Immigration and Nationality Act, by deleting the name of any alien not inadmissible under the Immigration and Nationality Act; and

"(2) report to the Congress concerning the completion of such correction process.

"(c) Report on Correction Process.—

"(1) Not later than 90 days after the date of enactment of this Act [Oct. 28, 1991], the Secretary of State, in coordination with the heads of other appropriate Government agencies, shall prepare and submit to the appropriate congressional committees, a plan which sets forth the manner in which the Department of State will correct the Automated Visa Lookout System, and any other system or list as set forth in subsection (b).

"(2) Not later than 1 year after the date of enactment of this Act [Oct. 28, 1991], the Secretary of State shall report to the appropriate congressional committees on the progress made toward completing the correction of lists as set forth in subsection (b).

"(d) Application.—This section refers to the Immigration and Nationality Act as in effect on and after June 1, 1991.
“(e) Limitation.—
“(1) The Secretary may add or retain in such system or list the names of aliens who are not inadmissible only if they are included for otherwise authorized law enforcement purposes or other lawful purposes of the Department of State. A name included for other lawful purposes under this paragraph shall include a notation which clearly and distinctly indicates that such person is not presently inadmissible. The Secretary of State shall adopt procedures to ensure that visas are not denied to such individuals for any reason not set forth in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].
“(2) The Secretary shall publish in the Federal Register regulations and standards concerning maintenance and use by the Department of State of systems and lists for purposes described in paragraph (1).
“(3) Nothing in this section may be construed as creating new authority or expanding any existing authority for any activity not otherwise authorized by law.
“(f) Definition.—As used in this section the term ‘appropriate congressional committees’ means the Committee on the Judiciary and the Committee on Foreign Affairs of the House of Representatives and the Committee on the Judiciary and the Committee on Foreign Relations of the Senate.

Changes in Labor Certification Process

(b) Notice in Labor Certifications.—The Secretary of Labor shall provide, in the labor certification process under section 212(a)(5)(A) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(5)(A)], that—
“(1) no certification may be made unless the applicant for certification has, at the time of filing the application, provided notice of the filing (A) to the bargaining representative (if any) of the employer’s employees in the occupational classification and area for which aliens are sought, or (B) if there is no such bargaining representative, to employees employed at the facility through posting in conspicuous locations; and
“(2) any person may submit documentary evidence bearing on the application for certification (such as information on available workers, information on wages and working conditions, and information on the employer’s failure to meet terms and conditions with respect to the employment of alien workers and co-workers).”

Review of Exclusion Lists
“(1) whose name is in such system, and
“(2) who either (A) applies for admission after the effective date of the amendments made by this section [see Effective Date of 1990 Amendment note above], or (B) requests (in writing to a local consular officer after such date) a review, without seeking admission, of the alien’s continued inadmissibility under the Immigration and Nationality Act [8 U.S.C. 1182 et seq.], if the alien is no longer inadmissible because of an amendment made by this section the alien’s name shall be removed from such books and system and the alien shall be informed of such removal and if the alien continues to be inadmissible the alien shall be informed of such determination.”

Implementation of Requirements for Admission of Nonimmigrant Nurses During 5-Year Period
Pub. L. 101–238, §3(c), Dec. 18, 1989, 103 Stat. 2103, provided that: “The Secretary of Labor (in consultation with the Secretary of Health and Human Services) shall—
“(1) first publish final regulations to carry out section 212(m) of the Immigration and Nationality Act (8 U.S.C. 1182(m)) (as added by this section) not later than the first day of the 8th month beginning after the date of the enactment of this Act [Dec. 18, 1989]; and
“(2) provide for the appointment (by January 1, 1991) of an advisory group, including representatives of the Secretary, the Secretary of Health and Human Services, the Attorney General, hospitals, and labor organizations representing registered nurses, to advise the Secretary—
“(A) concerning the impact of this section on the nursing shortage,
“(B) on programs that medical institutions may implement to recruit and retain registered nurses who are United States citizens or immigrants who are authorized to perform nursing services,
“(C) on the formulation of State recruitment and retention plans under section 212(m)(3) of the Immigration and Nationality Act, and
“(D) on the advisability of extending the amendments made by this section (amending sections 1101 and 1182 of this title) beyond the 5-year period described in subsection (d) [set out above].”

