RENUMBERING OF REPEALING ACT

Section 611 of act July 1, 1944, which repealed this section, was renumbered 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049, 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47, 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720, 913 by Pub. L. 88-581, § 4(b), Sept. 4, 1964, 78 Stat. 919, 1013 by Pub. L. 89-239, § 3(b), Oct. 6, 1965, 79 Stat. 931, 1113 by Pub. L. 91-572, § 6(b), Dec. 24, 1970, 84 Stat. 1506, 1213 by Pub. L. 92-294, § 3(b) May 16, 1972, 86 Stat. 137, 1313 by Pub. L. 93-154, § 2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93-222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

Section 118, act Apr. 18, 1930, ch. 184, title IV, § 1, 46 Stat. 216, which related to motor vehicles and horses for enforcement of immigration and Chinese exclusion laws, expired with the appropriation act of which it was a part.

Similar provisions were carried in the following prior appropriation acts:

Jan. 25, 1929, ch. 102, title IV, 45 Stat. 1137.
Feb. 15, 1928, ch. 57, title IV, 45 Stat. 107.
Feb. 24, 1927, ch. 189, title IV, 44 Stat. 1223.
Apr. 29, 1926, ch. 195, title IV, 44 Stat. 371.
Feb. 27, 1925, ch. 364, title IV, 43 Stat. 1049.
May 28, 1924, ch. 204, title IV, 43 Stat. 240.
Jan. 5, 1923, ch. 24, title II, 42 Stat. 1127.
Mar. 28, 1922, ch. 117, title II, 42 Stat. 487.
June 12, 1917, ch. 27, § 1, 40 Stat. 170.

SUBCHAPTER II—REGULATION AND RESTRICTION OF IMMIGRATION IN GENERAL

§ 131. Omitted

CODIFICATION

Section, acts Feb. 14, 1903, ch. 552, § 7, 32 Stat. 828; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2423, 54 Stat. 1238, which related to control of immigration, was transferred to section 342a of former Title 5, Executive Departments and Government Officers and Employees, and subsequently eliminated from the Code on enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

§ 174. Omitted

CODIFICATION

Section, acts Aug. 18, 1894, ch. 301, § 1, 28 Stat. 390; Feb. 14, 1903, ch. 552, § 7, 32 Stat. 328; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2423, 54 Stat. 1238, which related to finality of decisions of immigration officers, was transferred to section 342j of former Title 5, Executive Departments and Government Officers and Employees, and subsequently eliminated from the Code on enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

CHAPTER 12—IMMIGRATION AND NATIONALITY

SUBCHAPTER II—IMMIGRATION

PART I—SELECTION SYSTEM

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

PART III—ISSUANCE OF ENTRY DOCUMENTS

PART IV—PROVISIONS RELATING TO ENTRY AND EXCLUSION

PART V—DEPORTATION; ADJUSTMENT OF STATUS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 7 sections 1996, 2020, 3508; title 10 sections 510, 591, 3253, 8253; title 18 sections 1203, 3077; title 22 sections 2454, 3303; title 25 section 1300b-13; title 42 section 6705; title 50 sections 47c, 47f.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1101. Definitions

(a) As used in this chapter—

[*See main edition for text of (1) to (8)*]

(9) The term "consular officer" means any consular, diplomatic, or other officer of the United States designated under regulations prescribed under authority contained in this chapter, for the purpose of issuing immigrant or nonimmigrant visas.

[*See main edition for text of (10) to (14)*]

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

[*See main edition for text of (A) to (C)*]

(D)(i) an alien crewman serving in good faith as such in any capacity required for normal operation and service on board a vessel (other than a fishing vessel having its home port or an operating base in the United States) or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

(ii) an alien crewman serving in good faith as such in any capacity required for normal operations and service aboard a fishing vessel having its home port or an operating base in the United States who intends to land temporarily in Guam and solely in pursuit of his calling as a crewman and to depart from Guam with the vessel on which he arrived;

[*See main edition for text of (E) to (G)*]

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability, and who, in the case of a graduate of a medical school coming to the United States to

perform services as a member of the medical profession, is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency; or (ii) who is coming temporarily to the United States (a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of title 26 and agriculture as defined in section 203(f) of title 29, of a temporary or seasonal nature, or (b) to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

[*See main edition for text of (I) to (K)*]

(L) an alien who, immediately preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him; or

(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or

(ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I).

[*See main edition for text of (16) to (26)*]

(27) The term "special immigrant" means—

[*See main edition for text of (A) to (F)*]

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977 [April 1, 1979], who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment;

(H) an immigrant, and his accompanying spouse and children, who—

[*See main edition for text of (i) to (iii)*]

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry; or

(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for admission under this subparagraph no later than his twenty-fifth birthday or six months after November 6, 1986, whichever is later;

(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) applies for admission under this subparagraph no later than six months after the date of such death or six months after November 6, 1986, whichever is later;

(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) ap-

plies for admission under this subparagraph before January 1, 1993, and no later than six months after the date of such retirement or six months after November 6, 1986, whichever is later; or

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

[*See main edition for text of (28) to (42)*]

(b) As used in subchapters I and II of this chapter—

(1) The term "child" means an unmarried person under twenty-one years of age who is—

[*See main edition for text of (A) to (C)*]

(D) an illegitimate child, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

[*See main edition for text of (F), (2) to (5)*]

(c) As used in subchapter III of this chapter—

(1) Repealed. Pub. L. 99-653, § 3, Nov. 14, 1986, 100 Stat. 3655.

[*See main edition for text of (2); (d) to (g)*]

(As amended Oct. 30, 1984, Priv. L. 98-47, § 3, 98 Stat. 3435; Oct. 21, 1986, Pub. L. 99-505, § 1, 100 Stat. 1806; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095; Nov. 6, 1986, Pub. L. 99-603, title III, §§ 301(a), 312, 315(a), 100 Stat. 3411, 3434, 3439; Nov. 14, 1986, Pub. L. 99-653, §§ 2, 3, 100 Stat. 3655.)

AMENDMENTS

1986—Subsec. (a)(15)(D). Pub. L. 99-505 designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(15)(H). Pub. L. 99-603, § 301(a), designated existing provisions of cl. (ii) as subcl. (b) thereof and added subcl. (a) relating to persons performing agricultural labor or services as defined by the Secretary of Labor in regulations and including agricultural labor as defined in section 3121(g) of title 26 and agriculture as defined in section 203(f) of title 29 of a temporary or seasonal nature.

Subsec. (a)(15)(H)(ii). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (a)(15)(N). Pub. L. 99-603, § 312(b), added subpar. (N).

Subsec. (a)(27)(I). Pub. L. 99-603, § 312(a), added subpar. (I).

Subsec. (b)(1)(D). Pub. L. 99-603, § 315(a), inserted "or to its natural father if the father has or had a bona fide parent-child relationship with the person".

Subsec. (b)(1)(E). Pub. L. 99-653, § 2, struck out "thereafter" after "the child has".

Subsec. (c)(1). Pub. L. 99-653, § 3, struck out par. (1) which defined "child" as unmarried person under age twenty-one, including a child legitimated under law of child's or father's residence or domicile, in United States or elsewhere, and, except as otherwise provided in sections 1431 to 1434 of this title, a child adopted in United States before age sixteen while in legal custody of legitimating or adopting parents.

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(a) of Pub. L. 99-603 applicable to petitions and applications filed under sections 1184(c) and 1186 of this title on or after the first day of the seventh month beginning after Nov. 6, 1986, see section 301(d) of Pub. L. 99-603, set out as an Effective Date note under section 1186 of this title.

SHORT TITLE OF 1986 AMENDMENTS

Section 1 of Pub. L. 99-653 provided: "That this Act [amending sections 1101, 1152, 1182, 1201, 1202, 1228, 1251, 1301, 1302, 1304, 1401, 1409, 1431 to 1433, 1451, 1452, 1481, and 1483 of this title and section 4195 of Title 22, Foreign Relations and Intercourse, and repealing section 1201a of this title and provisions set out as notes under section 1153 of this title] may be cited as the 'Immigration and Nationality Act Amendments of 1986'."

Pub. L. 99-639, § 1, Nov. 10, 1986, 100 Stat. 3537, provided that: "This Act [enacting section 1186a of this title, amending sections 1154, 1182, 1184, 1251, 1255, and 1325 of this title, and enacting provisions set out as notes under sections 1154, 1182, 1184, and 1255 of this title] may be cited as the 'Immigration Marriage Fraud Amendments of 1986'."

Pub. L. 99-605, § 1(a), Nov. 6, 1986, 100 Stat. 3449, provided that: "This Act [amending sections 1522 to 1524 of this title and enacting provisions set out as notes under section 1522 of this title] may be cited as the 'Refugee Assistance Extension Act of 1986'."

Section 1(a) of Pub. L. 99-603 provided that: "This Act [enacting sections 1160, 1161, 1186, 1187, 1255a, 1324a, 1324b, 1364, and 1365 of this title and section 1437r of Title 42, The Public Health and Welfare, amending sections 1101, 1152, 1184, 1251, 1252, 1254, 1255, 1258, 1259, 1321, 1324, and 1357 of this title, section 2025 of Title 7, Agriculture, section 1546 of Title 18, Crimes and Criminal Procedure, sections 1091 and 1096 of Title 20, Education, sections 1802, 1813, and 1851 of Title 29, Labor, and sections 303, 502, 602, 603, 672, 673, 1203, 1320b-7, 1353, 1396b, and 1436a of Title 42, repealing section 1816 of Title 29, enacting provisions set out as notes under sections 1101, 1152, 1153, 1160, 1186, 1187, 1253, 1255a, 1259, 1324a, and 1324b of this title, section 1802 of Title 29, and sections 405, 502, and 1320b-7 of Title 42, and amending provisions set out as notes under section 1101 of this title and section 1383 of Title 42] may be cited as the 'Immigration Reform and Control Act of 1986'."

APPROPRIATIONS

Section 404 of act June 27, 1952, as amended by acts Dec. 29, 1981, Pub. L. 97-116, § 18(s), 95 Stat. 1621; Nov. 6, 1986, Pub. L. 99-603, title I, § 113, 100 Stat. 3383, provided that:

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

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

DEFINITIONS; APPLICABILITY OF SECTION 1101(a) AND (b) OF THIS TITLE

Section 14 of Pub. L. 85-316 provided that: "Except as otherwise specifically provided in this Act, the definitions contained in subsections (a) and (b) of section 101 of the Immigration and Nationality Act [8 U.S.C. 1101(a), (b)] shall apply to sections 4, 5, 6, 7, 8, 9, 12, 13, and 15 of this Act [enacting sections 1182b, 1182c, 1201a, 1205, 1251a, 1255a, and 1255b of this title and provisions set out as notes under section 1153 of this title and section 1971a of the Appendix to Title 50, War and National Defense.]"

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

Section 111 of Pub. L. 99-603 provided that:

"(a) TWO ESSENTIAL ELEMENTS.—It is the sense of Congress that two essential elements of the program of immigration control established by this Act [see Short Title of 1986 Amendments note above] are—

"(1) an increase in the border patrol and other inspection and enforcement activities of the Immigration and Naturalization Service and of other appropriate Federal agencies in order to prevent and deter the illegal entry of aliens into the United States and the violation of the terms of their entry, and

"(2) an increase in examinations and other service activities of the Immigration and Naturalization Service and other appropriate Federal agencies in order to ensure prompt and efficient adjudication of petitions and applications provided for under the Immigration and Nationality Act [this chapter].

"(b) INCREASED AUTHORIZATION OF APPROPRIATIONS FOR INS AND EOIR.—In addition to any other amounts authorized to be appropriated, in order to carry out this Act there are authorized to be appropriated to the Department of Justice—

"(1) for the Immigration and Naturalization Service, for fiscal year 1987, $422,000,000, and for fiscal year 1988, $419,000,000; and

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

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

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

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

ELIGIBILITY OF H-2 AGRICULTURAL WORKERS FOR CERTAIN LEGAL ASSISTANCE

Section 305 of Pub. L. 99-603 provided that: "A nonimmigrant worker admitted to or permitted to remain in the United States under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) for agricultural labor or service shall be considered to be an alien described in section 101(a)(20) of such Act (8 U.S.C. 1101(a)(20)) for purposes of establishing eligibility for legal assistance under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.), but only with respect to legal assistance on matters relating to wages, housing, transportation, and other employment rights as provided in the worker's specific contract under which the nonimmigrant was admitted."

DENIAL OF CREW MEMBER NONIMMIGRANT VISA IN CASE OF STRIKES

Section 315(d) of Pub. L. 99-603 provided that:

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

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

SENSE OF CONGRESS RESPECTING CONSULTATION WITH MEXICO

Section 407 of Pub. L. 99-603 provided that: "It is the sense of the Congress that the President of the United States should consult with the President of the Republic of Mexico within 90 days after enactment of this Act [Nov. 6, 1986] regarding the implementation of this Act [see Short Title of 1986 Amendments note above] and its possible effect on the United States or Mexico. After the consultation, it is the sense of the Congress that the President should report to the Congress any legislative or administrative changes that may be necessary as a result of the cousultation and the enactment of this legislation."

COMMISSION FOR THE STUDY OF INTERNATIONAL MIGRATION AND COOPERATIVE ECONOMIC DEVELOPMENT

Section 601 of Pub. L. 99-603 provided that:

"(a) ESTABLISHMENT AND COMPOSITION OF COMMISSION.—(1) There is established a Commission for the Study of International Migration and Cooperative Economic Development (in this section referred to as the 'Commission'), to be composed of twelve members—

"(A) three members to be appointed by Speaker of the House of Representatives;

"(B) three members to be appointed by the minority leader of the House of Representatives;

"(C) three members to be appointed by the Majority Leader of the Senate; and

"(D) three members to be appointed by the Minority Leader of the Senate.

"(2) Members shall be appointed for the life of the Commission. Appointments to the Commission shall be made within 90 days after the date of the enactment of this Act [Nov. 6, 1986]. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

"(3) A majority of the members of the Commission shall elect a Chairman.

"(b) DUTY OF COMMISSION.—The Commission, in consultation with the governments of Mexico and other sending countries in the Western Hemisphere, shall examine the conditions in Mexico and such other sending countries which contribute to unauthorized migration to the United States and mutually beneficial, reciprocal trade and investment programs to alleviate such conditions. For purposes of this section, the term 'sending country' means a foreign country a substantial number of whose nationals migrate to, or remain in, the United States without authorization.

"(c) REPORT TO THE PRESIDENT AND CONGRESS.—Not later than three years after the appointment of the members of the Commission, the Commission shall prepare and transmit to the President and to the Congress a report describing the results of the Commission's examination and recommending steps to provide mutually beneficial reciprocal trade and investment programs to alleviate conditions leading to unauthorized migration to the United States.

"(d) COMPENSATION OF MEMBERS, MEETINGS, STAFF, AUTHORITY OF COMMISSION, AND AUTHORIZATION OF APPROPRIATIONS.—(1) The provisions of subsections (d), (e)(3), (f), (g), and (h) of section 304 [8 U.S.C. 1160 note] shall apply to the Commission in the same manner as they apply to the Commission established under section 304.

"(2) Seven members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

"(e) TERMINATION DATE.—The Commission shall terminate on the date on which a report is required to be transmitted by subsection (c), except that the Commission may continue to function for not more than thirty days thereafter for the purpose of concluding its activities."

TREATMENT OF DEPARTURES FROM GUAM

Section 2 of Pub. L. 99-505 provided that: "In the administration of section 101(a)(15)(D)(ii) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(D)(ii)] (added by the amendment made by section 1 of this Act), an alien crewman shall be considered to have departed from Guam after leaving the territorial waters of Guam, without regard to whether the alien arrives in a foreign state before returning to Guam."

ALIEN EMPLOYEES OF AMERICAN UNIVERSITY OF BEIRUT

Priv. L. 98-53, Oct. 30, 1984, 98 Stat. 3437, provided: "That an alien lawfully admitted to the United States for permanent residence shall be considered, for purposes of section 101(a)(27)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(A)), to be temporarily visiting abroad during any period (before or after the date of the enactment of this Act [Oct. 30, 1984]) in which the alien is employed by the American University of Beirut."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1102, 1151, 1152, 1153, 1154, 1157, 1158, 1159, 1160, 1161, 1181, 1182, 1184, 1184a, 1186, 1187, 1201, 1251, 1254, 1255, 1255a, 1255b, 1257, 1258, 1282, 1303, 1356, 1365 of this title; title 2 section 441e; title 7 section 2015; title 18 sections 613, 831, 1203, 2331, 3077, 3142; title 19 section 58c; title 22 sections 1474, 2395, 2508, 3508, 5001; title 26 sections 871, 872, 1441, 3121, 3231, 3306, 7701; title 29 section 1802; title 42 sections 410, 1436a; title 45 sections 231, 351; title 46 section 2101; title 50 sections 424, 1801; title 50 App. sections 453, 456.

§ 1103. Powers and duties of the Attorney General and Commissioner; appointment of Commissioner

PILOT PROGRAM TO ESTABLISH OR IMPROVE COMPUTER CAPABILITIES

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

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

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

§ 1105a. Judicial review of orders of deportation and exclusion

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1160, 1255a of this title.

SUBCHAPTER II—IMMIGRATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1101, 1364 of this title.

PART I—SELECTION SYSTEM

§ 1151. Numerical limitations on total lawful admissions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1152, 1153, 1154, 1160, 1186a, 1202, 1254, 1255 1255a of this title.

