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(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

PRESIDENTIAL DETERMINATION CONCERNING ADMISSION AND ADJUSTMENT OF STATUS OF REFUGEES

Determinations by the President pursuant to this section concerning the admission and adjustment of status of refugees for particular fiscal years were contained in the following Presidential Determinations:


Presidential Determination No. 1999–33, Aug. 12, 1999, 64 F.R. 47341.


EX. ORD. No. 12208, CONSULTATIONS ON THE ADMISSION OF REFUGEES

§ 1158. Asylum

(a) Authority to apply for asylum

(1) In general

Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

(2) Exceptions

(A) Safe third country

Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien’s nationality or, in the case of an alien having no nationality, the country of the alien’s last habitual residence) in which the alien’s life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

(B) Time limit

Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed
within 1 year after the date of the alien’s ar-
ival in the United States.

(C) Previous asylum applications

Subject to subparagraph (D), paragraph (1) shall not apply to an alien if the alien has previously applied for asylum and had such application denied.

(D) Changed circumstances

An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General evidence of changed circumstances which materially affect the applicant’s eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph (B).

(E) Applicability

Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child (as defined in section 279(g) of title 6).

(3) Limitation on judicial review

No court shall have jurisdiction to review any determination of the Attorney General under paragraph (2).

(b) Conditions for granting asylum

(1) In general

(A) Eligibility

The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

(B) Burden of proof

(i) In general

The burden of proof is on the applicant to establish that the applicant is a refugee within the meaning of subsection (A) of this section. To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that the alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

(ii) Sustaining burden

The testimony of the applicant may be sufficient to sustain the applicant’s burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant’s testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant’s burden, the trier of fact may weigh the credible testimony along with other evidence of record.

Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

(iii) Credibility determination

Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant’s or witness’s account, the consistency between the applicant’s or witness’s written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

(2) Exceptions

(A) In general

Paragraph (1) shall not apply to an alien if the Attorney General determines that—

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 1182(a)(3)(B)(i) of this title or section 1227(a)(4)(B) of this title (relating to terrorist activity), unless, in the case only of an alien described in subclause (IV) of section 1182(a)(3)(B)(i) of this title, the Attorney General determines, in the Attorney General’s discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or

(vi) the alien was firmly resettled in another country prior to arriving in the United States.
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(3) Treatment of spouse and children

subsection (b), the Attorney General—

(1) In general

(B) Continued classification of certain aliens
following to join, such alien.

same status as the alien if accompanying, or

asylum under this section, be granted the
subsection may, if not otherwise eligible for
of an alien who is granted asylum under this
1101(b)(1)(A), (B), (C), (D), or (E) of this title)

(A) In general

an alien shall be ineligible for asylum under paragraph (1).

(D) No judicial review

There shall be no judicial review of a de-
termination of the Attorney General under subparagraph (A)(v).

(3) Treatment of spouse and children

(A) In general

A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title)
of an alien who is granted asylum under this
section may, if not otherwise eligible for
under this section, be granted the
same status as the alien if accompanying, or

following to join, such alien.

(B) Continued classification of certain aliens
as children

An unmarried alien who seeks to accom-
pany, or follow to join, a parent granted asy-
num under this subsection, and who was
under 21 years of age on the date on which
such parent applied for asylum under this
section, shall continue to be classified as a
child for purposes of this paragraph and sec-
tion 1159(b)(3) of this title, if the alien at-
tained 21 years of age after such application
was filed but while it was pending.

(C) Initial jurisdiction

An alien officer (as defined in section 1225(b)(1)(E) of this title) shall have initial
jurisdiction over any asylum application
filed by an unaccompanied alien child (as de-

defined in section 279(g) of title 6), regardless
of whether filed in accordance with this sec-
tion or section 1225(b) of this title.

(e) Asylum status

(1) In general

In the case of an alien granted asylum under
subsection (b), the Attorney General—

(A) shall not remove or return the alien to
the alien’s country of nationality or, in the
case of a person having no nationality,
the country of the alien’s last habitual resi-
dence;

(B) shall authorize the alien to engage in
employment in the United States and pro-
vide the alien with appropriate endorsement
of that authorization; and

(C) may allow the alien to travel abroad
with the prior consent of the Attorney Gen-
eral.

(2) Termination of asylum

Asylum granted under subsection (b) does
not convey a right to remain permanently in
the United States, and may be terminated if
the Attorney General determines that—

(A) the alien no longer meets the condi-
tions described in subsection (b)(1) owing to
a fundamental change in circumstances;

(B) the alien meets a condition described
in subsection (b)(2);

(C) the alien may be removed, pursuant to
a bilateral or multilateral agreement, to a
country (other than the country of the
alien’s nationality or, in the case of an alien
having no nationality, the country of the
alien’s last habitual residence) in which the
alien’s life or freedom would not be threat-
ened on account of race, religion, nation-
ality, membership in a particular social
group, or political opinion, and where the
alien is eligible to receive asylum or equiva-

tent temporary protection;

(D) the alien has voluntarily availed him-
self or herself of the protection of the alien’s
country of nationality or, in the case of an
alien having no nationality, the alien’s
country of last habitual residence, by re-
turning to such country with permanent
resident status or the reasonable possibility
of obtaining such status with the same
rights and obligations pertaining to other
permanent residents of that country; or

(E) the alien has acquired a new nation-
ality and enjoys the protection of the coun-
try of his or her new nationality.