Prohibition on Exclusion or Deportation of Aliens on Certain Grounds

Regulations Governing Admission, Detention, and Travel of Nonimmigrant Aliens in Guam Pursuant to Visa Waivers

Annual Report to Congress on Implementation of Provisions Authorizing Waiver of Certain Requirements for Nonimmigrant Visitors to Guam
SHARING OF INFORMATION CONCERNING DRUG TRAFFICKERS


“(a) REPORTING SYSTEMS.—In order to ensure that foreign narcotics traffickers are denied visas to enter the United States, as required by section 212(a)(23) of the Immigration and Naturalization Act (former) 22 [8 U.S.C. 1182(a)(23)]—

“(1) the Department of State shall cooperate with United States law enforcement agencies, including the Drug Enforcement Administration and the United States Customs Service, in establishing a comprehensive information system on all drug arrests of foreign nationals in the United States, so that that information may be communicated to the appropriate United States embassies; and

“(2) the National Drug Enforcement Policy Board shall agree on uniform guidelines which would permit the sharing of information on foreign drug traffickers.

“(b) REPORT.—Not later than six months after the date of the enactment of this Act [Aug. 16, 1985], the Chairman of the National Drug Enforcement Policy Board shall submit a report to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate on the steps taken to implement this section.”

[For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, and for related purposes, see section 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 of Title 6.]

REFUGEES FROM DEMOCRATIC KAMPUCHEA (CAMBODIA); TEMPORARY PAROLE INTO UNITED STATES FOR FISCAL YEARS 1979 AND 1980

Pub. L. 95-431, title VI, §605, Oct. 10, 1978, 92 Stat. 1045, provided that it was the sense of Congress that United States give special consideration to plights of refugees from Democratic Kampuchea (Cambodia) and that Attorney General should parole into United States, under section 1182(d)(5) of this title for fiscal years 1979, 7,500 aliens who are nationals or citizens of Democratic Kampuchea and for fiscal year 1980, 7,500 such aliens.

RETROACTIVE ADJUSTMENT OF REFUGEE STATUS

Pub. L. 95-412, §5, Oct. 5, 1978, 92 Stat. 909, as amended by Pub. L. 96-212, title II, §203(g), Mar. 17, 1980, 94 Stat. 108, provided that any refugee, not otherwise eligible for retroactive adjustment of status, who was paroled into United States by Attorney General pursuant to section 1182(d)(5) of this title before Apr. 1, 1980, was to have his status adjusted pursuant to section 1153(g) and (b) of this title.

REPORT BY ATTORNEY GENERAL TO CONGRESSIONAL COMMITTEES ON ADMISSION OF CERTAIN EXCLUDABLE ALIENS

Pub. L. 95-370, title IV, §401, Sept. 17, 1978, 92 Stat. 627, directed Attorney General, by October 30, 1979, to report to specific congressional committees on certain cases of the admission to the United States of aliens that may have been excludable under former section 1182(a)(27) to (29) of this title.

NATIONAL BOARD OF MEDICAL EXAMINERS EXAMINATION

Pub. L. 94-484, title VI, §602(a), (b), as added by Pub. L. 95-83, title III, §307(c)(3), Aug. 1, 1977, 91 Stat. 395, eff. Jan. 10, 1977, provided that an alien who is a graduate of a medical school would be considered to have passed parts I and II of the National Board of Medical Examiners Examination if the alien was on January 1977 a doctor of medicine fully and permanently licensed to practice medicine in a State, held on that date a valid specialty certificate issued by a constituent board of the American Board of Medical Specialties, and was on that date practicing medicine in a State, prior to repeal by Pub. L. 97-116, §5(a)(3), Dec. 29, 1981, 95 Stat. 1612.