§ 1152. Numerical limitations on individual foreign states

[*See main edition for text of* (a)]

(b) Determination of individual foreign states by Secretary of State; charging immigrant to proper foreign state

Each independent country, self-governing dominion, mandated territory, and territory under the international trusteeship system of the United Nations, other than the United States and its outlying possessions, shall be treated as a separate foreign state for the purposes of the numerical limitation set forth in the proviso to subsection (a) of this section

when approved by the Secretary of State. All other inhabited lands shall be attributed to a foreign state specified by the Secretary of State. For the purposes of this chapter the foreign state to which an immigrant is chargeable shall be determined by birth within such foreign state except that (1) an alien child, when accompanied by or following to join his alien parent or parents, may be charged to the foreign state of either parent if such parent has received or would be qualified for an immigrant visa, if necessary to prevent the separation of the child from the parent or parents, and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached the numerical limitation set forth in the proviso to subsection (a) of this section for that fiscal year; (2) if an alien is chargeable to a different foreign state from that of his spouse, the foreign state to which such alien is chargeable may, if necessary to prevent the separation of husband and wife, be determined by the foreign state of the spouse he is accompanying or following to join, if such spouse has received or would be qualified for an immigrant visa and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached the numerical limitation set forth in the proviso to subsection (a) of this section for that fiscal year; (3) an alien born in the United States shall be considered as having been born in the country of which he is a citizen or subject, or, if he is not a citizen or subject of any country, in the last foreign country in which he had his residence as determined by the consular officer; (4) an alien born within any foreign state in which neither of his parents was born and in which neither of his parents had a residence at the time of such alien's birth may be charged to the foreign state of either parent.

(c) Immigrants born in colonies of foreign states

Any immigrant born in a colony or other component or dependent area of a foreign state overseas from the foreign state, other than a special immigrant, as defined in section 1101(a)(27) of this title, or an immediate relative of a United States citizen, as defined in section 1151(b) of this title, shall be chargeable for the purpose of the limitation set forth in subsection (a) of this section, to the foreign state, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed 5,000 in any one fiscal year.

[*See main edition for text of (d)*]

(e) Additional visas; availability and allocation

Whenever the maximum number of visas have been made available under this section to natives of any single foreign state as defined in subsection (b) of this section or any dependent area as defined in subsection (c) of this section in any fiscal year, in the next following fiscal year a number of visas, not to exceed 20,000, in the case of a foreign state or 5,000 in the case of a dependent area, shall be made available and allocated as follows:

[*See main edition for text of (1) to (7)*]

(As amended Nov. 6, 1986, Pub. L. 99-603, title III, § 311(a), 100 Stat. 3434; Nov. 14, 1986, Pub. L. 99-653, § 4, 100 Stat. 3655.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-653 amended subsec. (b) generally, substituting "outlying possessions, shall" for "outlying possessions shall", in cl. (1) substituting "when accompanied by or following to join his alien" for "when accompanied by his alien", "charged to the foreign state of either parent" for "charged to the same foreign state as the accompanying parent or of either accompanying parent", "from the parent" for "from the accompanying parent", "and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached the numerical" for "and if the foreign state to which such parent has been or would be chargeable has not exceeded the numerical", in cl. (2) substituting "of his spouse" for "of his accompanying spouse", "of the spouse he is accompanying or following to join" for "of the accompanying spouse", "and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached the numerical" for "and if the foreign state to which such spouse has been or would be chargeable has not exceeded the numerical", in cl. (3) substituting "subject, or, if" for "subject, or if", "country, in" for "country then in", and in cl. (4) substituting "(4) an alien" for "and (4) an alien".

Subsec. (c). Pub. L. 99-603, § 311(a)(1), substituted "5,000" for "six hundred".

Subsec. (e). Pub. L. 99-603, § 311(a)(2), substituted "5,000" for "600" in provisions preceding par. (1).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 311(b) of Pub. L. 99-603 provided that: "The amendments made by subsection (a) [amending subsecs. (c) and (e) of this section] shall apply to fiscal years beginning after the date of the enactment of this Act [Nov. 6, 1986]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1154, 1160, 1254, 1255, 1255a, 1255b of this title; title 22 section 3303.

§ 1153. Allocation of immigrant visas

MAKING VISAS AVAILABLE TO NONPREFERENCE IMMIGRANTS

Pub. L. 99-603, title III, § 314, Nov. 6, 1986, 100 Stat. 3439, provided that:

"(a) AUTHORIZATION OF ADDITIONAL VISAS.—Notwithstanding the numerical limitations in section 201(a) of the Immigration and Nationality Act (8 U.S.C. 1151(a)), but subject to the numerical limitations in section 202 of such Act [8 U.S.C. 1152], there shall be made available to qualified immigrants described in section 203(a)(7) of such Act [8 U.S.C. 1153(a)(7)] 5,000 visa numbers in each of fiscal years 1987 and 1988.

"(b) DISTRIBUTION OF VISA NUMBERS.—The Secretary of State shall provide for making visa numbers provided under subsection (a) available in the same manner as visa numbers are otherwise made available to qualified immigrants under section 203(a)(7) of the Immigration and Nationality Act [8 U.S.C. 1153(a)(7)], except that—

"(1) the Secretary shall first make such visa numbers available to qualified immigrants who are natives of foreign states the immigration of whose natives to the United States was adversely affected by the enactment of Public Law 89-236 [see Tables for classification], and

"(2) within groups of qualified immigrants, such visa numbers shall be made available strictly in the

chronological order in which they qualify after the date of the enactment of this Act [Nov. 6, 1986].

"(c) WAIVER OF LABOR CERTIFICATION.—Section 212(a)(14) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(14)) shall not apply in the determination of an immigrant's eligibility to receive any visa made available under this section or in the admission of such an immigrant issued such a visa under this section.

"(d) APPLICATION OF DEFINITIONS OF IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section. Nothing in this section shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization."

NONQUOTA IMMIGRANT STATUS OF CERTAIN RELATIVES OF UNITED STATES CITIZENS; ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS FILED PRIOR TO JANUARY 1, 1962

Pub. L. 87-885, § 1, Oct. 24, 1962, 76 Stat. 1247, which provided that certain alien relatives of United States citizens registered on a consular waiting list under priority date earlier than March 31, 1954, and eligible for a quota immigrant status on a basis of a petition filed with the Attorney General prior to January 1, 1962, and the spouse and children of such alien, be held to be nonquota immigrants and be issued nonquota immigrant visas, was repealed by Pub. L. 99-653, § 11, Nov. 14, 1986, 100 Stat. 3657.

NONQUOTA IMMIGRANT STATUS OF SKILLED SPECIALISTS; ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS FILED PRIOR TO APRIL 1, 1962

Pub. L. 87-885, § 2, Oct. 24, 1962, 76 Stat. 1247, which provided that certain alien skilled specialists eligible for a quota immigrant status on the basis of a petition filed with the Attorney General prior to April 1, 1962, be held to be nonquota immigrants and be issued nonquota immigrant visas, was repealed by Pub. L. 99-653, § 11, Nov. 14, 1986, 100 Stat. 3657.

ISSUANCE OF NONQUOTA IMMIGRANT VISAS TO CERTAIN ELIGIBLE ORPHANS

Section 25 of Pub. L. 87-301, as amended by Pub. L. 99-653, § 11, Nov. 14, 1986, 100 Stat. 3657, provided that: "At any time prior to the expiration of the one hundred and eightieth day immediately following the enactment of this Act [Sept. 26, 1961] a special nonquota immigrant visa may be issued to an eligible orphan as defined in section 4 of the Act of September 11, 1957, as amended (8 U.S.C. 1205; 71 Stat. 639, 73 Stat. 490, 74 Stat. 505), if a visa petition filed in behalf of such eligible orphan was (A) approved by the Attorney General prior to September 30, 1961, or (B) pending before the Attorney General prior to September 30, 1961, and the Attorney General approves such petition."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1152, 1154, 1182, 1186a, 1255 of this title; title 26 section 3304; title 42 sections 602, 615, 1382c, 1382j.

§ 1154. Procedure for granting immigrant status

(a) Petition for preference status or immediate relative status; spousal second preference petition

(1) Any citizen of the United States claiming that an alien is entitled to a preference status by reason of a relationship described in paragraph (1), (4), or (5) of section 1153(a) of this title, or to an immediate relative status under section 1151(b) of this title, or any alien lawfully admitted for permanent residence claiming that an alien is entitled to a preference status by reason of the relationship described in section 1153(a)(2) of this title, or any alien desiring to be classified as a preference immigrant under section 1153(a)(3) of this title (or any person on behalf of such an alien), or any person desiring and intending to employ within the United States an alien entitled to classification as a preference immigrant under section 1153(a)(6) of this title, may file a petition with the Attorney General for such classification. The petition shall be in such form as the Attorney General may by regulations prescribe and shall contain such information and be supported by such documentary evidence as the Attorney General may require. The petition shall be made under oath administered by any individual having authority to administer oaths, if executed in the United States, but, if executed outside the United States, administered by a consular officer or an immigration officer.

(2)(A) The Attorney General may not approve a spousal second preference petition filed by an alien who, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence, unless—

(i) a period of 5 years has elapsed after the date the alien acquired the status of an alien lawfully admitted for permanent residence, or

(ii) the alien establishes to the satisfaction of the Attorney General by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence) was not entered into for the purpose of evading any provision of the immigration laws.

In this subparagraph, the term "spousal second preference petition" refers to a petition, seeking preference status under section 1153(a)(2) of this title, for an alien as a spouse of an alien lawfully admitted for permanent residence.

(B) Subparagraph (A) shall not apply to a petition filed by an alien whose prior marriage was terminated by the death of his or her spouse.

[*See main edition for text of* (b)]

(c) Limitation on orphan petitions approved for a single petitioner; prohibition against approval in cases of marriages entered into in order to evade immigration laws; restriction on future entry of aliens involved with marriage fraud

Notwithstanding the provisions of subsection (b) of this section no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, a nonquota or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has

attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

[*See main edition for text of (d) to (g)*]

(h) Restriction on petitions based on marriages entered while in exclusion or deportation proceedings

Notwithstanding subsection (a) of this section, a petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period described in section 1255(e)(2) of this title, until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

(As amended Nov. 10, 1986, Pub. L. 99-639, §§ 2(c), 4(a), 5(b), 100 Stat. 3541, 3543.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-639, § 2(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 99-639, § 4(a), inserted "(1)" after "if" and ", or has sought to be accorded," and added cl. (2).

Subsec. (h). Pub. L. 99-639, § 5(b), added subsec. (h).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 4(b) of Pub. L. 99-639 provided that: "The amendment made by subsection (a) [amending subsec. (c) of this section] shall apply to petitions filed on or after the date of the enactment of this Act [Nov. 10, 1986]."

Section 5(c) of Pub. L. 99-639 provided that: "The amendments made by this section [amending sections 1154 and 1255 of this title] shall apply to marriages entered into on or after the date of the enactment of this Act [Nov. 10, 1986]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1153, 1155, 1186a, 1255a of this title.

§ 1157. Annual admission of refugees and admission of emergency situation refugees

PRESIDENTIAL DETERMINATION CONCERNING ADMISSION AND ADJUSTMENT OF STATUS OF REFUGEES

Determinations by the President pursuant to subsec. (a) of 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. 87-1, Oct. 17, 1986, 51 F.R. 39637.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1151, 1159, 1181, 1182, 1324b, 1522 of this title; title 7 section 2015; title 22 section 4703; title 42 sections 602, 615, 1382j, 1436a.

§ 1158. Asylum procedure

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1324b of this title; title 7 section 2015; title 22 section 4703; title 42 sections 602, 615, 1436a.

§ 1159. Adjustment of status of refugees

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1160, 1255a of this title.

§ 1160. Special agricultural workers

(a) Lawful residence

(1) In general

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

(A) Application period

The alien must apply for such adjustment during the 18-month period beginning on the first day of the seventh month that begins after November 6, 1986.

(B) Performance of seasonal agricultural services and residence in the United States

The alien must establish that he has—

(i) resided in the United States, and

(ii) performed seasonal agricultural services in the United States for at least 90 man-days,

during the 12-month period ending on May 1, 1986. For purposes of the previous sentence, performance of seasonal agricultural services in the United States for more than one employer on any one day shall be counted as performance of services for only 1 man-day.

(C) Admissible as immigrant

The alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2) of this section.

(2) Adjustment to permanent residence

The Attorney General shall adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence on the following date:

(A) Group 1

Subject to the numerical limitation established under subparagraph (C), in the case of an alien who has established, at the time of application for temporary residence under paragraph (1), that the alien performed seasonal agricultural services in the United States for at least 90 man-days during each of the 12-months periods ending on May 1, 1984, 1985, and 1986, the adjustment shall occur on the first day after the end of the one-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).

(B) Group 2

In the case of aliens to which subparagraph (A) does not apply, the adjustment shall occur on the day after the last day of the two-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).

(C) Numerical limitation

Subparagraph (A) shall not apply to more than 350,000 aliens. If more than 350,000 aliens meet the requirements of such subparagraph, such subparagraph shall apply to the 350,000 aliens whose applications for adjustment were first filed under paragraph (1) and subparagraph (B) shall apply to the remaining aliens.

(3) Termination of temporary residence

During the period of temporary resident status granted an alien under paragraph (1), the Attorney General may terminate such status only upon a determination under this chapter that the alien is deportable.

(4) Authorized travel and employment during temporary residence

During the period an alien is in lawful temporary resident status granted under this subsection, the alien has the right to travel abroad (including commutation from a residence abroad) and shall be granted authorization to engage in employment in the United States and shall be provided an "employment authorized" endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence.

(5) In general

Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under paragraph (1), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 1101(a)(20) of this title), other than under any provision of the immigration laws.

(b) Applications for adjustment of status

(1) To whom may be made

(A) Within the United States

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

(i) with the Attorney General, or

(ii) with a designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Attorney General.

(B) Outside the United States

The Attorney General, in cooperation with the Secretary of State, shall provide a procedure whereby an alien may apply for adjustment of status under subsection (a)(1) of this section at an appropriate consular office outside the United States. If the alien otherwise qualifies for such adjustment, the Attorney General shall provide such documentation of authorization to enter the United States and to have the alien's status adjusted upon entry as may be necessary to carry out the provisions of this section.

(2) Designation of entities to receive applications

For purposes of receiving applications under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, community, farm labor organizations, and associations of agricultural employers, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 1159 or 1255 of this title, Public Law 89-732 [8 U.S.C. 1255 note], or Public Law 95-145 [8 U.S.C. 1255 note].

(3) Proof of eligibility

(A) In general

An alien may establish that he meets the requirement of subsection (a)(1)(B)(ii) of this section through government employment records, records supplied by employers or collective bargaining organizations, and such other reliable documentation as the alien may provide. The Attorney General shall establish special procedures to credit properly work in cases in which an alien was employed under an assumed name.

(B) Documentation of work history

(i) An alien applying for adjustment of status under subsection (a)(1) of this section has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of man-days (as required under subsection (a)(1)(B)(ii) of this section).

(ii) If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof nnder clause (i) may be met by securing timely production of those records under regulations to be promulgated by the Attorney General.

(iii) An alien can meet such burden of proof if the alien establishes that the alien has in fact performed the work described in subsection (a)(1)(B)(ii) of this section by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference. In such a case, the burden then shifts to the Attorney General to disprove the alien's evidence with a showing which negates the reasonableness of the inference to be drawn from the evidence.

(4) Treatment of applications by designated entities

Each designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(A)(ii) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(5) Limitation on access to information

Files and records prepared for purposes of this section by designated entities operating under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

(6) Confidentiality of information

Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (7),

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(7) Penalties for false statements in applications

(A) Criminal penalty

Whoever—

(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or

(ii) creates or supplies a false writing or document for use in making such an application,

shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(B) Exclusion

An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 1182(a)(19) of this title.

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

(1) Numerical limitations do not apply

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

(2) Waiver of grounds for exclusion

In the determination of an alien's admissibility under subsection (a)(1)(C) of this section—

(A) Grounds of exclusion not applicable

The provisions of paragraphs (14), (20), (21), (25), and (32) of section 1182(a) of this title shall not apply.

(B) Waiver of other grounds

(i) In general

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

(ii) Grounds that may not be waived

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

(I) Paragraph (9) and (10) (relating to criminals).

(II) Paragraph (15) (relating to aliens likely to become public charges).

(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

(C) Special rule for determination of public charge

An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 1182(a)(15) of this title if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(d) Temporary stay of exclusion or deportation and work authorization for certain applicants

(1) Before application period

The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1) of this section and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) of this section (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

(A) may not be excluded or deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(2) During application period

The Attorney General shall provide that in the case of an alien who presents a nonfrivolous application for adjustment of status under subsection (a) of this section during

the application period, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be excluded or deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(e) Administrative and judicial review

(1) Administrative and judicial review

There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) Administrative review

(A) Single level of administrative appellate review

The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) Standard for review

Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) Judicial review

(A) Limitation to review of exclusion or deportation

There shall be judicial review of such a denial only in the judicial review of an order of exclusion or deportation under section 1105a of this title.

(B) Standard for judicial review

Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(f) Temporary disqualification of newly legalized aliens from receiving aid to families with dependent children

During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a) of this section, and notwithstanding any other provision of law, the alien is not eligible for aid under a State plan approved under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.]. Notwithstanding the previous sentence, in the case of an alien who would be eligible for aid under a State plan approved under part A of title IV of the Social Security Act but for the previous sentence, the provisions of paragraph (3) of section 1255a(h) of this title shall apply in the same manner as they apply with respect to paragraph (1) of such section and, for this purpose, any reference in section 1255a(h)(3) of this title to paragraph (1) is deemed a reference to the previous sentence.

(g) Treatment of special agricultural workers

For all purposes (subject to subsections (b)(3) and (f) of this section) an alien whose status is adjusted under this section to that of an alien lawfully admitted for permanent residence, such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence (within the meaning of section 1101(a)(20) of this title).

(h) "Seasonal agricultural services" defined

In this section, the term "seasonal agricultural services" means the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.

(June 27, 1952, ch. 477, title II, ch. 1, § 210, as added Nov. 6, 1986, Pub. L. 99-603, title III, § 302(a)(1), 100 Stat. 3417.)

