

SUBCHAPTER A—GENERAL PROVISIONS

PART 1—DEFINITIONS

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AUTHORITY: 8 U.S.C. 1101; 8 U.S.C. 1103; 5 U.S.C. 301; Pub. L. 107-296, 116 Stat. 2135; 6 U.S.C. 1 *et seq.*

SOURCE: 76 FR 53778, Aug. 29, 2011, unless otherwise noted.

§ 1.1 Applicability.

This part further defines some of the terms already described in section 101 and other sections of the Immigration and Nationality Act (66 Stat. 163), as amended, and such other enactments as pertain to immigration and nationality. These terms are used consistently by components within the Department of Homeland Security including U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services.

§ 1.2 Definitions.

As used in this chapter I, the term:

Act or *INA* means the Immigration and Nationality Act, as amended.

Aggravated felony means a crime (or a conspiracy or attempt to commit a crime) described in section 101(a)(43) of the Act. This definition applies to any proceeding, application, custody determination, or adjudication pending on or after September 30, 1996, but shall apply under section 276(b) of the Act only to violations of section 276(a) of the Act occurring on or after that date.

Application means benefit request.

Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if pa-

roled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked. However, an arriving alien who was paroled into the United States before April 1, 1997, or who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, solely by reason of that grant of parole, as an arriving alien under section 235(b)(1)(A)(i) of the Act.

Attorney means any person who is eligible to practice law in, and is a member in good standing of the bar of, the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law.

Benefit request means any application, petition, motion, appeal, or other request relating to an immigration or naturalization benefit, whether such request is filed on a paper form or submitted in an electronic format, provided such request is submitted in a manner prescribed by DHS for such purpose.

Board means the Board of Immigration Appeals within the Executive Office for Immigration Review, Department of Justice, as defined in 8 CFR 1001.1(e).

Case, unless the context otherwise requires, means any proceeding arising under any immigration or naturalization law, Executive Order, or Presidential proclamation, or preparation for or incident to such proceeding, including preliminary steps by any private person or corporation preliminary to the filing of the application or petition by which any proceeding under the jurisdiction of the Service or the Board is initiated.

CBP means U.S. Customs and Border Protection.

Commissioner means the Commissioner of the Immigration and Naturalization Service prior to March 1,

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2003. Unless otherwise specified, references after that date mean the Director of U.S. Citizenship and Immigration Services, the Commissioner of U.S. Customs and Border Protection, and the Director of U.S. Immigration and Customs Enforcement, as appropriate in the context in which the term appears.

Day, when computing the period of time for taking any action provided in this chapter I including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period computed falls on a Saturday, Sunday, or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

Department or DHS, unless otherwise noted, means the Department of Homeland Security.

Director or district director prior to March 1, 2003, means the district director or regional service center director, unless otherwise specified. On or after March 1, 2003, pursuant to delegation from the Secretary of Homeland Security or any successive re-delegation, the terms mean, to the extent that authority has been delegated to such official: asylum office director; director, field operations; district director for interior enforcement; district director for services; field office director; service center director; or special agent in charge. The terms also mean such other official, including an official in an acting capacity, within U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, or other component of the Department of Homeland Security who is delegated the function or authority above for a particular geographic district, region, or area.

EOIR means the Executive Office for Immigration Review within the Department of Justice.

Executed or execute means fully completed.

Form when used in connection with a benefit or other request to be filed with DHS to request an immigration benefit, means a device for the collection of information in a standard format that may be submitted in paper format

or in an electronic format as prescribed by USCIS on its official Internet Web site. The term Form followed by an immigration form number includes an approved electronic equivalent of such form as may be prescribed by the appropriate component on its official Internet Web site.

Form instructions means instructions on how to complete and where to file a benefit request, supporting evidence or fees, or any other required or preferred document or instrument with a DHS immigration component. Form instructions prescribed by USCIS or other DHS immigration components on their official Internet Web sites will be considered the currently applicable version, notwithstanding paper or other versions that may be in circulation, and may be issued through non-form guidance such as appendices, exhibits, guidebooks, or manuals.

ICE means U.S. Immigration and Customs Enforcement.

Immigration judge means an immigration judge as defined in 8 CFR 1001.1(1).

Immigration officer means the following employees of the Department of Homeland Security, including senior or supervisory officers of such employees, designated as immigration officers authorized to exercise the powers and duties of such officer as specified by the Act and this chapter I: aircraft pilot, airplane pilot, asylum officer, refugee corps officer, Border Patrol agent, contact representative, deportation officer, detention enforcement officer, detention officer, fingerprint specialist, forensic document analyst, general attorney (except with respect to CBP, only to the extent that the attorney is performing any immigration function), helicopter pilot, immigration agent (investigations), immigration enforcement agent, immigration information officer, immigration inspector, immigration officer, immigration services officer, investigator, intelligence agent, intelligence officer, investigative assistant, special agent, other officer or employee of the Department of Homeland Security or of the United States as designated by the Secretary of Homeland Security as provided in 8 CFR 2.1.

Lawfully admitted for permanent residence means the status of having been

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lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Such status terminates upon entry of a final administrative order of exclusion, deportation, or removal.

Petition. See Benefit request.

Practice means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with DHS.

Preparation, constituting practice, means the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed DHS forms, by one whose remuneration, if any, is nominal and who does not hold himself or herself out as qualified in legal matters or in immigration and naturalization procedure.