LABOR CERTIFICATION FOR GRADUATES OF FOREIGN MEDICAL SCHOOLS; DEVELOPMENT OF DATA BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE NOT LATER THAN OCT. 1, 1977

Pub. L. 94-484, title IX, §906, Oct. 12, 1976, 90 Stat. 2325, directed Secretary of Health, Education, and Welfare, not later than one year after Oct. 12, 1976, to develop sufficient data to enable the Secretary of Labor to make equitable determinations with regard to applications for labor certification by graduates of foreign medical schools, such data to include the number of physicians (by specialty and by percent of population) in a geographic area necessary to provide adequate medical care, including such care in hospitals, nursing homes, and other health care institutions, in such area.

RESETTLEMENT OF REFUGEE-ESCAPEE; REPORTS; FORMULA; TERMINATION DATE; PERSONS DIFFICULT TO RESETTLE; CREATION OF RECORD OF ADMISSION FOR PERMANENT RESIDENCE


“SEC. 3. Any alien who was paroled into the United States as a refugee-escapee, pursuant to section 1 of the Act, whose parole has not theretofore been terminated by the Attorney General pursuant to such regulations as he may prescribe under the authority of section 212(d)(5) of the Immigration and Nationality Act [subsec. (d)(5) of this section]; and who has been in the United States for at least two years, and who has not acquired permanent residence, shall forthwith return or be returned to the custody of the Immigration and Naturalization Service and shall thereafter be inspected and examined for admission into the United States, and his case dealt with in accordance with the provisions of sections 235, 236, and 237 of the Immigration and Nationality Act [sections 1225, 1226, and (former) 1227 of this title].

“SEC. 4. Any alien who, pursuant to section 3 of this Act, is found, upon inspection by the immigration officer or after hearing before a special inquiry officer, to be admissible as an immigrant under the Immigration and Nationality Act [this chapter] at the time of his inspection and examination, except for the fact that he was not and is not in possession of the documents required by section 212(a)(20) of the said Act [former subsec. (a)(20) of this section], shall be regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival.

* * * * * * *


CREATION OF RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASE OF CERTAIN HUNGARIAN REFUGEES

Pub. L. 85-559, July 25, 1958, 72 Stat. 419, provided:

“That any alien who was paroled into the United States as a refugee from the Hungarian revolution
under section 212(d)(5) of the Immigration and Nationality Act [subsection (d)(5) of this section] subsequent to October 23, 1956, who has been in the United States for at least two years, and who has not acquired permanent residence, shall forthwith return or be returned to the custody of the Immigration and Naturalization Service, and shall thereupon be inspected and examined for admission into the United States, and his case dealt with, in accordance with the provisions of sections 235, 236 and 237 of that Act [sections 1225, 1226 and (former) 1227 of this title].

"SEC. 2. Any such alien who, pursuant to section 1 of this Act, is found, upon inspection by an immigration officer or after hearing before a special inquiry officer, to have been and to be admissible as an immigrant at the time of his arrival in the United States and at the time of his inspection and examination, except for the fact that he was not and is not in possession of the documents required by section 212(a)(20) of the Immigration and Nationality Act [former subsection (a)(20) of this section], shall be regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival.

"SEC. 3. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act [this chapter] or any other law relating to immigration, nationality, or naturalization."

**Definition of Appropriate Congressional Committees**


**Executive Documents**

**Presidential Proclamations Suspending Entry of Certain Aliens**

Suspension of entry of certain aliens into the United States was contained in the following Presidential proclamations:

**Proc. No. 10309, Nov. 16, 2021, 86 F.R. 64797**, relating to immigrants and nonimmigrants responsible for policies or actions that threaten democracy, human rights, and humanitarian law violations and other abuses, in Nicaragua.


**Proc. No. 10445, Oct. 4, 2019, 84 F.R. 53991**, relating to persons who will financially burden the United States healthcare system, was revoked by Proc. No. 10239, May 14, 2021, 86 F.R. 27015.