REFERENCES IN TEXT

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

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

The Social Security Act, referred to in subsec. (f), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Social Security Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

COMMISSION ON AGRICULTURAL WORKERS

Section 304 of Pub. L. 99-603 provided that:

"(a) ESTABLISHMENT AND COMPOSITION OF COMMISSION.—(1) There is established a Commission on Agricultural Workers (hereinafter in this section referred to as the 'Commission'), to be composed of 12 members—

"(A) six to be appointed by the President,

"(B) three to be appointed by the Speaker of the House of Representatives, and

"(C) three to be appointed by the President pro tempore of the Senate.

"(2) In making appointments under paragraph (1)(A), the President shall consult—

"(A) with the Attorney General in appointing two members,

"(B) with the Secretary of Labor in appointing two members, and

"(C) with the Secretary of Agriculture in appointing two members.

"(3) A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

"(4) Members shall be appointed to serve for the life of the Commission.

"(b) FUNCTIONS OF COMMISSION.—(1) The Commission shall review the following:

"(A) The impact of the special agricultural worker provisions on the wages and working conditions of domestic farmworkers, on the adequacy of the supply of agricultural labor, and on the ability of agricultural workers to organize.

"(B) The extent to which aliens who have obtained lawful permanent or temporary resident status under the special agricultural worker provisions continue to perform seasonal agricultural services and the requirement that aliens who become special agricultural workers under section 210A of the Immigration and Nationality Act [8 U.S.C. 1161] perform 90 man-days of seasonal agricultural services for certain periods in order to avoid deportation or to become naturalized.

"(C) The impact of the legalization program and the employers' sanctions on the supply of agricultural labor.

"(D) The extent to which the agricultural industry relies on the employment of a temporary workforce.

"(E) The adequacy of the supply of agricultural labor in the United States and whether this supply needs to be further supplemented with foreign labor and the appropriateness of the numerical limitation on additional special agricultural workers imposed under section 210A(b) of the Immigration and Nationality Act [8 U.S.C. 1161(b)].

"(F) The extent of unemployment and underemployment of farmworkers who are United States citizens or aliens lawfully admitted for permanent residence.

"(G) The extent to which the problems of agricultural employers in securing labor are related to the lack of modern labor-management techniques in agriculture.

"(H) Whether certain geographic regions need special programs or provisions to meet their unique needs for agricultural labor.

"(I) Impact of the special agricultural worker provisions on the ability of crops harvested in the United States to compete in international markets.

"(2) The Commission shall conduct an overall evaluation of the special agricultural worker provisions, including the process for determining whether or not an agricultural labor shortage exists.

"(c) REPORT TO CONGRESS.—The Commission shall report to the Congress not later than five years after the the date of the enactment of this Act [Nov. 6, 1986] on its reviews under subsection (b). The Commission shall include in its report recommendations for appropriate changes that should be made in the special agricultural worker provisions.

"(d) COMPENSATION OF MEMBERS.—(1) Each member of the Commission who is not an officer or employee of the Federal Government is entitled to receive, subject to such amounts as are provided in advance in appropriations Acts, the daily equivalent of the minimum annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which the member is engaged in the actual performance of duties of the Commission. Each member of the Commission who is such an officer or employee shall serve without additional pay.

"(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence.

"(e) MEETINGS OF COMMISSION.—(1) Five members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

"(2) The Chairman and the Vice Chairman of the Commission shall be elected by the members of the Commission for the life of the Commission.

"(3) The Commission shall meet at the call of the Chairman or a majority of its members.

"(f) STAFF.—(1) The Chairman, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other additional personnel as may be necessary to enable the Commission to carry out its functions, without regard to the laws, rules, and regulations governing appointment in the competitive service. Any Federal employee subject to those laws, rules, and regulations may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

"(2) The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the minimum annual rate of basic pay payable for GS-18 of the General Schedule.

"(g) AUTHORITY OF COMMISSION.—(1) The Commission may for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate.

"(2) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of such department or agency shall furnish such information to the Commission.

"(3) The Commission may accept, use, and dispose of gifts or donations of services or property.

"(4) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

"(5) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

"(h) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

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

"(i) TERMINATION DATE.—The Commission shall cease to exist at the end of the 63-month period beginning with the month after the month in which this Act is enacted [November 1986].

"(j) DEFINITIONS.—In this section:

"(1) The term 'employer sanctions' means the provisions of section 274A of the Immigration and Nationality Act [8 U.S.C. 1324a].

"(2) The term 'legalization program' refers to the provisions of section 245A of the Immigration and Nationality Act [8 U.S.C. 1255a].

"(3) The term 'seasonal agricultural services' has the meaning given such term in section 210(h) of the Immigration and Nationality Act [8 U.S.C. 1160(h)].

"(4) The term 'special agricultural worker provisions' refers to sections 210 and 210A of the Immigration and Nationality Act [8 U.S.C. 1160, 1161]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1161, 1324a of this title.

§ 1161. Determination of agricultural labor shortages and admission of additional special agricultural workers

(a) Determination of need to admit additional special agricultural workers

(1) In general

Before the beginning of each fiscal year (beginning with fiscal year 1990 and ending with fiscal year 1993), the Secretaries of Labor and Agriculture (in this section referred to as the "Secretaries") shall jointly determine the number (if any) of additional

aliens who should be admitted to the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence under this section during the fiscal year to meet a shortage of workers to perform seasonal agricultural services in the United States during the year. Such number is, in this section, referred to as the "shortage number".

(2) Overall determination

The shortage number is—

(A) the anticipated need for special agricultural workers (as determined under paragraph (4)) for the fiscal year, minus

(B) the supply of such workers (as determined under paragraph (5)) for that year,

divided by the factor (determined under paragraph (6)) for man-days per worker.

(3) No replenishment if no shortage

In determining the shortage number, the Secretaries may not determine that there is a shortage unless, after considering all of the criteria set forth in paragraphs (4) and (5), the Secretaries determine that there will not be sufficient able, willing, and qualified workers available to perform seasonal agricultural services required in the fiscal year involved.

(4) Determination of need

For purposes of paragraph (2)(A), the anticipated need for special agricultural workers for a fiscal year is determined as follows:

(A) Base

The Secretaries shall jointly estimate, using statistically valid methods, the number of man-days of labor performed in seasonal agricultural services in the United States in the previous fiscal year.

(B) Adjustment for crop losses and changes in industry

The Secretaries shall jointly—

(i) increase such number by the number of man-days of labor in seasonal agricultural services in the United States that would have been needed in the previous fiscal year to avoid any crop damage or other loss that resulted from the unavailability of labor, and

(ii) adjust such number to take into account the projected growth or contraction in the requirements for seasonal agricultural services as a result of—

(I) growth or contraction in the seasonal agriculture industry, and

(II) the use of technologies and personnel practices that affect the need for, and retention of, workers to perform such services.

(5) Determination of supply

For purposes of paragraph (2)(B), the anticipated supply of special agricultural workers for a fiscal year is determined as follows:

(A) Base

The Secretaries shall use the number estimated under paragraph (4)(A).

(B) Adjustment for retirements and increased recruitment

The Secretaries shall jointly—

(i) decrease such number by the number of man-days of labor in seasonal agricultural services in the United States that will be lost due to retirement and movement of workers out of performance of seasonal agricultural services, and

(ii) increase such number by the number of additional man-days of labor in seasonal agricultural services in the United States that can reasonably be expected to result from the availability of able, willing, qualified, and unemployed special agricultural workers, rural low skill, or manual, laborers, and domestic agricultural workers.

(C) Bases for increased number

In making the adjustment under subparagraph (B)(ii), the Secretaries shall consider—

(i) the effect, if any, that improvements in wages and working conditions offered by employers will have on the availability of workers to perform seasonal agricultural services, taking into account the adverse effect, if any, of such improvements in wages and working conditions on the economic competitiveness of the perishable agricultural industry,

(ii) the effect, if any, of enhanced recruitment efforts by the employers of such workers and government employment services in the traditional and expected areas of supply of such workers, and

(iii) the number of able, willing and qualified individuals who apply for employment opportunities in seasonal agricultural services listed with offices of government employment services.

(D) Construction

Nothing in this subsection shall be deemed to require any individual employer to pay any specified level of wages, to provide any specified working conditions, or to provide for any specified recruitment of workers.

(6) Determination of man-day per worker factor

(A) Fiscal year 1990

For fiscal year 1990—

(i) In general

Subject to clause (ii), for purposes of paragraph (2) the factor under this paragraph is the average number, as estimated by the Director of the Bureau of the Census under subsection (b)(3)(A)(ii) of this section, of man-days of seasonal agricultural services performed in the United States in fiscal year 1989 by special agricultural workers whose status is adjusted under section 1160 of this title and who performed seasonal agricultural services in the United States at any time during the fiscal year.

(ii) Lack of adequate information

If the Director determines that—

(I) the information reported under subsection (b)(2)(A) of this section is not adequate to make a reasonable estimate of the average number described in clause (i), but

(II) the inadequacy of the information is not due to the refusal or failure of employers to report the information required under subsection (b)(2)(A) of this section,

the factor under this paragraph is 90.

(B) Fiscal year 1991

For purposes of paragraph (2) for fiscal year 1991, the factor under this paragraph is the average number, as estimated by the Director of the Bureau of the Census under subsection (b)(3)(A)(ii) of this section, of man-days of seasonal agricultural services performed in the United States in fiscal year 1990 by special agricultural workers who obtained lawful temporary resident status under this section.

(C) Fiscal years 1992 and 1993

For purposes of paragraph (2) for fiscal years 1992 and 1993, the factor under this paragraph is the average number, as estimated by the Director of the Bureau of the Ceusus under subsection (b)(3)(A)(ii) of this section, of man-days of seasonal agricultural services performed in the United States in each of the two previous fiscal years by special agricultural workers who obtained lawful temporary resident status under this section during either of such fiscal years.

(7) Emergency procedure for increase in shortage number

(A) Requests

After the beginning of a fiscal year, a group or association representing employers (and potential employers) of individuals who perform seasonal agricultural services may request the Secretaries to increase the shortage number for the fiscal year based upon a showing that extraordinary, unusual, and unforeseen circumstances have resulted in a significant increase in the shortage number due to (i) a significant increase in the need for special agricultural workers in the year, (ii) a significant decrease in the availability of able, willing, and qualified workers to perform seasonal agricultural services, or (iii) a significant decrease (below the factor used for purposes of paragraph (6)) in the number of man-days of seasonal agricultural services performed by aliens who were recently admitted (or whose status was recently adjusted) under this section.

(B) Notice of emergency procedure

Not later than 3 days after the date the Secretaries receive a request under subparagraph (A), the Secretaries shall provide for notice in the Federal Register of the substance of the request and shall provide an opportunity for interested parties to submit information to the Secretaries on a timely basis respecting the request.

(C) Prompt determination on request

The Secretaries, not later than 21 days after the date of the receipt of such a request and after consideration of any information submitted on a timely basis with respect to the request, shall make and publish in the Federal Register their determination on the request. The request shall be granted, and the shortage number for the fiscal year shall be increased, to the extent that the Secretaries determine that such an increase is justified based upon the showing and circumstances described in subparagraph (A) and that such an increase takes into account reasonable recruitment efforts having been undertaken.

(8) Procedure for decreasing man-days of seasonal agricultural services required in the case of over-supply of workers

(A) Requests

After the beginning of a fiscal year, a group of special agricultural workers may request the Secretaries to decrease the number of man-days required under subparagraphs (A) and (B) of subsection (d)(2) of this section with respect to the fiscal year based upon a showing that extraordinary, unusual, and unforeseen circumstances have resulted in a significant decrease in the shortage number due to (i) a significant decrease in the need for special agricultural workers in the year, (ii) a significant increase in the availability of able, willing, and qualified workers to perform seasonal agricultural services, or (iii) a significant increase (above the factor used for purposes of paragraph (6)) in the number of man-days of seasonal agricultural services performed by aliens who were recently admitted (or whose status was recently adjusted) under this section.

(B) Notice of request

Not later than 3 days after the date the Secretaries receive a request under subparagraph (A), the Secretaries shall provide for notice in the Federal Register of the substance of the request and shall provide an opportunity for interested parties to submit information to the Secretaries on a timely basis respecting the request.

(C) Determination on request

The Secretaries, before the end of the fiscal year involved and after consideration of any information submitted on a timely basis with respect to the request, shall make and publish in the Federal Register their determination on the request. The request shall be granted, and the number of man-days specified in subparagraphs (A) and (B) of subsection (d)(2) of this section for the fiscal year shall be reduced by the same proportion as the Secretaries determine that a decrease in the shortage number is justified based upon the showing

and circumstances described in subparagraph (A).

(b) Annual numerical limitation on admission of additional special agricultural workers

(1) Annual Numerical Limitation

(A) Fiscal year 1990

The numerical limitation on the number of aliens who may be admitted under subsection (c)(1) of this section or who otherwise may acquire lawful temporary residence under such subsection for fiscal year 1990 is—

(i) 95 percent of the number of individuals whose status was adjusted under section 1160(a) of this title, minus

(ii) the number estimated under paragraph (3)(A)(i) for fiscal year 1989 (as adjusted in accordance with subparagraph (C)).

(B) Fiscal years 1991, 1992, and 1993

The numerical limitation on the number of aliens who may be admitted under subsection (c)(1) of this section or who otherwise may acquire lawful temporary residence under such subsection for fiscal year 1991, 1992, or 1993 is—

(i) 90 percent of the number described in this clause for the previous fiscal year (or, for fiscal year 1991, the number described in subparagraph (A)(i)), minus

(ii) the number estimated under paragraph (3)(A)(i) for the previous fiscal year (as adjusted in accordance with subparagraph (C)).

(C) Adjustment to take into account change in number of H-2 agricultural workers

The number used under subparagraph (A)(ii) or (B)(ii) (as the case may be) shall be increased or decreased to reflect any numerical increase or decrease, respectively, in the number of aliens admitted to perform temporary seasonal agricultural services (as defined in subsection (g)(2) of this section) under section 1101(a)(15)(H)(ii)(a) of this title in the fiscal year compared to such number in the previous fiscal year.

(2) Reporting of information on employment

In the case of a person or entity who employs, during a fiscal year (beginning with fiscal year 1989 and ending with fiscal year 1992) in seasonal agricultural services, a special agricultural worker—

(A) whose status was adjusted under section 1160 of this title, the person or entity shall furnish an official designated by the Secretaries with a certificate (at such time, in such form, and containing such information as the Secretaries establish, after consultation with the Attorney General and the Director of the Bureau of the Census) of the number of man-days of employment performed by the alien in seasonal agricultural services during the fiscal year, or

(B) who was admitted or whose status was adjusted under this section, the person or entity shall furnish the alien and an official designated by the Secretaries with a certificate (at such time, in such form, and containing such information as the Secretaries establish, after consultation with the Attorney General and the Director of the Bureau of the Census) of the number of man-days of employment performed by the alien in seasonal agricultural services during the fiscal year.

(3) Annual estimate of employment of special agricultural workers

(A) In general

The Director of the Bureau of the Census shall, before the end of each fiscal year (beginning with fiscal year 1989 and ending with fiscal year 1992), estimate—

(i) the number of special agricultural workers who have performed seasonal agricultural services in the United States at any time during the fiscal year, and

(ii) for purposes of subsection (a)(5) of this section, the average number of man-days of such services certain of such workers have performed in the United States during the fiscal year.

(B) Furnishing of information to Director

The offical designated by the Secretaries under paragraph (2) shall furnish to the Director, in such form and manner as the Director specifies, information contained in the certifications furnished to the official under paragraph (2).

(C) Basis for estimates

The Director shall base the estimates under subparagraph (A) on the information furnished under subparagraph (B), but shall take into account (to the extent feasible) the underreporting or duplicate reporting of special agricultural workers who have performed seasonal agricultural services at any time during the fiscal year. The Director shall periodically conduct appropriate surveys, of agricultural employers and others, to ascertain the extent of such underreporting or duplicate reporting.

(D) Report

The Director shall annually prepare and report to the Congress information on the estimates made under this paragraph.

(c) Admission of additional special agricultural workers

(1) In general

For each fiscal year (beginning with fiscal year 1990 and ending with fiscal year 1993), the Attorney General shall provide for the admission for lawful temporary resident status, or for the adjustment of status to lawful temporary resident status, of a number of aliens equal to the shortage number (if any, determined under subsection (a) of this section) for the fiscal year, or, if less, the numerical limitation established under subsection (b)(1) of this section for the fiscal year. No such alien shall be admitted who is not admissible to the United States as an immigrant, except as otherwise provided under subsection (e) of this section.

(2) Allocation of visas

The Attorney General shall, in consultation with the Secretary of State, provide such process as may be appropriate for aliens to petition for immigrant visas or to adjust status to become aliens lawfully admitted for temporary residence under this subsection. No alien may be issued a visa as an alien to be admitted under this subsection or may have the alien's status adjusted under this subsection unless the alien has had a petition approved under this paragraph.

(d) Rights of aliens admitted or adjusted under this section

(1) Adjustment to permanent residence

The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (c) of this section to that of an alien lawfully admitted for permanent residence at the end of the 3-year period that begins on the date the alien was granted such temporary resident status.

(2) Termination of temporary residence

During the period of temporary resident status granted an alien under subsection (c) of this section, the Attorney General may terminate such status only upon a determination under this chapter that the alien is deportable.

(3) Authorized travel and employment during temporary residence

During the period an alien is in lawful temporary resident status granted under this section, the alien has the right to travel abroad (including commutation from a residence abroad) and shall be granted authorization to engage in employment in the United States and shall be provided an "employment authorized" endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence.

(4) In general

Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under subsection (c) of this section, such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 1101(a)(20) of this title), other than under any provision of the immigration laws.