(3) Removal when asylum is terminated

An alien described in paragraph (2) is subject
to any applicable grounds of inadmissibility or

deportability under section 1182(a) and 1227(a)
of this title, and the alien’s removal or return
shall be directed by the Attorney General in
accordance with sections 1229a and 1231 of
this title.

(d) Asylum procedure

(1) Applications

The Attorney General shall establish a pro-
cEDURE for the consideration of asylum appli-
cations filed under subsection (a). The Attor-
ney General may require applicants to submit
fingerprints and a photograph at such time
and in such manner to be determined by regu-
lation by the Attorney General.

(2) Employment

An applicant for asylum is not entitled to
employment authorization, but such author-
ization may be provided under regulation by
the Attorney General. An applicant who is not
otherwise eligible for employment authoriza-
tion shall not be granted such authorization
prior to 180 days after the date of filing of the
application for asylum.

(3) Fees

The Attorney General may impose fees for
the consideration of an application for asy-
um, for employment authorization under this
section, and for adjustment of status under

1 So in original. Probably should be “sections”.

(2) Special rules

(i) Conviction of aggravated felony

For purposes of clause (ii) of subpara-
graph (A), an alien who has been convicted
of an aggravated felony shall be considered
to have been convicted of a particularly
serious crime.

(ii) Offenses

The Attorney General may designate by
regulation offenses that will be considered
to be a crime described in clause (ii) or
(iii) of subparagraph (A).

(C) Additional limitations

The Attorney General may by regulation
establish additional limitations and condi-
tions, consistent with this section, under
which an alien shall be ineligible for asylum
under paragraph (1).

(D) No judicial review

There shall be no judicial review of a de-
termination of the Attorney General under
paragraph (A)(v).

1182(a) and 1227(a)
section 1159(b) of this title. Such fees shall not exceed the Attorney General’s costs in adjudicating the applications. The Attorney General may provide for the assessment and payment of such fees over a period of time or by installment. Nothing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 1356(m) of this title.

(4) Notice of privilege of counsel and consequences of frivolous application

At the time of filing an application for asylum, the Attorney General shall—

(A) advise the alien of the privilege of being represented by counsel and of the consequences, under paragraph (6), of knowingly filing a frivolous application for asylum; and

(B) provide the alien a list of persons (updated not less often than quarterly) who have indicated their availability to represent aliens in asylum proceedings on a pro bono basis.

(5) Consideration of asylum applications

(A) Procedures

The procedure established under paragraph (1) shall provide that—

(i) asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State, including the Automated Visa Lookout System, to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum;

(ii) in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed;

(iii) in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed;

(iv) any administrative appeal shall be filed within 30 days of a decision granting or denying asylum, or within 30 days of the completion of removal proceedings before an immigration judge under section 1229a of this title, whichever is later; and

(v) in the case of an applicant for asylum who fails without prior authorization or in the absence of exceptional circumstances to appear for an interview or hearing, including a hearing under section 1229a of this title, the application may be dismissed or the applicant may be otherwise sanctioned for such failure.

(B) Additional regulatory conditions

The Attorney General may provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with this chapter.

(6) Frivolous applications

If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this chapter, effective as of the date of a final determination on such application.

(7) No private right of action

Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(e) Commonwealth of the Northern Mariana Islands

The provisions of this section and section 1158(b) of this title shall apply to persons physically present in the Commonwealth of the Northern Mariana Islands or arriving in the Commonwealth (whether or not at a designated port of arrival and including persons who are brought to the Commonwealth after having been interdicted in international or United States waters) only on or after January 1, 2014.

Editorial Notes

References in Text


Amendments


amendment, text read as follows: “A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.”

2008—Subsec. (b)(2)(A)(v). Pub. L. 107–56 substituted ‘‘(III), (IV), or (V)’’ for ‘‘(III), or (IV)’’.

1996—Pub. L. 104–208 substituted ‘‘Asylum’’ for ‘‘Asylum procedure’’ as section catchline and amended text generally substituting subsecs. (a) to (d) for former subsecs. (a) to (e).

Subsec. (a). Pub. L. 104–132, §421(a), inserted at end ‘‘The Attorney General may not grant an alien asylum if the Attorney General determines that the alien is excludable under subclause (I), (II), or (III) of section 1182(a)(3)(B)(i) of this title or deportable under section 1251(a)(4)(B) of this title, unless the Attorney General determines, in the discretion of the Attorney General, that there are not reasonable grounds for regarding the United States as a danger to the security of the United States.’’