**Proc. No. 9932, Sept. 25, 2019, 84 F.R. 51935**, relating to senior officials of the government of Iran.

**Proc. No. 9931, Sept. 25, 2019, 84 F.R. 51931**, relating to persons responsible for policies or actions that threaten Venezuela’s democratic institutions.


**Proc. No. 7756, Jan. 12, 2009, 71 F.R. 2297**, relating to persons engaged in or benefiting from corruption.

**Proc. No. 10135, Nov. 26, 2021, 86 F.R. 68385**, relating to noncitizens who were physically present within the Republic of Botswana, the Kingdom of Eswatini, the Kingdom of Lesotho, the Republic of Malawi, the Republic of Mozambique, the Republic of Namibia, the Republic of South Africa, and the Republic of Zimbabwe, was revoked by Proc. No. 10294, §1, Oct. 25, 2021, 86 F.R. 59604.

**Proc. No. 10143, Jan. 23, 2021, 86 F.R. 7467**, relating to noncitizens who were physically present within the Schengen Area, the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, and the Federative Republic of Brazil, was revoked by Proc. No. 10294, §1, Oct. 25, 2021, 86 F.R. 59604.


**Proc. No. 9993, Mar. 11, 2020, 85 F.R. 15045**, relating to aliens present in the Schengen Area, was revoked by Proc. No. 10138, Jan. 18, 2021, 86 F.R. 6799.


**Proc. No. 4865, High Seas Interdiction of Illegal Aliens**

**Proc. No. 4865, Sept. 29, 1981, 46 F.R. 48107**, provided: The ongoing migration of persons to the United States in violation of our laws is a serious national problem detrimental to the interests of the United States. A particularly difficult aspect of the problem is the continuing illegal migration by sea of large numbers of undocumented aliens into the southeastern United States. These arrivals have severely strained the law enforcement resources of the Immigration and Naturalization Service and have threatened the welfare and safety of communities in that region.

As a result of our discussions with the Governments of affected foreign countries and with agencies of the Executive Branch of our Government, I have deter-
The entry or attempted entry of aliens into the United States is detrimental to the interests of the United States, and in accordance with our laws. Therefore, I, Ronald Reagan, President of the United States of America, by the authority vested in me by the Constitution and the statutes of the United States, including Sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185a(1)), as a necessary and proper means of insuring the effective enforcement of our laws,

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by the Constitution and the statutes of the United States, including Sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185a(1)), in order to protect the sovereignty of the United States, and in accordance with cooperative arrangements with certain foreign governments, and having found that the entry of undocumented aliens, arriving at the borders of the United States from the high seas, is detrimental to the interests of the United States, do proclaim that:

The entry of undocumented aliens from the high seas is hereby enjoined and shall be prevented by the interdiction of certain vessels carrying such aliens.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and sixth.

RONALD REAGAN.

PROC. NO. 9645. ENHANCING VETTING CAPABILITIES AND PROCESSES FOR DETECTING ATTEMPTED ENTRY INTO THE UNITED STATES BY TERRORISTS OR OTHER PUBLIC-SAFETY THREATS

PROC. NO. 9645, Sept. 24, 2017. 82 F.R. 45161, as amended by PROC. No. 9723, ¶ 1, Apr. 10, 2018, 83 F.R. 15933; PROC. No. 9883, ¶ 3, Jan. 31, 2020, 85 F.R. 6706, which prohibited entry into the United States by nationals of certain countries unless they are approved for a waiver, was revoked by PROC. No. 10141, Jan. 20, 2021, 86 F.R. 7005.

PROC. NO. 9983. IMPROVING ENHANCED VETTING CAPABILITIES AND PROCESSES FOR DETECTING ATTEMPTED ENTRY INTO THE UNITED STATES BY TERRORISTS OR OTHER PUBLIC-SAFETY THREATS

PROC. No. 9983, Jan. 31, 2020, 85 F.R. 6999, which prohibited entry into the United States by nationals of certain countries, was revoked by PROC. No. 10141, Jan. 20, 2021, 86 F.R. 7005.