(5) Employment in seasonal agricultural services required

(A) For 3 years to avoid deportation

In order to meet the requirement of this paragraph (for purposes of this subsection and section 1251(a)(20) of this title), an alien, who has obtained the status of an alien lawfully admitted for temporary residence under this section, must establish to the Attorney General that the alien has performed 90 man-days of seasonal agricultural services—

(i) during the one-year period beginning on the date the alien obtained such status,

(ii) during the one-year period beginning one year after the date the alien obtained such status, and

(iii) during the one-year period beginning two years after the date the alien obtained such status.

(B) For 5 years for naturalization

Notwithstanding any provision in subchapter III of this chapter, an alien admitted under this section may not be naturalized as a citizen of the United States under that subchapter unless the alien has performed 90 man-days of seasonal agricultural services in each of 5 fiscal years (not including any fiscal year before the fiscal year in which the alien was admitted under this section).

(C) Proof

In meeting the requirements of subparagraphs (A) and (B), an alien may submit such documentation as may be submitted under section 1160(b)(3) of this title.

(D) Adjustment of number of man-days required

The number of man-days specified in subparagraphs (A) and (B) are subject to adjustment under subsection (a)(8) of this section.

(6) Disqualification from certain public assistance

The provisions of section 1255a(h) of this title (other than paragraph (1)(A)(iii)) shall apply to an alien who has obtained the status of an alien lawfully admitted for temporary residence under this section, during the five-year period beginning on the date the alien obtained such status, in the same manner as they apply to an alien granted lawful temporary residence under section 1255a of this title; except that, for purposes of this paragraph, assistance furnished under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) or under title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) shall not be construed to be financial assistance described in section 1255a(h)(1)(A)(i) of this title.

(e) Determination of admissibility of additional workers

In the determination of an alien's admissibility under subsection (c)(1) of this section—

(1) Grounds of exclusion not applicable

The provisions of paragraphs (14), (20), (21), (25), and (32) of section 1182(a) of this title shall not apply.

(2) Waiver of certain grounds for exclusion

(A) In general

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

(B) Grounds that may not be waived

The following provisions of section 1182(a) of this title may not be waived by

the Attorney General under subparagraph (A):

(i) Paragraphs (9) and (10) (relating to criminals).

(ii) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(iii) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

(iv) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

(C) Special rule for determination of public charge

An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 1182(a)(15) of this title if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(3) Medical examination

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

(f) Terms of employment respecting aliens admitted under this section

(1) Equal transportation for domestic workers

If a person employs an alien, who was admitted or whose status is adjusted under subsection (c) of this section, in the performance of seasonal agricultural services and provides transportation arrangements or assistance for such workers, the employer must provide the same transportation arrangements or assistance (generally comparable in expense and scope) for other individuals employed in the performance of seasonal agricultural services.

(2) Prohibition of false information by certain employers

A farm labor contractor, agricultural employer, or agricultural association who is an exempt person (as defined in paragraph (5)) shall not knowingly provide false or misleading information to an alien who was admitted or whose status was adjusted under subsection (c) of this section concerning the terms, conditions, or existence of agricultural employment (described in subsection (a), (b), or (c) of section 301 of MASAWPA [29 U.S.C. 1831(a), (b), (c)]).

(3) Prohibition of discrimination by certain employers

In the case of an exempt person and with respect to aliens who have been admitted or whose status has been adjusted under subsection (c) of this section, the provisions of section 505 of MASAWPA [29 U.S.C. 1855] shall apply to any proceeding under or related to (and rights and protections afforded by) this section in the same manner as they apply to proceedings under or related to (and rights and protections afforded by) MASAWPA.

(4) Enforcement

If a person or entity—

(A) fails to furnish a certificate required under subsection (b)(2) of this section or furnishes false statement of a material fact in such a certificate,

(B) violates paragraph (1) or (2), or

(C) violates the provisions of section 505(a) of MASAWPA [29 U.S.C. 1855(a)] (as they apply under paragraph (3)),

the person or entity is subject to a civil money penalty under section 503 of MASAWPA [29 U.S.C. 1853] in the same manner as if the person or entity had committed a violation of MASAWPA.

(5) Special definitions

In this subsection:

(A) MASAWPA.—The term "MASAWPA" means the Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97-470) [29 U.S.C. 1801 et seq.].

(B) The term "exempt person" means a person or entity who would be subject to the provisions of MASAWPA but for paragraph (1) or (2), or both, of section 4(a) of MASAWPA [29 U.S.C. 1803(a)(1), (2)].

(g) General definitions

In this section:

(1) The term "special agricultural worker" means an individual, regardless of present status, whose status was at any time adjusted under section 1160 of this title or who at any time was admitted or had the individual's status adjusted under subsection (c) of this section.

(2) The term "seasonal agricultural services" has the meaning given such term in section 1160(h) of this title.

(3) The term "Director" refers to the Director of the Bureau of the Census.

(4) The term "man-day" means, with respect to seasonal agricultural services, the performance during a calendar day of at least 4 hours of seasonal agricultural services.

(June 27, 1952, ch. 477, title II, ch. 1, § 210A, as added Nov. 6, 1986, Pub. L. 99-603, title III, § 303(a), 100 Stat. 3422.)

REFERENCES IN TEXT

The Legal Services Corporation Act, referred to in subsec. (d)(6), is title X of Pub. L. 88-452, as added Pub. L. 93-355, § 2, July 25, 1974, 88 Stat. 378, as amended, which is classified generally to subchapter X (§ 2996 et seq.) of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2996 of Title 42 and Tables.

The Housing Act of 1949, referred to in subsec. (d)(6), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Migrant and Seasonal Agricultural Worker Protection Act, referred to in subsec. (f)(5)(A), is Pub. L. 97-470, Jan. 14, 1983, 96 Stat. 2584, which is classified generally to chapter 20 (§ 1801 et seq.) of Title 29, Labor. For complete classification of this Act to the

Code, see Short Title note set out under section 1801 of Title 29 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1251 of this title.

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

§ 1182. Excludable aliens

(a) General classes

Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

[*See main edition for text of (1) to (3)*]

(4) Aliens afflicted with psychopathic personality, or sexual deviation, or a mental defect;

[*See main edition for text of (5) to (18)*]

(19) 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 entry into the United States or other benefit provided under this chapter;

[*See main edition for text of (20) to (22)*]

(23) Any alien who has been convicted of a violation of, or a conspiracy to violate, any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21); or any alien who the consular officer or immigration officer know or have reason to believe is or has been an illicit trafficker in any such controlled substance;

(24) Repealed. Pub. L. 99-653, § 7(a), Nov. 14, 1986, 100 Stat. 3657.

[*See main edition for text of (25) to (33); (b) to (d)*]

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

No person admitted under section 1101(a)(15)(J) of this title or acquiring such status after admission (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or acquisition of status under section 1101(a)(15)(J) of this title was a national or resident of a country which the Director of the United States Information Agency, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a 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 his last residence for an aggregate of at least two years following departure from the United States: *Provided,* That upon the favorable recommendation of the Director of the United States Information Agency, pursuant to the request of an interested United States Government agency, 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: *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 of the United States Information Agency, 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 of the United States Information Agency a statement in writing that it has no objection to such waiver in the case of such alien.

[*See main edition for text of (f) to (k)*]

(l) Guam; waiver of requirements for nonimmigrant visitors; conditions of waiver; acceptance of funds from Guam

(1) The requirement of paragraph (26)(B) of subsection (a) of this section may be waived by the Attorney General, the Secretary of State, and the Secretary of the Interior, acting jointly, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay on Guam for a period not to exceed fifteen days, if the Attorney General, the Secretary of State, and the Secretary of the Interior, after consultation with the Governor of Guam, jointly determine that—

(A) an adequate arrival and departure control system has been developed on Guam, 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) 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 of an immigration officer's determination as to the admissibility of the alien at the port of entry into Guam, or

(B) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

(3) If adequate appropriated funds to carry out this subsection are not otherwise available, the Attorney General is authorized to accept from the Government of Guam such funds as may be tendered to cover all or any part of the cost of administration and enforcement of this subsection.

(As amended Oct. 5, 1984, Pub. L. 98-454, title VI, § 602(a), 98 Stat. 1737; Aug. 27, 1986, Pub. L. 99-396, § 14(a), 100 Stat. 842; Oct. 27, 1986, Pub. L. 99-570, title I, § 1751(a), 100 Stat. 3207-47; Nov. 10, 1986, Pub. L. 99-639, § 6(a), 100 Stat. 3543; Nov. 14, 1986, Pub. L. 99-653, § 7(a), 100 Stat. 3657.)

AMENDMENT OF SUBSECTION (a)(9)

Pub. L. 98-473, title II, §§ 220(a), 235(a)(1), Oct. 12, 1984, 98 Stat. 2028, 2031, as amended, provided that, effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 (Nov. 1, 1987), the second sentence of subsection (a)(9) of this section is amended to read: "An alien who would be excludable because of the conviction of an offense for which the sentence actually imposed did not exeeed a term of imprisonment in excess of six months, or who would be excludable as one who admits the eommission of an offense for which a sentence not to exceed one year's imprisonment might have been imposed on 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." See Effective Date note set out under section 3551 of Title 18, Crimes and Criminal Procedure.

REFERENCES IN TEXT

Section 1228(d) of this title, referred to in subsec. (d)(4), was redesignated section 1228(c) of this title by Pub. L. 99-653, § 7(b), Nov. 14, 1986, 100 Stat. 3657.

CODIFICATION

Subsecs. (a)(4) and (e) are set out in this supplement to correct typographical error appearing in the main edition.

AMENDMENTS

1986—Subsec. (a)(19). Pub. L. 99-639 amended par. (19) generally. Prior to amendment, par. (19) read as follows: "Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact;".

Subsec. (a)(23). Pub. L. 99-570 substituted "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21)" for "any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, or any salt derivative, or preparation of opium or coca leaves, or insonipecaine or any addiction-forming or addiction-sustaining opiate" and "any such controlled substance" for "any of the aforementioned drugs".

Subsec. (a)(24). Pub. L. 99-653 struck out par. (24) which related to aliens seeking admission from foreign contiguous territory or adjacent islands who arrived there on vessel or aircraft of nonsignatory line or noncomplying transportation line and have not resided there at least two years subsequent to such arrival, except for aliens described in section 1101(a)(27)(A) of this title and aliens born in Western Hemisphere, and further provided that no paragraph following par. (24) shall be redesignated as result of this amendment.

Subsec. (*l*). Pub. L. 99-396 amended subsec. (*l*) generally, designating existing provisions as par. (1) of subsec. (*l*) and redesignating former pars. (1) and (2) as subpars. (A) and (B), respectively, inserting in par. (1) as so designated reference to consultation with the Governor of Guam, inserting in subpar. (B) as so redesignated reference to the welfare, safety, and security of the territories and commonwealths of the United States, and adding pars. (2) and (3).

1984—Subsec. (*l*). Pub. L. 98-454 added subsec. (*l*).

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 6(b) of Pub. L. 99-639 provided that: "The amendment made by subsection (a) [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."

Section 1751(c) of Pub. L. 99-570 provided that: "The amendments made by the [sic] subsections (a) and (b) of this section [amending this section and section 1251 of this title] shall apply to convictions occurring before, on, or after the date of the enactment of this section [Oct. 27, 1986], and the amendments made by subsection (a) [amending this section] shall apply to aliens entering the United States after the date of the enactment of this section."

REGULATIONS GOVERNING ADMISSION, DETENTION, AND TRAVEL OF NONIMMIGRANT ALIENS IN GUAM PURSUANT TO VISA WAIVERS

Section 14(b) of Pub. L. 99-396 provided that: "After consultation with the Secretary of State, the Secretary of the Interior, and the Governor of Guam and within ninety days after the date of the enactment of this Act [Aug. 27, 1986], the Attorney General shall issue regulations governing the admission, detention, and travel of nonimmigrant aliens pursuant to the visa waiver authorized by the amendment made by subsection (a) [amending this section]."

ANNUAL REPORT TO CONGRESS ON IMPLEMENTATION OF PROVISIONS AUTHORIZING WAIVER OF CERTAIN REQUIREMENTS FOR NONIMMIGRANT VISITORS TO GUAM

Section 14(c) of Pub. L. 99-396 provided that: "Each year the Attorney General shall submit a report on the implementation of section 212(*l*) of the Immigration and Nationality Act [8 U.S.C. 1182(*l*)] to the Committees on the Judiciary and Interior and Insular Affairs of the House of Representatives and the Committees on the Judiciary and Energy and Natural Resources of the Senate."

SHARING OF INFORMATION CONCERNING DRUG TRAFFICKERS

Pub. L. 99-93, title I, § 132, Aug. 16, 1985, 99 Stat. 420, provided that:

"(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 (22 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."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1102, 1153, 1157, 1159, 1160, 1161, 1181, 1183, 1184, 1186, 1186a, 1187, 1201, 1222, 1224, 1225, 1226, 1251, 1254, 1255, 1255a, 1258, 1259, 1282, 1284, 1322, 1327 of this title; title 7 section 2015; title 26 section 3304; title 28 section 1821; title 42 sections 602, 615, 1382c, 1382j, 1436a.

§ 1184. Admission of nonimmigrants

(a) Regulations

The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States. No alien admitted to Guam without a visa pursuant to section 1182(*l*) of this title may be authorized to enter or stay in the United States other than in Guam or to remain in Guam for a period exceeding fifteen days from date of admission to Guam. No alien admitted to the United States without a visa pursuant to section 1187 of this title may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.

[*See main edition for text of* (*b*)]

(c) Petition of importing employer; involvement of Departments of Labor and Agriculture

The question of importing any alien as a nonimmigrant under section 1101(a)(15)(H) or (L) of this title in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition, shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. For purposes of this subsection with respect to nonimmigrants described in section 1101(a)(15)(H)(ii)(a) of this title, the term "appropriate agencies of Government" means the Department of Labor and includes the Department of Agriculture. The provisions of section 1186 [2] of this title shall apply to the question of importing any alien as a nonimmigrant under section 1101(a)(15)(H)(ii)(a) of this title.

(d) Issuance of visa to fiancee or fiance of citizen

A visa shall not be issued under the provisions of section 1101(a)(15)(K) of this title until the consular officer has received a petition filed in the United States by the fiancee and fiance of the applying alien and approved by the Attorney General. The petition shall be in such form and contain such information as the Attorney General shall, by regulation, prescribe. It shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival, except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person. In the event the marriage with the petitioner does not occur within three months after the entry of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so shall be deported in accordance with sections 1252 and 1253 of this title.

(As amended Oct. 5, 1984, Pub. L. 98-454, title VI, § 602(b), 98 Stat. 1737; Nov. 6, 1986, Pub. L. 99-603, title III, §§ 301(b), 313(b), 100 Stat. 3411, 3438; Nov. 10, 1986, Pub. L. 99-639, § 3(a), (c), 100 Stat. 3542.)

REFERENCES IN TEXT

Section 1186 of this title, referred to in subsec. (c), was in the original "section 216", meaning section 216 of act June 27, 1952, as added by section 301(c) of Pub. L. 99-603, which is classified to section 1186 of this title, and was so translated as the probable intent of Congress. Another section 216 of act June 27, 1952, as added by section 2(a) of Pub. L. 99-639, is classified to section 1186a of this title.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-603, § 313(b), added provision directing that no alien admitted without a visa pursuant to section 1187 of this title may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.

Subsec. (c). Pub. L. 99-603, § 301(b), added provisions relating to nonimmigrants described in section 1101(a)(15)(H)(ii)(a) of this title.

Subsec. (d). Pub. L. 99-639, § 3(a), substituted "have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry," for "have a bona fide intention to marry", and added ", except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person".

Pub. L. 99-639, § 3(c), struck out last sentence which read: "In the event the marriage between the said alien and the petitioner shall occur within three months after the entry and they are found otherwise

[2] See References in Text note below.

admissible, the Attorney General shall record the lawful admission for permanent residence of the alien and minor children as of the date of the payment of the required visa fees."

1984—Subsec. (a). Pub. L. 98-454 added "No alien admitted to Guam without a visa pursuant to section 1182(*l*) of this title may be authorized to enter or stay in the United States other than in Guam or to remain in Guam for a period exceeding fifteen days from date of admission to Guam."

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 3(d)(1), (3) of Pub. L. 99-639 provided that:

"(1) The amendments made by subsection (a) [amending subsec. (d) of this section] shall apply to petitions approved on or after the date of the enactment of this Act [Nov. 10, 1986].

"(3) The amendment made by subsection (c) [amending subsec. (d) of this section] shall apply to aliens issued visas under section 101(a)(15)(K) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(K)] on or after the date of the enactment of this Act."

Amendment by section 301(b) of Pub. L. 99-603 applicable to petitions and applications filed under sections 1184(c) and 1186 of this title on or after the first day of the seventh month beginning after Nov. 6, 1986, see section 301(d) of Pub. L. 99-603, set out as an Effective Date note under section 1186 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1186, 1186a, 1201 of this title, title 26 section 3306; title 29 section 1802.

§ 1186. Admission of temporary H-2A workers

(a) Conditions for approval of H-2A petitions

(1) A petition to import an alien as an H-2A worker (as defined in subsection (i)(2) of this section) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

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

(2) The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

(b) Conditions for denial of labor certification

The Secretary of Labor may not issue a certification under subsection (a) of this section with respect to an employer if the conditions described in that subsection are not met or if any of the following conditions are met:

(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

(2)(A) The employer during the previous two-year period employed H-2A workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.

(B) No employer may be denied certification under subparagraph (A) for more than three years for any violation described in such subparagraph.

(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(4) The Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer's job offer. The obligation to engage in positive recruitment under this paragraph shall terminate on the date the H-2A workers depart for the employer's place of employment.

(c) Special rules for consideration of applications

The following rules shall apply in the case of the filing and consideration of an application for a labor certification under this section:

(1) Deadline for filing applications

The Secretary of Labor may not require that the application be filed more than 60 days before the first date the employer requires the labor or services of the H-2A worker.