Statutory Notes and Related Subsidaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–229 effective on the transition program effective date described in section 1806 of Title 48, Territories and Insular Possessions, see section 708(b) of Pub. L. 110–229, set out as an Effective Date note under section 1806 of Title 48.

EFFECTIVE DATE OF 2005 AMENDMENT


“(1) The amendments made by paragraphs (1) and (2) of subsection (a) [amending this section] shall take effect as if enacted on March 1, 2003.

“(2) The amendments made by subsections (a)(3), (b), (c), and (d) [amending this section and sections 1229a and 1231 of this title] shall take effect on the date of the enactment of this division [May 11, 2005] and shall apply to applications for asylum, withholding, or other relief from removal made on or after such date.”

EFFECTIVE DATE OF 2002 AMENDMENT


EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–56 effective Oct. 26, 2001, and applicable to actions taken by an alien before, on, or after Oct. 26, 2001, and to all aliens, regardless of date of entry or attempted entry into the United States, in removal proceedings on or after such date (except for proceedings in which there has been a final administrative decision before such date) or seeking admission to the United States on or after such date, with special rules and exceptions, see section 411(c) of Pub. L. 107–56, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS


EFFECTIVE DATE OF 1990 AMENDMENT


“(1) The amendment made by subsection (a)(1) [amending this section] shall apply to convictions entered before, on, or after the date of the enactment of this Act [Nov. 29, 1990] and to applications for asylum made on or after such date.

“(2) The amendment made by subsection (a)(2) [amending section 1253 of this title] shall apply to convictions entered before, on, or after the date of the enactment of this Act [Nov. 29, 1990] and to applications for withholding of deportation made on or after such date.

EFFECTIVE DATE

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

REGULATIONS


“(2) AUTHORITY TO WAIVE CERTAIN REGULATORY REQUIREMENTS.—The requirements of chapter 5 of title 5, United States Code (commonly referred to as the ‘Administrative Procedure Act’), chapter 35 of title 44, United States Code (commonly referred to as the ‘Paperwork Reduction Act’), or any other law relating to rulemaking, information collection, or publication in the Federal Register, shall not apply to any action to implement paragraph (1) to the extent the Attorney General or the Secretary Homeland of [sic] Security determines that compliance with any such requirement would impede the expeditious implementation of such paragraph.”

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

EXPEDITIOUS REMOVAL FOR DENIED ASYLUM APPLICANTS


“(a) IN GENERAL.—The Attorney General may provide for the expeditious adjudication of asylum claims and the expeditious removal of asylum applicants whose applications have been finally denied, unless the applicant remains in an otherwise valid nonimmigrant status.

“(b) EMPLOYMENT AUTHORIZATION.—[Amended this section.]

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—
§ 1159. Adjustment of status of refugees

(a) Inspection and examination by Department of Homeland Security

(1) Any alien who has been admitted to the United States under section 1157 of this title—

(A) whose admission has not been terminated by the Secretary of Homeland Security or the Attorney General pursuant to such regulations as the Secretary of Homeland Security or the Attorney General may prescribe,

(B) who has been physically present in the United States for at least one year, and

(C) who has not acquired permanent resident status,

shall, at the end of such year period, return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 1225, 1229a, and 1231 of this title.

(2) Any alien who is found upon inspection and examination by an immigration officer pursuant to paragraph (1) or after a hearing before an immigration judge to be admissible (except as otherwise provided under subsection (c)) as an immigrant under this chapter at the time of the alien’s inspection and examination shall, notwithstanding any numerical limitation specified in this chapter, be regarded as lawfully admitted to the United States for permanent residence as of the date of such alien’s arrival into the United States.

(b) Requirements for adjustment

The Secretary of Homeland Security or the Attorney General, in the Secretary’s or the Attorney General’s discretion and under such regulations as the Secretary or the Attorney General may prescribe, may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—

(1) applies for such adjustment,

(2) has been physically present in the United States for at least one year after being granted asylum,

(3) continues to be a refugee within the meaning of section 1101(a)(42)(A) of this title or a spouse or child of such a refugee,

(4) is not firmly resettled in any foreign country, and

(5) is admissible (except as otherwise provided under subsection (c)) as an immigrant under this chapter at the time of examination for adjustment of such alien.

Upon approval of an application under this subsection, the Secretary of Homeland Security or the Attorney General shall establish a record of the alien’s admission for lawful permanent residence as of the date one year before the date of the approval of the application.

(c) Coordination with section 1182

The provisions of paragraphs (4), (5), and (7)(A) of section 1182(a) of this title shall not be applicable to any alien seeking adjustment of status under this section, and the Secretary of Homeland Security or the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.