EXECUTIVE ORDER NO. 12324

Ex. Ord. No. 12324, Sept. 29, 1981, 46 F.R. 48109, which directed Secretary of State to enter into cooperative arrangements with foreign governments for purposes of preventing illegal migration by terrorists or other public-safety threats, was revoked by Ex. Ord. No. 12807, ¶ 4, May 24, 1992, 57 F.R. 23134, set out below.

Ex. Ord. No. 12324.

INTERDICTING ILLEGAL ALIENS


By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185a(1)), and whereas:

(1) The President has authority to suspend the entry of aliens coming by sea to the United States without necessary documentation, to establish reasonable rules and regulations regarding, and other limitations on, the entry or attempted entry of aliens into the United States, and to repatriate aliens interdicted beyond the territorial sea of the United States;
(3) Proclamation No. 4865 (set out above) suspends the entry of all undocumented aliens into the United States by the high seas; and
(4) There continues to be a serious problem of persons attempting to come to the United States by sea without necessary documentation and otherwise illegally;

I, GEORGE BUSH, President of the United States of America, hereby order as follows:

SECTION 1. The Secretary of State shall undertake to enter into, on behalf of the United States, cooperative arrangements with appropriate foreign governments for the purpose of preventing illegal migration to the United States by sea.

Sect. 2. (a) The Secretary of Department in which the Coast Guard is operating, in consultation, where appropriate, with the Secretary of Defense, the Attorney General, and the Secretary of State, shall issue appropriate instructions to the Coast Guard in order to enforce the suspension of the entry of undocumented aliens by sea and the interdiction of any defined vessel carrying such aliens.

(b) Those instructions shall apply to any of the following defined vessels:

(1) Vessels of the United States, meaning any vessel documented or numbered pursuant to the laws of the United States, or owned in whole or in part by the United States, a citizen of the United States, or a corporation incorporated under the laws of the United States or any State, Territory, District, Commonwealth, or possession thereof, unless the vessel has been granted nationality by a foreign nation in accordance with Article 5 of the Convention on the High Seas of 1958 (U.S. T.I.A.S. 5200; 13 U.S.T. 2312).
(2) Vessels without nationality or vessels assimilated to vessels without nationality in accordance with paragraph (2) of Article 6 of the Convention on the High Seas of 1958 (U.S. T.I.A.S. 5200; 13 U.S.T. 2312).
(3) Vessels of foreign nations with whom we have arrangements authorizing the United States to stop and board such vessels.

(c) Those instructions to the Coast Guard shall include appropriate directives providing for the Coast Guard:

(1) To stop and board defined vessels, when there is reason to believe that such vessels are engaged in irregular transportation of persons or violations of United States law or the law of a country with which the United States has an arrangement authorizing such action.
(2) To make inquiries of those on board, examine documents and take such actions as are necessary to carry out this order.
(3) To return the vessel and its passengers to the country from which it came, or to another country, when there is reason to believe that an offense is being committed against the United States immigration laws, or appropriate laws of a foreign country with which we have an arrangement to assist; provided, however, that the Secretary of Homeland Security, in his unreviewable discretion, may decide that a person who is a refugee will not be returned without his consent.

(d) These actions, pursuant to this section, are authorized to be undertaken only beyond the territorial sea of the United States.

Sect. 3. This order is intended only to improve the internal management of the Executive Branch. Neither this order nor any agency guidelines, procedures, instructions, directives, rules or regulations implementing this order shall be construed to create, any right or benefit, substantive or procedural (including without limitation any right or ben-
\section*{Delegation of Responsibilities Concerning Undocumented Aliens Interdicted or Intercepted in the Caribbean Region}

Ex. Ord. No. 13276, Nov. 15, 2002, 67 F.R. 69985, as amended by Ex. Ord. No. 13296, \S\ 1, Feb. 28, 2003, 68 F.R. 10619, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (\S\ 8 U.S.C. 1182(f) and 1185a(a)(1)), and section 301 of title 3, United States Code, and in order to delegate appropriate responsibilities to Federal agencies for responding to migration of undocumented aliens in the Caribbean region, it is hereby ordered:

Section 1. Duties and Authorities of Agency Heads. Consistent with applicable law,

(a)(i) The Secretary of Homeland Security may maintain custody, at any location he deems appropriate, of any undocumented aliens he has reason to believe are seeking to enter the United States and who are interdicted or intercepted in the Caribbean region. In this regard, the Secretary of Homeland Security shall provide and operate a facility, or facilities, to house and provide for the needs of any such aliens. Such a facility may be located at Guantanamo Bay Naval Base or any other appropriate location.