(2) Notice within seven days of deficiencies

(A) The employer shall be notified in writing within seven days of the date of filing if the application does not meet the standards (other than that described in subsection (a)(1)(A) of this section) for approval.

(B) If the application does not meet such standards, the notice shall include the reasons therefor and the Secretary shall provide an opportunity for the prompt resubmission of a modified application.

(3) Issuance of certification

(A) The Secretary of Labor shall make, not later than 20 days before the date such labor or services are first required to be performed, the certification described in subsection (a)(1) of this section if—

(i) the employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

(ii) the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such

labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

In considering the question of whether a specific qualification is appropriate in a job offer, the Secretary shall apply the normal and accepted qualifications required by non-H-2A-employers in the same or comparable occupations and crops.

(B)(i) For a period of 3 years subsequent to the effective date of this section, labor certifications shall remain effective only if, from the time the foreign worker departs for the employer's place of employment, the employer will provide employment to any qualified United States worker who applies to the employer until 50 percent of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer will offer to provide benefits, wages and working conditions required pursuant to this section and regulations.

(ii) The requirement of clause (i) shall not apply to any employer who—

(I) did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, as defined in section 203(u) of title 29,

(II) is not a member of an association which has petitioned for certification under this section for its members, and

(III) has not otherwise associated with other employers who are petitioning for temporary foreign workers under this section.

(iii) Six months before the end of the 3-year period described in clause (i), the Secretary of Labor shall consider the findings of the report mandated by section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986 as well as other relevant materials, including evidence of benefits to United States workers and costs to employers, addressing the advisability of continuing a policy which requires an employer, as a condition for certification under this section, to continue to accept qualified, eligible United States workers for employment after the date the H-2A workers depart for work with the employer. The Secretary's review of such findings and materials shall lead to the issuance of findings in furtherance of the Congressional policy that aliens not be admitted under this section unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or service needed and that the employment of the aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. In the absence of the enactment of Federal legislation prior to three months before the end of the 3-year period described in clause (i) which addresses the subject matter of this subparagraph, the Secretary shall immediately publish the findings required by this clause, and shall promulgate, on an interim or final basis, regulations based on his findings which shall be effective no later than three years from the effective date of this section.

(iv) In complying with clause (i) of this subparagraph, an association shall be allowed to refer or transfer workers among its members: *Provided*, That for purposes of this section an association acting as an agent for its members shall not be considered a joint employer merely because of such referral or transfer.

(v) United States workers referred or transferred pursuant to clause (iv) of this subparagraph shall not be treated disparately.

(vi) An employer shall not be liable for payments under section 655.202(b)(6) of title 20, Code of Federal Regulations (or any successor regulation) with respect to an H-2A worker who is displaced due to compliance with the requirement of this subparagraph, if the Secretary of Labor certifies that the H-2A worker was displaced because of the employer's compliance with clause (i) of this subparagraph.

(vii)(I) No person or entity shall willfully and knowingly withhold domestic workers prior to the arrival of H-2A workers in order to force the hiring of domestic workers under clause (i).

(II) Upon the receipt of a complaint by an employer that a violation of subclause (I) has occurred the Secretary shall immediately investigate. He shall within 36 hours of the receipt of the complaint issue findings concerning the alleged violation. Where the Secretary finds that a violation has occurred, he shall immediately suspend the application of clause (i) of this subparagraph with respect to that certification for that date of need.

(4) Housing

Employers shall furnish housing in accordance with regulations. The employer shall be permitted at the employer's option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing which meets the local standards for rental and/or public accomodations [3] or other substantially similar class of habitation: *Provided*, That in the absence of applicable local standards, State standards for rental and/or public accomodations [3] or other substantially similar class of habitation shall be met: *Provided further*, That in the absence of applicable local or State standards, Federal temporary labor camp standards shall apply: *Provided further*, That the Secretary of Labor shall issue regulations which address the specific requirements of housing for employees principally engaged in the range production of livestock: *Provided further*, That when it is the prevailing practice in the area and occupation of intended employment to provide family housing, family housing shall be provided to workers with families who request it: *And provided further*, That nothing in this paragraph shall require an employer to provide or secure housing for workers who are not entitled to it under the temporary labor

[3] So in original. Probably should be "accommodations".

certification regulations in effect on June 1, 1986.

(d) Roles of agricultural associations

(1) Permitting filing by agricultural associations

A petition to import an alien as a temporary agricultural worker, and an application for a labor certification with respect to such a worker, may be filed by an association of agricultural producers which use agricultural services.

(2) Treatment of associations acting as employers

If an association is a joint or sole employer of temporary agricultural workers, the certifications granted under this section to the association may be used for the certified job opportunities of any of its producer members and such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the certifications were granted.

(3) Treatment of violations

(A) Member's violation does not necessarily disqualify association or other members

If an individual producer member of a joint employer association is determined to have committed an act that under subsection (b)(2) of this section results in the denial of certification with respect to the member, the denial shall apply only to that member of the association unless the Secretary determines that the association or other member participated in, had knowledge of, or reason to know of, the violation.

(B) Association's violation does not necessarily disqualify members

(i) If an association representing agricultural producers as a joint employer is determined to have committed an act that under subsection (b)(2) of this section results in the denial of certification with respect to the association, the denial shall apply only to the association and does not apply to any individual producer member of the association unless the Secretary determines that the member participated in, had knowledge of, or reason to know of, the violation.

(ii) If an association of agricultural producers certified as a sole employer is determined to have committed an act that under subsection (b)(2) of this section results in the denial of certification with respect to the association, no individual producer member of such association may be the beneficiary of the services of temporary alien agricultural workers admitted under this section in the commodity and occupation in which such aliens were employed by the association which was denied certification during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.

(e) Expedited administrative appeals of certain determinations

(1) Regulations shall provide for an expedited procedure for the review of a denial of certification under subsection (a)(1) of this section or a revocation of such a certification or, at the applicant's request, for a de novo administrative hearing respecting the denial or revocation.

(2) The Secretary of Labor shall expeditiously, but in no case later than 72 hours after the time a new determination is requested, make a new determination on the request for certification in the case of an H-2A worker if able, willing, and qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified workers. If the employer asserts that any eligible individual who has been referred is not able, willing, or qualified, the burden of proof is on the employer to establish that the individual referred is not able, willing, or qualified because of employment-related reasons.

(f) Violators disqualified for 5 years

An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

(g) Authorization of appropriations

(1) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, $10,000,000 for the purposes—

(A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 1101(a)(15)(H)(ii)(a) of this title, and

(B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States.

(2) The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

(3) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under this section and under section 1182(a)(14) of this title.

(4) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under this section.

(h) Miscellaneous provisions

(1) The Attorney General shall provide for such endorsement of entry and exit documents of nonimmigrants described in section 1101(a)(15)(H)(ii) of this title as may be necessary to carry out this section and to provide notice for purposes of section 1324a of this title.

(2) The provisions of subsections (a) and (c) of section 1184 of this title and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

(i) Definitions

For purposes of this section:

(1) The term "eligible individual" means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 1324a(h) of this title) with respect to that employment.

(2) The term "H-2A worker" means a nonimmigrant described in section 1101(a)(15)(H)(ii)(a) of this title.

(June 27, 1952, ch. 477, title II, ch. 2, § 216, as added Nov. 6, 1986, Pub. L. 99-603, title III, § 301(c), 100 Stat. 3411.)

REFERENCES IN TEXT

Section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986, referred to in subsec. (c)(3)(B)(iii), is section 403(a)(4)(D) of Pub. L. 99-603, which is set out in a note under this section.

CODIFICATION

Another section 216 of act June 27, 1952, is classified to section 1186a of this title.

EFFECTIVE DATE; REGULATIONS

Section 301(d), (e) of Pub. L. 99-603 provided that:

"(d) EFFECTIVE DATE.—The amendments made by this section [enacting this section and amending sections 1101 and 1184] apply to petitions and applications filed under sections 214(c) and 216 of the Immigration and Nationality Act [8 U.S.C. 1184(c), 1186] on or after the first day of the seventh month beginning after the date of the enactment of this Act [Nov. 6, 1986] (hereinafter in this section referred to as the 'effective date').

"(e) REGULATIONS.—The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall approve all regulations to be issued implementing sections 101(a)(15)(H)(ii)(a) and 216 of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(H)(ii)(a), 1186]. Notwithstanding any other provision of law, final regulations to implement such sections shall first be issued, on an interim or other basis, not later than the effective date."

SENSE OF CONGRESS RESPECTING CONSULTATION WITH MEXICO

Section 301(f) of Pub. L. 99-603 provided that: "It is the sense of Congress that the President should establish an advisory commission which shall consult with the Governments of Mexico and of other appropriate countries and advise the Attorney General regarding the operation of the alien temporary worker program established under seetion 216 of the Immigration and Nationality Act [8 U.S.C. 1186]."

REPORTS ON H-2A PROGRAM

Section 403 of Pub. L. 99-603 provided that:

"(a) PRESIDENTIAL REPORTS.—The President shall transmit to the Committees on the Judiciary of the Senate and of the House of Representatives reports on the implementation of the temporary agricultural worker (H-2A) program, which shall include—

"(1) the number of foreign workers permitted to be employed under the program in each year;

"(2) the compliance of employers and foreign workers with the terms and conditions of the program;

"(3) the impact of the program on the labor needs of the United States agricultural employers and on the wages and working conditions of United States agricultural workers; and

"(4) recommendations for modifications of the program, including—

"(A) improving the timeliness of decisions regarding admission of temporary foreign workers under the program,

"(B) removing any economic disincentives to hiring United States citizens or permanent resident aliens for jobs for which temporary foreign workers have been requested,

"(C) improving cooperation among government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary foreign workers, and

"(D) the relative benefits to domestic workers and burdens upon employers of a policy which requires employers, as a condition for certification under the program, to continue to accept qualified United States workers for employment after the date the H-2A workers depart for work with the employer.

The recommendations under subparagraph (D) shall be made in furtherance of the Congressional policy that aliens not be admitted under the H-2A program unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or services needed and that the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

"(b) DEADLINES.—A report on the H-2A temporary worker program under subsection (a) shall be submitted not later than two years after the date of the enactment of this Act [Nov. 6, 1986], and every two years thereafter."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1184 of this title.

§ 1186a. Conditional permanent resident status for certain alien spouses and sons and daughters

(a) In general

(1) Conditional basis for status

Notwithstanding any other provision of this chapter, an alien spouse (as defined in subsection (g)(1) of this section) and an alien son or daughter (as defined in subsection (g)(2) of this section) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

(2) Notice of requirements

(A) At time of obtaining permanent residence

At the time an alien spouse or alien son or daughter obtains permanent resident status on a conditional basis under paragraph (1), the Attorney General shall provide for notice to such a spouse, son, or daughter respecting the provisions of this section and the requirements of subsection (c)(1) of this section to have the conditional basis of such status removed.

(B) At time of required petition

In addition, the Attorney General shall attempt to provide notice to such a spouse, son, or daughter, at or about the beginning of the 90-day period described in subsection

(d)(2)(A) of this section, of the requirements of subsections (c)(1) of this section.

(C) Effect of failure to provide notice

The failure of the Attorney General to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such a spouse, son, or daughter.

(h) Termination of status if finding that qualifying marriage improper

(1) In general

In the case of an alien with permanent resident status on a conditional basis under subsection (a) of this section, if the Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

(A) the qualifying marriage—

(i) was entered into for the purpose of procuring an alien's entry as an immigrant, or

(ii) has been judicially annulled or terminated, other than through the death of a spouse; or

(B) a fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) or 1184(d) of this title with respect to the alien;

the Attorney General shall so notify the parties involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (or aliens) involved as of the date of the determination.

(2) Hearing in deportation proceeding

Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to deport the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

(c) Requirements of timely petition and interview for removal of condition

(1) In general

In order for the conditional basis established under subsection (a) of this section for an alien spouse or an alien son or daughter to be removed—

(A) the alien spouse and the petitioning spouse (if not deceased) jointly must submit to the Attorney General, during the period described in subsection (d)(2) of this section, a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1) of this section, and

(B) in accordance with subsection (d)(3) of this section, the alien spouse and the petitioning spouse (if not deceased) must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1) of this section.

(2) Termination of permanent resident status for failure to file petition or have personal interview

(A) In general

In the case of an alien with permanent resident status on a conditional basis under subsection (a) of this section, if—

(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or

(ii) unless there is good cause shown, the alien spouse and petitioning spouse fail to appear at the interview described in paragraph (1)(B),

the Attorney General shall terminate the permanent resident status of the alien as of the second anniversary of the alien's lawful admission for permanent residence.

(B) Hearing in deportation proceeding

In any deportation proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B).

(3) Determination after petition and interview

(A) In general

If—

(i) a petition is filed in accordance with the provisions of paragraph (1)(A), and

(ii) the alien spouse and petitioning spouse appear at the interview described in paragraph (1)(B),

the Attorney General shall make a determination, within 90-days of the date of the interview, as to whether the facts and information described in subsection (d)(1) of this section and alleged in the petition are true with respect to the qualifying marriage.

(B) Removal of conditional basis if favorable determination

If the Attorney General determines that such facts and information are true, the Attorney General shall so notify the parties involved and shall remove the conditional basis of the parties effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(C) Termination if adverse determination

If the Attorney General determines that such facts and information are not true, the Attorney General shall so notify the parties involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien spouse or an alien son or daughter as of the date of the determination.

(D) Hearing in deportation proceeding

Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to deport the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by

a preponderance of the evidence, that the facts and information described in subsection (d)(1) of this section and alleged in the petition are not true with respect to the qualifying marriage.

(4) Hardship waiver

The Attorney General, in the Attorney General's discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that—

(A) extreme hardship would result if such alien is deported, or

(B) the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) by the alien spouse for good cause and the alien was not at fault in failing to meet the requirements of paragraph (1).

In determining extreme hardship, the Attorney General shall consider circumstances occurring only during the period that the alien was admitted for permanent residence on a conditional basis.

(d) Details of petition and interview

(1) Contents of petition

Each petition under subsection (c)(1)(A) of this section shall contain the following facts and information:

(A) Statement of proper marriage and petitioning process

The facts are that—

(i) the qualifying marriage—

(I) was entered into in accordance with the laws of the place where the marriage took place,

(II) has not been judicially annulled or terminated, other than through the death of a spouse, and

(III) was not entered into for the purpose of procuring an alien's entry as an immigrant; and

(ii) no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) or 1184(d) of this title with respect to the alien spouse or alien son or daughter.

(B) Statement of additional information

The information is a statement of—

(i) the actual residence of each party to the qualifying marriage since the date the alien spouse obtained permanent resident status on a conditional basis under subsection (a) of this section, and

(ii) the place of employment (if any) of each such party since such date, and the name of the employer of such party.

(2) Period for filing petition

(A) 90-day period before second anniversary

Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) of this section must be filed during the 90-day period before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(B) Date petitions for good cause

Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) Filing of petitions during deportation

In the case of an alien who is the subject of deportation hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Attorney General may stay such deportation proceedings against an alien pending the filing of the petition under subparagraph (B).

(3) Personal interview

The interview under subsection (c)(1)(B) of this section shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) of this section and at a local office of the Service, designated by the Attorney General, which is convenient to the parties involved. The Attorney General, in the Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

(e) Treatment of period for purposes of naturalization

For purposes of subchapter III of this chapter, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

(f) Treatment of certain waivers

In the case of an alien who has permanent residence status on a conditional basis under this section, if, in order to obtain such status, the alien obtained a waiver under subsection (h) or (i) of section 1182 of this title of certain grounds of exclusion, such waiver terminates upon the termination of such permanent residence status under this section.

(g) Definitions

In this section:

(1) The term "alien spouse" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)—

(A) as an immediate relative (described in section 1151(b) of this title) as the spouse of a citizen of the United States,

(B) under section 1184(d) of this title as the fiancee or fiance of a citizen of the United States, or

(C) under section 1153(a)(2) of this title as the spouse of an alien lawfully admitted for permanent residence,

by virtue of a marriage which was entered into less than 24 months before the date the alien obtains such status by virtue of such marriage, but does not include such an alien who only obtains such status as a result of section 1153(a)(8) of this title.

(2) The term "alien son or daughter" means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the son or daughter of an individual through a qualifying marriage.

(3) The term "qualifying marriage" means the marriage described to in paragraph (1).

(4) The term "petitioning spouse" means the spouse of a qualifying marriage, other than the alien.

(June 27, 1952, ch. 477, title II, ch. 2, § 216, as added Nov. 10, 1986, Pub. L. 99-639, § 2(a), 100 Stat. 3537.)

CODIFICATION

Another section 216 of act June 27, 1952, is classified to section 1186 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1251, 1255 of this title.

§ 1187. Visa waiver pilot program for certain visitors

(a) Establishment of pilot program

The Attorney General and the Secretary of State are authorized to establish a pilot program (hereafter in this section referred to as the "pilot program") under which the requirement of paragraph (26)(B) of section 1182(a) of this title may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this section, in the case of an alien who meets the following requirements:

(1) Seeking entry as tourist for 90 days or less

The alien is applying for admission during the pilot program period (as defined in subsection (e) of this section) as a nonimmigrant visitor (described in section 1101(a)(15)(B) of this title) for a period not exceeding 90 days.

(2) National of pilot program country

The alien is a national of a country which—

(A) extends (or agrees to extend) reciprocal privileges to citizens and nationals of the United States, and

(B) is designated as a pilot program country under subsection (c) of this section.

(3) Executes entry control and waiver forms

The alien before the time of such admission—

(A) completes such immigration form as the Attorney General shall establish under subsection (b)(3) of this section, and

(B) executes a waiver of review and appeal described in subsection (b)(4) of this section.