Representation before DHS includes practice and preparation as defined in this section.

Representative refers to a person who is entitled to represent others as provided in 8 CFR 292.1(a)(2) through (6) and 8 CFR 292.1(b).

Respondent means an alien named in a Notice to Appear issued in accordance with section 239(a) of the Act, or in an Order to Show Cause issued in accordance with 8 CFR 242.1 (1997) as it existed prior to April 1, 1997.

Secretary, unless otherwise noted, means the Secretary of Homeland Security.

Service means U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and/or U.S. Immigration and Customs Enforcement, as appropriate in the context in which the term appears.

Service counsel means any immigration officer assigned to represent the Service in any proceeding before an immigration judge or the Board of Immigration Appeals.

Transition program effective date as used with respect to extending the immi-

gration laws to the Commonwealth of the Northern Mariana Islands means November 28, 2009.

USCIS means U.S. Citizenship and Immigration Services.

§ 1.3 Lawfully present aliens for purposes of applying for Social Security benefits.

(a) *Definition of the term an “alien who is lawfully present in the United States.”* For the purposes of 8 U.S.C. 1611(b)(2) only, an “alien who is lawfully present in the United States” means:

(1) A qualified alien as defined in 8 U.S.C. 1641(b);

(2) An alien who has been inspected and admitted to the United States and who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;

(3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Act for less than 1 year, except:

(i) Aliens paroled for deferred inspection or pending removal proceedings under section 240 of the Act; and

(ii) Aliens paroled into the United States for prosecution pursuant to 8 CFR 212.5(b)(3);

(4) An alien who belongs to one of the following classes of aliens permitted to remain in the United States because DHS has decided for humanitarian or other public policy reasons not to initiate removal proceedings or enforce departure:

(i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the Act;

(ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the Act;

(iii) Cuban-Haitian entrants, as defined in section 202(b) of Pub. L. 99-603, as amended;

(iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649, as amended;

(v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(vi) Aliens currently in deferred action status;

(vii) Aliens who are the spouse or child of a United States citizen whose visa petition has been approved and

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who have a pending application for adjustment of status;

(5) Applicants for asylum under section 208(a) of the Act and applicants for withholding of removal under section 241(b)(3) of the Act or under the Convention Against Torture who have been granted employment authorization, and such applicants under the age of 14 who have had an application pending for at least 180 days.

(b) *Non-issuance of a Notice to Appear and non-enforcement of deportation, exclusion, or removal orders.* An alien may not be deemed to be lawfully present solely on the basis of DHS's decision not to, or failure to:

- (1) Issue a Notice to Appear; or
- (2) Enforce an outstanding order of deportation, exclusion or removal.

§ 1.4 Definition of Form I-94

The term *Form I-94*, as used in this chapter I, includes the collection of arrival/departure and admission or parole information by DHS, whether in paper or electronic format, which is made available to the person about whom the information has been collected, as may be prescribed by DHS. The following terms, when used in the context of the *Form I-94*, are clarified as to their meaning to accommodate the collection of such information in an electronic format.

(a) The terms “annotate,” “note,” “indicate on,” “stamp,” and “endorse,” unless used in part 231 of this chapter, include, but are not limited, to DHS amending, including or completing information in its electronic record of admission, or arrival/departure. For purposes of part 231, the term “endorse” includes but is not limited to the submission of electronic departure data to CBP.

(b) The terms “completed,” “completely executed” and “completed and signed” include, but are not limited to, DHS completing its collection of information into its electronic record of admission, or arrival/departure.

(c) The terms “issuance” and “given” include, but are not limited to, the creation of an electronic record of admission, or arrival/departure by DHS following an inspection performed by an immigration officer.

(d) The term “original I-94” includes, but is not limited to, any printout or electronic transmission of information from DHS systems containing the electronic record of admission or arrival/departure.

(e) The terms “present,” “presentation,” or “submission” of a Form I-94, unless they are used in §231.1 or §231.2 of this chapter, include, but are not limited to, providing a printout of information from DHS systems containing an electronic record of admission or arrival/departure. For purposes of §231.1 of this chapter, the terms “present” or “submission” of the Form I-94 includes ensuring that each passenger presents him/herself to a CBP Officer for inspection at a U.S. port-of-entry. For the purposes of §231.2 of this chapter, the terms “present,” “submit,” or “submission” of the Form I-94 includes ensuring that each passenger is available for inspection by a CBP Officer upon request.

(f) The term “possession” with respect to a Form I-94 includes, but is not limited to, obtaining a copy or printout of the record of an electronic evidence of admission or arrival/departure from the appropriate CBP systems.

(g) The terms “surrendering,” “turning in a Form I-94,” and “departure I-94” includes, but is not limited to, complying with any departure controls under 8 CFR part 215 that may be prescribed by CBP in addition to the submission of electronic departure data to CBP by a carrier.

[78 FR 18472, Mar. 27, 2013]

PART 2—AUTHORITY OF THE SECRETARY OF HOMELAND SECURITY

AUTHORITY: 8 U.S.C. 1103; 5 U.S.C. 301; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

§ 2.1 Authority of the Secretary of Homeland Security.

All authorities and functions of the Department of Homeland Security to administer and enforce the immigration laws are vested in the Secretary of Homeland Security. The Secretary of