(ii) The Secretary of Homeland Security may conduct any screening of such aliens that he deems appropriate, including screening to determine whether such aliens should be returned to their country of origin or transit, or whether they are persons in need of protection who should not be returned without their consent. If the Secretary of Homeland Security institutes such screening, and a determination is made, the Secretary of Homeland Security shall provide for the custody, care, safety, transportation, and other needs of the aliens that is of such magnitude and duration that it poses a threat to the national security of the United States, as determined by the President.

(b) Nothing in this order shall be construed to impair or otherwise affect the authorities and responsibilities set forth in Executive Order 12807 of May 24, 1992 [set out above], regarding interdiction of migrants.

This order is intended only to improve the management of the executive branch. This order is not intended to, and does not create any right or source of substantive or procedural, enforceable at law or equity or otherwise against the United States, its departments, agencies, entities, instrumentalities, officers, employees, or any other person.

(c) Any agency assigned any duties by this order may use the provisions of the Economy Act, 31 U.S.C. 1535 and 1536, to carry out such duties, to the extent permitted by such Act.

(d) This order shall not be construed to require any procedure to determine whether a person is a refugee or otherwise in need of protection.

Executive Order No. 13769

Ex. Ord. No. 13769, Jan. 27, 2017, 82 F.R. 3977, which related to review and suspension of issuance of visas and other immigration benefits to nationals of certain countries, implementation of a program to identify individuals seeking to enter the United States with the intent to cause or risk of causing harm, review and suspension of the U.S. Refugee Admissions Program, exercised authority relating to terrorism and inadmissibility under this section, expedited completion of the biometric entry-exit tracking system, review and suspension of the Visa Interview Waiver Program, and review of nonimmigrant visa reciprocity agreements, and collection and public availability of certain immigration data, was repealed, effective Mar. 16, 2017, by Ex. Ord. No. 13780, \S\ 13, Mar. 6, 2017, 82 F.R. 13218, set out below.

Executive Order No. 13790


[Memorandum of President of the United States, June 14, 2017, 82 F.R. 27965, related to implementation of Ex. Ord. No. 13790, formerly set out above, in light of preliminary injunctions that barred enforcement of certain provisions and construed to amend the effective date of Ex. Ord. No. 13780 to the extent necessary to comply with such injunctions.]

Executive Order No. 13815

§ 1182a to 1182c

IMPLEMENTING IMMEDIATE HEIGHTENED SCREENING AND VETTING OF APPLICATIONS FOR VISAS AND OTHER IMMIGRATION BENEFITS, ENSURING ENFORCEMENT OF ALL LAWS FOR ENTRY INTO THE UNITED STATES, AND INCREASING TRANSPARENCY AMONG DEPARTMENTS AND AGENCIES OF THE FEDERAL GOVERNMENT AND FOR THE AMERICAN PEOPLE

Memorandum of President of the United States, Mar. 6, 2017, 82 F.R. 16279, which related to increased enforcement of immigration laws, was revoked by Ex. Ord. No. 13813, §2(b), Feb. 4, 2021, 86 F.R. 8460, set out in a note under section 1157 of this title.


Section 1182a, act Sept. 3, 1954, ch. 1254, §4, 68 Stat. 1145, related to admission of aliens who were either convicted, or who admitted the commission, of a misdemeanor.

Section 1182b, Pub. L. 85–316, §5, Sept. 11, 1957, 71 Stat. 650, permitted admission of an alien spouse, child or parent excludible for crime involving moral turpitude in cases of hardship, when not contrary to na-