(4) Round-trip ticket

The alien has a round-trip, nontransferable transportation ticket which—

(A) is valid for a period of not less than one year,

(B) is nonrefundable except in the country in which issued or in the country of the alien's nationality or residence,

(C) is issued by a carrier which has entered into an agreement described in subsection (d) of this section, and

(D) guarantees transport of the alien out of the United States at the end of the alien's visit.

(5) Not a safety threat

The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

(6) No previous violation

If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

(b) Conditions before pilot program can be put into operation

(1) Prior notice to Congress

The pilot program may not be put into operation until the end of the 30-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and monitoring system described in paragraph (2) is operational and effective and that the form described in paragraph (3) has been produced.

(2) Automated data arrival and departure system

The Attorney General in cooperation with the Secretary of State shall develop and establish an automated data arrival and departure control system to screen and monitor the arrival into and departure from the United States of nonimmigrant visitors receiving a visa waiver under the pilot program.

(3) Visa waiver information form

The Attorney General shall develop a form for use under the pilot program. Such form shall be consistent and compatible with the control system developed under paragraph (2). Such form shall provide for, among other items—

(A) a summary description of the conditions for excluding nonimmigrant visitors from the United States under section 1182(a) of this title and under the pilot program,

(B) a description of the conditions of entry with a waiver under the pilot program, including the limitation of such entry to 90 days and the consequences of failure to abide by such conditions, and

(C) questions for the alien to answer concerning any previous denial of the alien's application for a visa.

(4) Waiver of rights

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

(A) to review or appeal under this chapter of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or

(B) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

(c) Designation of pilot program countries

(1) Up to 8 countries

The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot program countries for purposes of the pilot program.

(2) Initial qualifications

For the initial period described in paragraph (4), a country may not be designated as a pilot program country unless the following requirements are met:

(A) Low nonimmigrant visa refusal rate for previous 2-year period

The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

(B) Low nonimmigrant visa refusal rate for each of 2 previous years

The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

(3) Continuing and subsequent qualifications

For each fiscal year (within the pilot program period) after the initial period—

(A) Continuing qualification

In the case of a country which was a pilot program country in the previous fiscal year, a country may not be designated as a pilot program country unless the sum of—

(i) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

(B) New countries

In the case of another country, the country may not be designated as a pilot program country unless the following requirements are met:

(i) Low nonimmigrant visa refusal rate in previous 2-year period

The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

(ii) Low nonimmigrant visa refusal rate in each of the 2 previous years

The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

(4) Initial period

For purposes of paragraphs (2) and (3), the term "initial period" means the period beginning at the end of the 30-day period described in subsection (b)(1) of this section and ending on the last day of the first fiscal year which begins after such 30-day period.

(d) Carrier agreements

(1) In general

The agreement referred to in subsection (a)(4)(C) of this section is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the pilot program—

(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the 90-day period described in subsection (a)(1)(A) of this section, and

(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under the pilot program.

(2) Termination of agreements

The Attorney General may terminate an agreement under paragraph (1) with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

(e) "Pilot program period" defined

For purposes of this section, the term "pilot program period" means the period beginning at the end of the 30-day period referred to in subsection (b)(1) of this section and ending on the last day of the third fiscal year which begins after such 30-day period.

(June 27, 1952, ch. 477, title II, ch. 2, § 217, as added Nov. 6, 1986, Pub. L. 99-603, title III, § 313(a), 100 Stat. 3435.)

REPORT ON VISA WAIVER PILOT PROGRAM

Section 405 of Pub. L. 99-603 provided that:

"(a) MONITORING AND REPORT ON THE PILOT PROGRAM.—The Attorney General and the Secretary of State shall jointly monitor the pilot program established under section 217 of the Immigration and Nationality Act [8 U.S.C. 1187] and shall report to the Congress not later than two years after the beginning of the program.

"(b) DETAILS IN REPORT.—The report shall include—

"(1) an evaluation of the program, including its impact—

"(A) on the control of alien visitors to the United States,

"(B) on consular operations in the countries designated under the program, as well as on consular operations in other countries in which additional consular personnel have been relocated as a result of the implementation of the program, and

"(C) on the United States tourism industry; and

"(2) recommendations—

"(A) on extending the pilot program period, and

"(B) on increasing the number of countries that may be designated under the program."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1184, 1255, 1258 of this title.

PART III—ISSUANCE OF ENTRY DOCUMENTS

§ 1201. Issuance of visas

(a) Immigrants; nonimmigrants

Under the conditions hereinafter prescribed and subject to the limitations prescribed in this chapter or regulations issued thereunder, a consular officer may issue (1) to an immigrant who has made proper application therefor, an immigrant visa which shall consist of the application provided for in section 1202 of this title, visaed by such consular officer, and shall specify the foreign state, if any, to which the immigrant is charged, the immigrant's particular status under such foreign state, the preference, nonpreference, immediate relative, or special immigrant classification to which the alien is charged, the date on which the validity of the visa shall expire, and such additional information as may be required; and (2) to a nonimmigrant who has made proper application therefor, a nonimmigrant visa, which shall specify the classification under section 1101(a)(15) of this title of the nonimmigrant, the period during which the nonimmigrant visa shall be valid, and such additional information as may be required.

(b) Registration; photographs; waiver of requirement

Each alien who applies for a visa shall be registered in connection with his application, and shall furnish copies of his photograph signed by him for such use as may be by regulations required. The requirements of this subsection may be waived in the discretion of the Secretary of State in the case of any alien who is within that class of nonimmigrants enumerated in sections 1101(a)(15)(A), and 1101(a)(15)(G) of this title, or in the case of any alien who is granted a diplomatic visa on a diplomatic passport or on the equivalent thereof.

(c) Period of validity; requirement of visa

An immigrant visa shall be valid for such period, not exceeding four months, as shall be by regulations prescribed, except that any visa issued to a child lawfully adopted by a United States citizen and spouse while such citizen is serving abroad in the United States Armed Forces, or is employed abroad by the United States Government, or is temporarily abroad on business, shall be valid until such time, for a period not to exceed three years, as the adoptive citizen parent returns to the United States in due course of his service, employment, or business. A nonimmigrant visa shall be valid for such periods as shall be by regulations prescribed. In prescribing the period of validity of a nonimmigrant visa in the case of nationals of any foreign country who are eligible for such visas, the Secretary of State shall, insofar as practicable, accord to such nationals the same treatment upon a reciprocal basis as such foreign country accords to nationals of the United States who are within a similar class. An immigrant visa may be replaced under the original number during the fiscal year in which the original visa was issued for an immigrant who establishes to the satisfaction of the consular officer that he was unable to use the original immigrant visa during the period of its validity because of reasons beyond his control and for which he was not responsible: *Provided*, That the immigrant is found by the consular officer to be eligible for an immigrant visa and the immigrant pays again the statutory fees for an application and an immigrant visa.

[*See main edition for text of (d) to (i)*]

(As amended Nov. 14, 1986, Pub. L. 99-653, § 5(a)-(c), 100 Stat. 3656.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-653, § 5(a), in cl. (1) substituted "specify the foreign state" for "specify the quota", "under such foreign state" for "under such quota", "special immigrant classification" for "special immigration classification", and struck out "one copy of" after "shall consist of".

Subsec. (b). Pub. L. 99-653, § 5(b), amended subsec. (b) generally, striking out "and fingerprinted" after "shall be registered" and substituting "sections 1101(a)(15)(A) and 1101(a)(15)(G) of this title" for "section 1101(a)(15)(A) and (G) of this title".

Subsec. (c). Pub. L. 99-653, § 5(c), amended subsec. (c) generally, substituting "during the fiscal year" for "during the year", "*Provided*, That the immigrant" for "*Provided*, the consular officer is in possession of the duplicate signed copy of the original visa, the immigrant", and "statutory fees" for "statutory fee".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1204, 1230, 1301, 1302 of this title.

§ 1201a. Repealed. Pub. L. 99-653, § 5(d), Nov. 14, 1986, 100 Stat. 3656

Section, Pub. L. 85-316, § 8, Sept. 11, 1957, 71 Stat. 641, related to waiver of fingerprinting requirements for nonimmigrant aliens.

§ 1202. Application for visas

[*See main edition for text of (a)*]

(b) Other documentary evidence for immigrant visa

Every alien applying for an immigrant visa shall present a valid unexpired passport or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Secretary of State. The immigrant shall furnish to the consular officer with his application a copy of a certification by the appropriate police authorities stating what their records show concerning the immigrant; a certified copy of any

existing prison record, military record, and record of his birth; and a certified copy of all other records or documents concerning him or his case which may be required by the consular officer. The copy of each document so furnished shall be permanently attached to the application and become a part thereof. In the event that the immigrant establishes to the satisfaction of the consular officer that any document or record required by this subsection is unobtainable, the consular officer may permit the immigrant to submit in lieu of such document or record other satisfactory evidence of the fact to which such document or record would, if obtainable, pertain.

[*See main edition for text of (c) and (d)*]

(e) Signing and verification of application

Except as may be otherwise prescribed by regulations, each application required by this section shall be signed by the applicant in the presence of the consular officer, and verified by the oath of the applicant administered by the consular officer. The application for an immigrant visa, when visaed by the consular officer, shall become the immigrant visa. The application for a nonimmigrant visa or other documentation as a nonimmigrant shall be disposed of as may be by regulations prescribed. The issuance of a nonimmigrant visa shall, except as may be otherwise by regulations prescribed, be evidenced by a stamp placed by the consular officer in the alien's passport.

[*See main edition for text of (f)*]

(As amended Nov. 14, 1986, Pub. L. 99-653, § 6, 100 Stat. 3656.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-653, § 6(a), substituted "a copy of" for "two copies of", "immigrant; a certified copy of" for "immigrant; two certified copies of", "and a certified copy of" for "and two certified copies of", "The copy of each" for "One copy of each", and "attached to the" for "attached to each copy of the".

Subsec. (e). Pub. L. 99-653, § 6(b), substituted "each application" for "each copy of an application", "The application for" for "One copy of the application for", and "the immigrant visa" for "the immigrant visa, and the other copy shall be disposed of as may be by regulations prescribed".

PART IV—PROVISIONS RELATING TO ENTRY AND EXCLUSION

§ 1222. Detention of aliens for observation and examination upon arrival

For the purpose of determining whether aliens (including alien crewmen) arriving at ports of the United States belong to any of the classes excluded by this chapter, by reason of being afflicted with any of the diseases or mental or physical defects or disabilities set forth in section 1182(a) of this title, or whenever the Attorney General has received information showing that any aliens are coming from a country or have embarked at a place where any of such diseases are prevalent or epidemic, such aliens shall be detained for a sufficient time to enable the immigration officers and medical officers to subject such aliens to observation and an examination sufficient to determine whether or not they belong to the excluded classes.

(As amended Oct. 18, 1986, Pub. L. 99-500, § 101(b) [title II, § 206], 100 Stat. 1783-39, 1783-56, and Oct. 30, 1986, Pub. L. 99-591, § 101(b) [title II, § 206], 100 Stat. 3341-39, 3341-56.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

1986—Pub. L. 99-500 and 99-591 substituted "by the Attorney General" for "on board the vessel or at the airport of arrival of the aircraft bringing them, unless the Attorney General directs their detention in a United States immigration station or other place specified by him at the expense of such vessel or aircraft except as otherwise provided in this chapter, as circumstances may require or justify,".

§ 1223. Repealed. Pub. L. 99-500, § 101(b) [title II, § 206], Oct. 18, 1986, 100 Stat. 1783-39, 1783-56, and Pub. L. 99-591, § 101(b) [title II, § 206], Oct. 30, 1986, 100 Stat. 3341-,39, 3341-56

Section, act June 27, 1952, ch. 477, title II, ch. 4, § 233, 66 Stat. 197, related to examinations of aliens upon arrival in the United States.

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

§ 1224. Physical and mental examinations; appeal of findings

The physical and mental examination of arriving aliens (including alien crewmen) shall be made by medical officers of the United States Public Health Service, who shall conduct all medical examinations and shall certify, for the information of the immigration officers and the special inquiry officers, any physical and mental defect or disease observed by such medical officers in any such alien. If medical officers of the United States Public Health Service are not available, civil surgeons of not less than four years' professional experience may be employed for such service upon such terms as may be prescribed by the Attorney General. Aliens (including alien crewmen) arriving at ports of the United States shall be examined by at least one such medical officer or civil surgeon under such administrative regulations as the Attorney General may prescribe, and under medical regulations prepared by the Secretary of Health and Human Services. Medical officers of the United States Public Health Service who have had special training in the diagnosis of insanity and mental defects shall be detailed for duty or employed at such ports of entry as the Attorney General may designate, and such medical officers shall be provided with suitable facilities for the detention and examination of all arriving aliens who it is suspected may be excludable under paragraphs (1) to (4) or (5) of section 1182(a) of this title, and the services of interpreters shall be provided for such examination. Any alien certified under paragraphs (1) to (4) or (5) of section 1182(a) of this title, may appeal to a board of medical officers of the United States Public Health Service, which

shall be convened by the Secretary of Health and Human Services, and any such alien may introduce before such board one expert medical witness at his own cost and expense.

(June 27, 1952, ch. 477, title II, ch. 4, § 234, 66 Stat. 198; 1966 Reorg. Plan No. 3, §§ 1, 3, 31 F.R. 8855, 80 Stat. 1610; Oct. 17, 1979, Pub. L. 96-88, title V, § 509(b), 93 Stat. 695.)

CODIFICATION

Section is set out in this supplement to correct typographical error appearing in the main edition.

§ 1227. Immediate deportation of aliens excluded from admission or entering in violation of law

REFERENCES IN TEXT

Section 1223 of this title, referred to in subsec. (b), was repealed by Pub. L. 99-500, § 101(b) [title II, § 206], Oct. 18, 1986, 100 Stat. 1783-39, 1783-56, and Pub. L. 99-591, § 101(b) [title II, § 206], Oct. 30, 1986, 100 Stat. 3341-39, 3341-56.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1159, 1182, 1253, 1330 of this title.

§ 1228. Entry through or from foreign contiguous territory and adjacent islands

(a) Necessity of transportation contract

The Attorney General shall have power to enter into contracts with transportation lines for the entry and inspection of aliens coming to the United States from foreign contiguous territory or from adjacent islands. No such transportation line shall be allowed to land any such alien in the United States until and unless it has entered into any such contracts which may be required by the Attorney General.

(b) Landing stations

Every transportation line engaged in carrying alien passengers for hire to the United States from foreign contiguous territory or from adjacent islands shall provide and maintain at its expense suitable landing stations, approved by the Attorney General, conveniently located at the point or points of entry. No such transportation line shall be allowed to land any alien passengers in the United States until such landing stations are provided, and unless such stations are thereafter maintained to the satisfaction of the Attorney General.

(c) Landing agreements

The Attorney General shall have power to enter into contracts including bonding agreements with transportation lines to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreigu countries. Notwithstanding any other provision of this chapter, such aliens may not have their classification changed under section 1258 of this title.

(d) Definitions

As used in this section the terms "transportation line" and "transportation company" include, but are not limited to, the owner, charterer, consiguee, or authorized agent operating any vessel or aircraft bringing aliens to the United States, to foreigu contiguous territory, or to adjacent islands.

(As amended Nov. 14, 1986, Pub. L. 99-653, § 7(b), 100 Stat. 3657.)

AMENDMENTS

1986—Pub. L. 99-653 struck out subsec. (a) which authorized the Attorney General to enter into contracts with transportation lines for the entry and inspection of aliens and to prescribe regulations, and redesignated subsecs. (b), (c), (d), and (e) as (a), (b), (c), and (d), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1182, 1321, 1356 of this title.

PART V—DEPORTATION; ADJUSTMENT OF STATUS

§ 1251. Deportable aliens

(a) General classes

Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

[*See main edition for text of (1) to (8)*]

(9)(A) was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 1258 of this title, or to comply with the conditions of any such status, (B) or is an alien with permanent resident status on a conditional basis under section 1186a [1] of this title and has such status terminated under such section;

(10) Repealed. Pub. L. 99-653, § 7(c), Nov. 14, 1986, 100 Stat. 3657;

(11) is, or hereafter at any time after entry has been, a narcotic drug addict, or who at any time has been convicted of a violation of, or a conspiracy to violate, any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21);

[*See main edition for text of (12) to (17)*]

(18) has been convicted under section 1328 of this title or under section 4 of the Immigration Act of February 5, 1917;

(19) during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(A) the Nazi government of Germany,

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

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

(D) 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; or

(20) obtains the status of an alien who becomes lawfully admitted for temporary residence under section 1161 of this title and fails to meet the requirement of section

[1] See References in Text note below.

1161(d)(5)(A) of this title by the end of the applicable period.

[*See main edition for text of (b) to (f)*]

(g) Termination of permanent resident status on a conditional basis not applicable in hardship waivers

The provisions of subsection (a)(9)(B) of this section shall not apply in the cases described in section 1186a(c)(4) [1] of this title.

(As amended Oct. 27, 1986, Pub. L. 99-570, title I, § 1751(b), 100 Stat. 3207-47; Nov. 6, 1986, Pub. L. 99-603, title III, § 303(b), 100 Stat. 3431; Nov. 10, 1986, Pub. L. 99-639, § 2(b), 100 Stat. 3541; Nov. 14, 1986, Pub. L. 99-653, § 7(c), 100 Stat. 3657.)

REFERENCES IN TEXT

Section 1186a of this title and section 1186a(c)(4) of this title, referred to in subsecs. (a)(9)(B) and (g), respectively, were in the original "section 216" and "section 216(c)(4)", respectively, meaning section 216 of act June 27, 1952, as added by section 2(a) of Pub. L. 99-639, which is classified to section 1186a of this title, and were so translated as the probable intent of Congress. Another section 216 of act June 27, 1952, as added by section 301(c) of Pub. L. 99-603, is classified to section 1186 of this title.

AMENDMENTS

1986—Subsec. (a)(9). Pub. L. 99-639, § 2(b)(1), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (a)(10). Pub. L. 99-653 repealed par. (10). Prior to repeal, par. (10) read as follows: "entered the United States from foreign contiguous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory transportation company under section 1228(a) of this title and was without the required period of stay in such foreign contiguous territory or adjacent islands following such arrival (other than an alien described in section 1101(a)(27)(A) of this title and aliens born in the Western Hemisphere);".

Subsec. (a)(11). Pub. L. 99-570 substituted "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21)" for "any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate".

Subsec. (a)(20). Pub. L. 99-603 added par. (20).

Subsec. (g). Pub. L. 99-639, § 2(b)(2), added subsec. (g).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-570 applicable to convictions occurring before, on, or after Oct. 27, 1986, see section 1751(c) of Pub. L. 99-570, set out as a note under section 1182 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1161, 1252, 1253, 1254, 1364 of this title; title 22 sections 618, 2508; title 42 section 402.

[1] See References in Text note below.

§ 1252. Apprehension and deportation of aliens

[*See main edition for text of (a) to (d)*]

(e) Penalty for willful failure to depart; suspension of sentence

Any alien against whom a final order of deportation is outstanding by reason of being a member of any of the classes described in paragraphs (4) to (7), (11), (12), (14) to (17), (18), or (19) of section 1251(a) of this title, who shall willfully fail or refuse to depart from the United States within a period of six months from the date of the final order of deportation under administrative processes, or, if judicial review is had, then from the date of the final order of the court, or from September 23, 1950, whichever is the later, or shall willfully fail or refuse to make timely application in good faith for travel or other documents necessary to his departure, or who shall connive or conspire, or take any other action, designed to prevent or hamper or with the purpose of preventing or hampering his departure pursuant to such order of deportation, or who shall willfully fail or refuse to present himself for deportation at the time and place required by the Attorney General pursuant to such order of deportation, shall upon conviction be guilty of a felony, and shall be imprisoned not more than ten years: *Provided*, That this subsection shall not make it illegal for any alien to take any proper steps for the purpose of securing cancellation of or exemption from such order of deportation or for the purpose of securing his release from incarceration or custody: *Provided further*, That the court may for good cause suspend the sentence of such alien and order his release under such conditions as the court may prescribe. In determining whether good cause has been shown to justify releasing the alien, the court shall take into account such factors as (1) the age, health, and period of detention of the alien; (2) the effect of the alien's release upon the national security and public peace or safety; (3) the likelihood of the alien's resuming or following a course of conduct which made or would make him deportable; (4) the character of the efforts made by such alien himself and by representatives of the country or countries to which his deportation is directed to expedite the alien's departure from the United States; (5) the reason for the inability of the Government of the United States to secure passports, other travel documents, or deportation facilities from the country or countries to which the alien has been ordered deported; and (6) the eligibility of the alien for discretionary relief under the immigration laws.

[*See main edition for text of (f) to (h)*]

(i) Expeditious deportation of convicted aliens

In the case of an alien who is convicted of an offense which makes the alien subject to deportation, the Attorney General shall begin any deportation proceeding as expeditiously as possible after the date of the conviction.

(As amended Nov. 6, 1986, Pub. L. 99-603, title VII, § 701, 100 Stat. 3445.)

AMENDMENT OF SUBSECTION (h)

Pub. L. 98-473, title II, §§ 220(b), 235(a)(1), Oct. 12, 1984, 98 Stat. 2028, 2031, as amended, provided that, effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 (Nov. 1, 1987), subsection (h) of this section is amended by adding "supervised release," after "parole,". See Effective Date note set out under section 3551 of Title 18, Crimes and Criminal Procedure.

CODIFICATION

Subsec. (e) is set out in this supplement to correct typographical error appearing in the main edition.

AMENDMENTS

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1105a, 1182, 1184, 1255a, 1282 of this title; title 18 section 4113; title 22 sections 618, 2508; title 28 section 1821; title 40 section 613.

§ 1253. Countries to which aliens shall be deported

SENSE OF CONGRESS RESPECTING TREATMENT OF CUBAN POLITICAL PRISONERS

Pub. L. 99-603, title III, § 315(c), Nov. 6, 1986, 100 Stat. 3440, provided that: "It is the sense of the Congress that the Secretary of State should provide for the issuance of visas to nationals of Cuba who are or were imprisoned in Cuba for political activities without regard to section 243(g) of the Immigration and Nationality Act (8 U.S.C. 1253(g))."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1184, 1330, 1427 of this title; title 7 section 2015; title 22 sections 618, 2508; title 42 section 1436a.

§ 1254. Suspension of deportation

[See main edition for text of (a)]

(b) Continuous physical presence: inapplicability based on service in Armed Forces; brief, casual, and innocent absences

The requirement of continuous physical presence in the United States specified in paragraphs (1) and (2) of subsection (a) of this section shall not be applicable to an alien who (A) has served for a minimum period of twenty-four months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and (B) at the time of his enlistment or induction was in the United States.

(3) [4] An alien shall not be considered to have failed to maintain continuous physical presence in the United States under paragraphs (1) and (2) of subsection (a) of this section if the absence from the United States was brief, casual, and innocent and did not meaningfully interrupt the continuous physical presence.

[See main edition for text of (c) to (f)]

(As amended Nov. 6, 1986, Pub. L. 99-603, title III, § 315(b), 100 Stat. 3439.)

[4] So in original. There is no par. (1) or (2) in subsec. (b).

AMENDMENTS

1986—Subsec. (b)(3). Pub. L. 99-603 in adding par. (3) provided that the amendment was to subsec. (b) of this section as previously amended by section 312(c) of Pub. L. 99-603. However, section 312 of Pub. L. 99-603 contains no subsec. (c).

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

[See main edition for text of (a) and (b)]

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

Subsection (a) of this section shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 1151(b) of this title or a special immigrant described in section 1101(a)(27)(H) of this title) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is not in legal immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own for technical reasons) to maintain continuously a legal status since entry into the United States; or (3) any alien admitted in transit without visa under section 1182(d)(4)(C) of this title; or (5) [5] an alien (other than an immediate relative as defined in section 1151(b) of this title) who was admitted as a nonimmigrant visitor without a visa under section 1182(*l*) of this title or section 1187 of this title.

(d) Alien admitted for permanent residence on conditional basis; fiancee or fiance of citizen

The Attorney General may not adjust, under subsection (a) of this section, the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 1186a [6] of this title or of a nonimmigrant described in section 1101(a)(15)(K) of this title.

(e) Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings

(1) An alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a) of this section.

(2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to enter or remain in the United States.

(As amended Nov. 6, 1986, Pub. L. 99-603, title I, § 117, title III, § 313(c), 100 Stat. 3384, 3438; Nov. 10, 1986, Pub. L. 99-639, §§ 2(e), 3(b), 5(a), 100 Stat. 3542, 3543.)

REFERENCES IN TEXT

Section 1186a of this title, referred to in subsec. (d), was in the original "section 216", meaning section 216 of act June 27, 1952, as added by section 2(a) of Pub.

[5] So in original. There is no cl. (4) in subsec. (c).

[6] See References in Text note below.

L. 99-639, which is classified to section 1186a of this title, and was so translated as the probable intent of Congress. Another section 216 of act June 27, 1952, as added by section 301(c) of Pub. L. 99-603, is classified to section 1186 of this title.

AMENDMENTS

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

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

Subsec. (c)(5). Pub. L. 99-603, § 313(c), in adding cl. (5) provided in part that the amendment was to subsec. (c) of this section as previously amended by section 312(b) of Pub. L. 99-603. Section 312(b) of Pub. L. 99-603 did not amend subsec. (c) of this section.

Subsec. (d). Pub. L. 99-639, § 3(b), inserted "or of a nonimmigrant described in section 1101(a)(15)(K) of this title".

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

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1154, 1160, 1255a, 1256 of this title.

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

(a) Temporary resident status

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

(1) Timely application

(A) During application period

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

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

An alien who, at any time during the first 11 months of the 12-month period described in subparagraph (A), is the subject of an order to show cause issued under section 1252 of this title, must make application under this section not later than the end of the 30-day period beginning either on the first day of such 18-month period or on the date of the issuance of such order, whichever day is later.

(C) Information included in application

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

(2) Continuous unlawful residence since 1982

(A) In general

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

(B) Nonimmigrants

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

(C) Exchange visitors

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

(3) Continuous physical presence since November 6, 1986

(A) In general

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

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

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

(C) Admissions

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

(4) Admissible as immigrant

The alien must establish that he—

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

(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

(D) is registered or registering under the Military Selective Service Act [50 App. U.S.C. 451 et seq.], if the alien is required to be so registered under that Act.

For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422 [8 U.S.C. 1522 note] shall be considered to have entered the United States and to be in an unlawful status in the United States.

(b) Subsequent adjustment to permanent residence and nature of temporary resident status

(1) Adjustment to permanent residence

The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (a) of this section to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

(A) Timely application after one year's residence

The alien must apply for such adjustment during the one-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status.

(B) Continuous residence

(i) In general

The alien must establish that he has continuously resided in the United States since the date the alien was granted such temporary resident status.

(ii) Treatment of certain absences

An alien shall not be considered to have lost the continuous residence referred to in clause (i) by reason of an absence from the United States permitted under paragraph (3)(A).

(C) Admissible as immigrant

The alien must establish that he--

(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2) of this section, and

(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States.

(D) Basic citizenship skills

(i) In general

The alien must demonstrate that he either—

(I) meets the requirements of section 1423 of this title (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or

(II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) Exception for elderly individuals

The Attorney General may, in his discretion, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older.

(iii) Relation to naturalization examination

In accordance with regulations of the Attorney General, an alien who has demonstrated under clause (i)(I) that the alien meets the requirements of section 1423 of this title may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under subchapter III of this chapter.

(2) Termination of temporary residence

The Attorney General shall provide for termination of temporary resident status granted an alien under subsection (a) of this section—

(A) if it appears to the Attorney General that the alien was in fact not eligible for such status;

(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2) of this section, or (ii) is convicted of any felony or three or more misdemeanors committed in the United States; or

(C) at the end of the thirty-first month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

(3) Authorized travel and employment during temporary residence

During the period an alien is in lawful temporary resident status granted under subsection (a) of this section—

(A) Authorization of travel abroad

The Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (1) and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need.

(B) Authorization of employment

The Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an "employment authorized" endorsement or other appropriate work permit.

(c) Applications for adjustment of status

(1) To whom may be made

The Attorney General shall provide that applications for adjustment of status under subsection (a) of this section may be filed—

(A) with the Attorney General, or

(B) with a qualified designated entity, but only if the applicant consents to the forwarding of the application to the Attorney General.

As used in this section, the term "qualified designated entity" means an organization or person designated under paragraph (2).

(2) Designation of qualified entities to receive applications

For purposes of assisting in the program of legalization provided under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, and community organizations, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 1159 or 1255 of this title, Public Law 89-732 [8 U.S.C. 1255 note], or Public Law 95-145 [8 U.S.C. 1255 note].

(3) Treatment of applications by designated entities

Each qualified designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(B) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(4) Limitation on access to information

Files and records of qualified designated entities relating to an alien's seeking assistance or information with respect to filing an application under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

(5) Confidentiality of information

Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (6),

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(6) Penalties for false statements in applications

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

(7) Application fees

(A) Fee schedule

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

(B) Use of fees

The Attorney General shall deposit payments received under this paragraph in a separate account and amounts in such account shall be available, without fiscal year limitation, to cover administrative and other expenses incurred in connection with the review of applications filed under this section.

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

(1) Numerical limitations do not apply

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

(2) Waiver of grounds for exclusion

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

(A) Grounds of exclusion not applicable

The provisions of paragraphs (14), (20), (21), (25), and (32) of section 1182(a) of this title shall not apply.

(B) Waiver of other grounds

(i) In general

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

(ii) Grounds that may not be waived

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

(I) Paragraphs (9) and (10) (relating to criminals).

(II) Paragraph (15) (relating to aliens likely to become public charges) insofar as it relates to an application for adjustment to permanent residence by an alien other than an alien who is eligible for benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] or section 212 of Public Law 93-66

[12 U.S.C. 1382 note] for the month in which such alien is granted lawful temporary residence status under subsection (a) of this section.

(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

(iii) Special rule for determination of public charge

An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 1182(a)(15) of this title if the alien demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance.

(C) Medical examination

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

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

(1) Before application period

The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(A) of this section and who can establish a prima facie case of eligibility to have his status adjusted under subsection (a) of this section (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

(A) may not be deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(2) During application period

The Attorney General shall provide that in the case of an alien who presents a prima facie application for adjustment of status under subsection (a) of this section during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(f) Administrative and judicial review

(1) Administrative and judicial review

There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) No review for late filings

No denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

(3) Administrative review

(A) Single level of administrative appellate review

The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of a determination described in paragraph (1).

(B) Standard for review

Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(4) Judicial review

(A) Limitation to review of deportation

There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 1105a of this title.

(B) Standard for judicial review

Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(g) Implementation of section

(1) Regulations

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

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

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

(2) Considerations

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

(A) Periods of continuous residence

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

(B) Absences caused by deportation or advanced parole

The Attorney General shall provide that—

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

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

(C) Waivers of certain absences

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

(D) Use of certain documentation

The Attorney General shall require that—

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

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

(3) Interim final regulations

Regulations prescribed under this section may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

(h) Temporary disqualification of newly legalized aliens from receiving certain public welfare assistance

(1) In general

During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a) of this section, and notwithstanding any other provision of law—

(A) except as provided in paragraphs (2) and (3), the alien is not eligible for—

(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government (but in any event including the program of aid to families with dependent children under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.]),

(ii) medical assistance under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], and

(iii) assistance under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; and

(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A) and paragraphs (2) and (3), provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision.

Unless otherwise specifically provided by this section or other law, an alien in temporary lawful residence status granted under subsection (a) of this section shall not be considered (for purposes of any law of a State or political subdivision providing for a program of financial assistance) to be permanently residing in the United States under color of law.

(2) Exceptions

Paragraph (1) shall not apply—

(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422 [8 U.S.C. 125 note], as in effect on April 1, 1983), or

(B) in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act [42 U.S.C. 1382c(a)(1)]).

(3) Restricted medicaid benefits

(A) Clarification of entitlement

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

(i) paragraph (1) shall not apply,

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

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

(B) Restriction of benefits

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

Notwithstanding any provision of title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (including subparagraphs (B)

and (C) of section 1902(a)(10) of such Act [42 U.S.C. 1396a(a)(10)(B), (C)]), aliens who, but for subparagraph (A), would be ineligible for medical assistance under paragraph (1), are only eligible for such assistance with respect to—

(I) emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act [42 U.S.C. 1396o(a)(2)(D)]), and

(II) services described in section 1916(a)(2)(B) of such Act (relating to service for pregnant women).

(ii) No restriction for exempt aliens and children

The restrictions of clause (i) shall not apply to aliens who are described in paragraph (2) or who are under 18 years of age.

(C) Definition of medical assistance

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

(4) Treatment of certain programs

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

(A) The National School Lunch Act [42 U.S.C. 1751 et seq.].

(B) The Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

(C) The Vocational Education Act of 1963 [20 U.S.C. 2301 et seq.].

(D) Chapter 1 of the Education Consolidation and Improvement Act of 1981 [20 U.S.C. 3801 et seq.].

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

(F) The Job Training Partnership Act [29 U.S.C. 1501 et seq.].

(G) Title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.].

(H) The Public Health Service Act [42 U.S.C. 201 et seq.].

(I) Titles V, XVI, and XX [42 U.S.C. 701 et seq., 1381 et seq., 1397 et seq.], and parts B, D, and E of title IV [42 U.S.C. 620 et seq., 651 et seq., 670 et seq.], of the Social Security Act (and titles I, X, XIV, and XVI of such Act [42 U.S.C. 301 et seq., 1201 et seq., 1351 et seq., 1381 et seq.] as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

(5) Adjustment not affecting Fascell-Stone benefits

For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122) [1] [8 U.S.C. 1255 note], assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

(i) Dissemination of information on legalization program

Beginning not later than the date designated by the Attorney General under subsection (a)(1)(A) of this section, the Attorney General, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.

(June 27, 1952, ch. 477, title II, ch. 5, § 245A, as added Nov. 6, 1986, Pub. L. 99-603, title II, § 201(a)(1), 100 Stat. 3394.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (a)(4)(D), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see note set out under section 451 of the Appendix to Title 50 and Tables.

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

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

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

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

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

Section 212 of Public Law 93-66, referred to in subsec. (d)(2)(B)(ii)(II), is section 212 of Pub. L. 93-66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of Title 42.

The Food Stamp Act of 1977, referred to in subsec. (h)(1)(A)(iii), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The National School Lunch Act, referred to in subsec. (h)(4)(A), is act June 4, 1946, ch. 281, 60 Stat.

[1] So in original. Probably should be "(Public Law 96-422)".

230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

The Child Nutrition Act of 1966, referred to in subsec. (h)(4)(B), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of Title 42 and Tables.

The Vocational Education Act of 1963, referred to in subsec. (h)(4)(C), was title I of Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 94-482, title II, § 202(a), Oct. 12, 1976, 90 Stat. 2169, which was classified to chapter 44 (§ 2301 et seq.) of Title 20, Education, prior to amendment by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435, striking out all after the enacting clause and inserting in lieu thereof titles I to V, to be cited as the Carl D. Perkins Vocational Education Act. For additional details, see the Codification note preceding section 2301 of Title 20.

The Education Consolidation and Improvement Act of 1981, referred to in subsec. (h)(4)(D), is subtitle D [§§ 551 to 596] of title V of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 463, as amended. Chapter 1 of the Act is classified generally to subchapter I [§ 3801 et seq.] of chapter 51 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of Title 20 and Tables.

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

The Job Training Partnership Act, referred to in subsec. (h)(4)(F), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified principally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

The Higher Education Act of 1965, referred to in subsec. (h)(4)(G), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Higher Education Act of 1965 is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education, and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Public Health Service Act, referred to in subsec. (h)(4)(H), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

PRIOR PROVISIONS

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

PROCEDURES FOR PROPERTY ACQUISITION OR LEASING

Section 201(c)(1) of Pub. L. 99-603 provided that: "Notwithstanding the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Attorney General is authorized to expend from the appropriation provided for the administration and enforcement of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], such amounts as may be necessary for the leasing or acquisition of property in the fulfillment of this section [enacting this section and amending sections 602, 672, and 673 of this title]. This authority shall end two years after the effective date of the legalization program."

USE OF RETIRED FEDERAL EMPLOYEES

Section 201(c)(2) of Pub. L. 99-603 provided that: "Notwithstanding any other provision of law, the retired or retainer pay of a member or former member of the Armed Forces of the United States or the annuity of a retired employee of the Federal Government who retired on or before January 1, 1986, shall not be reduced while such individual is temporarily employed by the Immigration and Naturalization Service for a period of not to exceed 18 months to perform duties in connection with the adjustment of status of aliens under this section [enacting this section and amending sections 602, 672, and 673 of this title]. The Service shall not temporarily employ more than 300 individuals under this paragraph. Notwithstanding any other provision of law, the annuity of a retired employee of the Federal Government shall not be increased or redetermined under chapter 83 or 84 of title 5, United States Code, as a result of a period of temporary employment under this paragraph."

CUBAN-HAITIAN ADJUSTMENT

Section 202 of Pub. L. 99-603 provided that:

"(a) ADJUSTMENT OF STATUS.—The status of any alien described in subsection (b) may be adjusted by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to that of an alien lawfully admitted for permanent residence if—

"(1) the alien applies for such adjustment within two years after the date of the enactment of this Act [Nov. 6, 1986];

"(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for exclusion specified in paragraphs (14), (15), (16), (17), (20), (21), (25), and (32) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(14)-(17), (20), (21), (25), (32)] shall not apply;

"(3) the alien is not an alien described in section 243(h)(2) of such Act [8 U.S.C. 1253(h)(2)];

"(4) the alien is physically present in the United States on the date the application for such adjustment is filed; and

"(5) the alien has continuously resided in the United States since January 1, 1982.

"(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—The benefits provided by subsection (a) shall apply to any alien—

"(1) who has received an immigration designation as a Cuban/Haitian Entrant (Status Pending) as of the date of the enactment of this Act [Nov. 6, 1986], or

"(2) who is a national of Cuba or Haiti, who arrived in the United States before January 1, 1982, with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982, and who (unless the alien filed an application for asylum with the Immigration and Naturalization Service before January 1, 1982) was not admitted to the United States as a nonimmigrant.

"(c) NO AFFECT ON FASCELL-STONE BENEFITS.—An alien who, as of the date of the enactment of this Act [Nov. 6, 1986], is a Cuban and Haitian entrant for the purpose of section 501 of Public Law 96-422 [8 U.S.C. 1522 note] shall continue to be considered such an en-

trant for such purpose without regard to any adjustment of status effected under this section.

"(d) RECORD OF PERMANENT RESIDENCE AS OF JANUARY 1, 1982.—Upon approval of an alien's application for adjustment of status under subsection (a), the Attorney General shall establish a record of the alien's admission for permanent residence as of January 1, 1982.

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

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

STATE LEGALIZATION IMPACT-ASSISTANCE GRANTS

Section 204 of Pub. L. 99-603 provided that:

"(a) APPROPRIATION OF FUNDS.—

"(1) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, there are appropriated to carry out this section (and including Federal, State, and local administrative costs) $1,000,000,000 (less the amount described in paragraph (2)) for fiscal year 1988 and for each of the three succeeding fiscal years.

"(2) OFFSET.—

"(A) IN GENERAL.—Subject to subparagraphs (B) through (D), the amount described in this paragraph for a fiscal year is equal to the amount estimated to be expended by the Federal Government in the fiscal year for the programs of financial assistance, medical assistance, and assistance under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.] for aliens who would not be eligible for such assistance under paragraph (1)(A) of section 245A(h) of the Immigration and Nationality Act [8 U.S.C. 1255a(h)(1)(A)] but for the provisions of paragraph (2) or paragraph (3) of such section.

"(B) NO OFFSET FOR CERTAIN SSI ELIGIBLE INDIVIDUALS.—The amount described in this paragraph shall not include any amounts attributable to supplemental security benefits paid under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] or medical assistance furnished under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], in the case of an alien who is determined by the Secretary of Health and Human Services, based on an application for benefits under title XVI of the Social Security Act or section 212 of Public Law 93-66 [42 U.S.C. 1382 note] filed prior to the date designated by the Attorney General in accordance with section 245A(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. 1255a(a)(1)(A)], to be permanently residing in the United States under color of law as provided in section 1614(a)(1)(B)(ii) of the Social Security Act [42 U.S.C. 1382c(a)(1)(B)(ii)] and to be eligible to receive such benefits for the month prior to the month in which such date occurs, for such time as such alien continues without interruption to be eligible to receive such benefits in accordance with the provisions of title XVI of the Social Security Act or section 212 of Public Law 93-66, as appropriate.

"(C) ESTIMATED INITIAL OFFSET.—For purposes of subparagraph (A), with respect to fiscal year 1988, the amount estimated to be expended is equal to $70,000,000. For subsequent fiscal years, the amount estimated to be expended shall be such estimate as is contained in the annual fiscal budget submitted for that year to the Congress by the President.

"(D) ADJUSTMENT FOR ESTIMATES.—If the actual amount of expenditures by the Federal Government described in subparagraph (A) for a fiscal year exceeds, or is less than, the amount estimated to be expended for that year under subparagraph (C) for that year (taking into account any adjustment under this subparagraph), then for the subsequent fiscal year the amount described in this paragraph shall be decreased, or increased, respectively, by the amount of such excess or deficit for that previous fiscal year.

"(b) ENTITLEMENT OF STATES.—(1) From the sums appropriated under subsection (a) for a fiscal year (less the amount reserved for Federal administrative costs), the Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall allot to each State with an application approved under subsection (d)(1) an amount determined in accordance with a formula, established by the Secretary by regulation, which takes into account—

"(A) the number of eligible legalized aliens (as defined in subsection (j)(4)) residing in the State in that fiscal year;

"(B) the ratio of the number of eligible legalized aliens in the State to the total number of residents of that State and to the total number of such aliens in all the States in that fiscal year;

"(C) the amount of expenditures the State is likely to incur in that fiscal year in providing assistance for eligible legalized aliens for which reimbursement or payment may be made under this section;

"(D) the ratio of the amount of such expenditures in the State to the total of all such expenditures in all the States;

"(E) adjustments for the difference in previous years between the State's actual expenditures (described in subparagraph (C)) incurred and the allocation provided the State under this section for those years; and

"(F) such other factors as the Secretary deems appropriate to provide for an equitable distribution of such amounts.

"(2) To the extent that all the funds appropriated under this section for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under this section for the fiscal year or because some States have indicated in their description of activities that they do not intend to use, in that fiscal year or the succeeding fiscal year, the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

"(3) In determining the number of eligible legalized aliens for purposes of paragraph (1)(A), the Secretary may estimate such number on the basis of such data as he may deem appropriate.

"(4) For each fiscal year the Secretary shall make payments, as provided by section 6503 of title 31, United States Code, to each State from its allotment under this subsection. Any amount paid to a State for any of the following fiscal years and remaining unobligated at the end of such year shall remain available to such State for the purposes for which it was made in subsequent fiscal years, but shall not remain available after September 30, 1994.

"(c) PROVIDING ASSISTANCE.—(1) Of the amounts allotted to a State under this section, the State may only use such funds, in accordance with this section—

"(A) for reimbursement of the costs of programs of public assistance provided with respect to eligible legalized aliens, for which such aliens were not disqualified under section 245A(h) of the Immigration and Nationality Act [8 U.S.C. 1255a(h)] at the time of such assistance,

"(B) for reimbursement of the costs of programs of public health assistance provided to any alien who is, or is applying on a timely basis under section 245A(a) of such Act [8 U.S.C. 1255a(a)] to become, an eligible legalized alien, and

"(C) to make payments to State educational agencies for the purpose of assisting local educational agencies of that State in providing educational services for eligible legalized aliens.

Subject to paragraph (2), the State may select the distribution of the use of such funds among such purposes.

"(2)(A) Subject to subparagraphs (B) and (C), of the amounts allotted to a State under this section in any fiscal year, 10 percent shall be used by the State for reimbursement under paragraph (1)(A), 10 percent shall be used by the State for reimbursement under paragraph (1)(B), and 10 percent shall be used by the State for payments under paragraph (1)(C).

"(B) If a State does not require the use of the full 10 percent provided under subparagraph (A) for a particular function described in a subparagraph of paragraph (1) for a fiscal year, the unused portion shall be equally distributed among the two other subparagraphs.

"(C) In no case shall the funds provided under this section be used to provide reimbursement for more than 100 percent of the costs described in paragraph (1)(A) or (1)(B).

"(3) To the extent that a State provides for the use of funds for the purpose described in paragraph (1)(C), the definitions and provisions of the Emergency Immigrant Education Act of 1984 (title VI of Public Law 98-511; 20 U.S.C. 4101 et seq.) shall apply to payments under such paragraph in the same manner as they apply to payments under that Act, except that, in applying this paragraph—

"(A) any reference in such Act to 'immigrant children' shall be deemed to be a reference to 'eligible legalized aliens' (including such aliens who are over 16 years of age) during the 60-month period beginning with the first month in which such an alien is granted temporary lawful residence under section 245A(a) of the Immigration and Nationality Act [8 U.S.C. 1255a(a)];

"(B) in determining the amount of payment with respect to eligible legalized aliens who are over 16 years of age, the phrase 'described under paragraph (2)' shall be deemed to be stricken from section 606(b)(1)(A) of such Act (20 U.S.C. 4105(b)(1)(A));

"(C) the State educational agency may provide such educational services to adult eligible legalized aliens through local educational agencies and other public and private nonprofit organizations, including community-based organizations of demonstrated effectiveness; and

"(D) such services may include English language and other programs designed to enable such aliens to attain the citizenship skills described in section 245A(b)(1)(D)(i) of the Immigration and Nationality Act [8 U.S.C. 1255a(b)(1)(D)(i)].

"(d) STATEMENTS AND ASSURANCES.—(1) No State is eligible for payment under subsection (b) unless the State—

"(A) has filed with, and had approved by, the Secretary an application containing such information, including the information described in paragraph (2) and criteria for and administrative methods of disbursing funds received under this section, as the Secretary determines to be necessary to carry out this section, and

"(B) transmits to the Secretary a statement of assurances that certifies that (i) funds allotted to the State under this section will only be used to carry out the purposes described in subsection (c)(1), (ii) the State will provide a fair method (as determined by the State) for the allocation of funds among State and local agencies in accordance with paragraph (2) and subsection (c)(2), and (iii) fiscal control and fund accounting procedures will be established that are adequate to meet the requirements of paragraph (2) and subsections (e) and (f).

"(2) The application of each State under this subsection for each fiscal year must include detailed information on—

"(A) the number of eligible legalized aliens residing in the State, and

"(B) the costs (excluding any such costs otherwise paid from Federal funds) which the State and each locality is likely to incur for the purposes described in subsection (c)(1).

"(e) REPORTS AND AUDITS.—(1)(A) Each State shall prepare and submit to the Secretary annual reports on its activities under this section. In order to properly evaluate and to compare the performance of different States assisted under this section and to assure the proper expenditure of funds under this section, such reports shall be in such form and contain such information as the Secretary determines (after consultation with the States and the Comptroller General) to be necessary—

"(i) to secure an accurate description of those activities,

"(ii) to secure a complete record of the purposes for which funds were spent, and of the recipients of such funds, and

"(iii) to determine the extent to which funds were expended consistent with this section.

Copies of the report shall be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

"(B) The Seeretary shall annually report to the Congress on activities funded under this section and shall provide for transmittal of a copy of such report to each State.

"(2)(A) For requirements relating to audits of funds received by a State under this section, see chapter 75 of title 31, United States Code (relating to requirements for single audit).

"(B) Each State shall repay to the United States amounts ultimately found not to have been expended in accordance with this section, or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this section.

"(C) The Secretary may, after notice and opportunity for a hearing, withhold payment of funds to any State which is not using its allotment under this section in accordance with this section. The Secretary may withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

"(3) The State shall make copies of the reports and audits required by this subsection available for public inspection within the State.

"(4)(A) For the purpose of evaluating and reviewing the assistance provided under this section, the Secretary and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that are related to such assistance, and that are in the possession, custody, or control of States, political subdivisions thereof, or any of their grantees.

"(B) In conjunction with an evaluation or review under subparagraph (A), no State or political subdivision thereof (or grantee of either) shall be required to create or prepare new records to comply with subparagraph (A).

"(f) LIMITATION ON PAYMENTS.—(1) Payment under this section shall not be made for costs to the extent the costs are otherwise reimbursed or paid for under other Federal programs.

"(2) Payment may only be made to a State with respect to costs for assistance of a program of public assistance or a program [of] public health assistance to the extent such assistance is otherwise generally available under such programs to citizens residing in the State.

"(g) CRIMINAL PENALTIES FOR FALSE STATEMENTS.—Whoever—

"(1) knowingly and willfully makes or causes to be made any false statement or misrepresentation of a material fact in connection with the furnishing of assistance or services for which payment may be made by a State from funds allotted to the State under this section, or

"(2) having knowledge of the occurrence of any event affecting his initial or continued right to any such payment conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such payment is authorized,

shall be fined in accordance with title 18, United States Code, imprisoned for not more than five years, or both.

"(h) ANTI-DISCRIMINATION PROVISION.—(1)(A) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under this section are considered to be programs and activities receiving Federal financial assistance.

"(B) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this section.

"(2) Whenever the Secretary finds that a State or locality which has been provided payment from an allotment under this section has failed to comply with a provision of law referred to in paragraph (1)(A), with paragraph (1)(B), or with an applicable regulation (including one prescribed to carry out paragraph (1)(B)), he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

"(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted,

"(B) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], or section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], as may be applicable, or

"(C) take such other action as may be provided by law.

"(3) When a matter is referred to the Attorney General pursuant to paragraph (2)(A), or whenever he has reason to believe that the entity is engaged in a pattern or practice in violation of a provision of law referred to in paragraph (1)(A) or in violation of paragraph (1)(B), the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

"(i) CONSULTATION WITH STATE AND LOCAL OFFICIALS.—In establishing regulations and guidelines to carry out this section, the Secretary shall consult with representatives of State and local governments.

"(j) DEFINITIONS.—For purposes of this section:

"(1) The term 'State' has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(36)].

"(2) The term 'programs of public assistance' means programs in a State or local jurisdiction which—

"(A) provide for cash, medical, or other assistance (as defined by the Secretary) designed to meet the basic subsistence or health needs of individuals,

"(B) are generally available to needy individuals residing in the State or locality, and

"(C) receive funding from units of State or local government.

"(3) The term 'programs of public health assistance' means programs in a State or local jurisdiction which—

"(A) provide public health services, including immunizations for immunizable diseases, testing and treatment for tuberculosis and sexually-transmitted diseases, and family planning services,

"(B) are generally available to needy individuals residing in the State or locality, and

"(C) receive funding from units of State or local government.

"(4) The term 'eligible legalized alien' means an alien who has been granted lawful temporary resident status under section 245A of the Immigration and Nationality Act [8 U.S.C. 1255a], but only until the end of the five-year period beginning on the date the alien was granted such status."

APPLICATION OF CERTAIN STATE ASSISTANCE PROVISIONS

Section 303(c) of Pub. L. 99-603 provided that: "For purposes of section 204 of this Act [set out above] (relating to State legalization assistance), the term 'eligible legalized alien' includes an alien who becomes an alien lawfully admitted for permanent or temporary residence under section 210 or 210A of the Immigration and Nationality Act [8 U.S.C. 1160, 1161], but only until the end of the 5-year period beginning on the date the alien was first granted permanent or temporary resident status."

REPORTS ON LEGALIZATION PROGRAM

Section 404 of Pub. L. 99-603 provided that:

"(a) IN GENERAL.—The President shall transmit to Congress two reports on the legalization program established under section 245A of the Immigration and Nationality Act [8 U.S.C. 1255a].

"(b) INITIAL REPORT DESCRIBING LEGALIZED ALIENS.—The first report, which shall be transmitted not later than 18 months after the end of the application period for adjustment to lawful temporary residence status under the program, shall include a description of the population whose status is legalized under the program, including—

"(1) geographical origins and manner of entry of these aliens into the United States,

"(2) their demographic characteristics, and

"(3) a general profile and characteristics.

"(c) SECOND REPORT ON IMPACT OF LEGALIZATION PROGRAM.—The second report, which shall be transmitted not later than three years after the date of transmittal of the first report, shall include a description of—

"(1) the impact of the program on State and local governments and on public health and medical needs of individuals in the different regions of the United States,

"(2) the patterns of employment of the legalized population, and

"(3) the participation of legalized aliens in social service programs."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1160, 1161, 1324b of this title.

§ 1258. Change of nonimmigrant classification

The Attorney General may, under such conditions as he may prescribe, authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status, except in the case of—

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

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

(3) an alien (other than an alien described in paragraph (2)) classified as a nonimmigrant under subparagraph (J) of section 1101(a)(15) of this title who is subject to the two-year foreign residence requirement of section 1182(e) of this title and has not received a waiver thereof, unless such alien applies to have the alien's classification changed from classification under subparagraph (J) of section 1101(a)(15) of this title to a classification under subparagraph (A) or (G) of such section, and

(4) an alien admitted as a nonimmigrant visitor without a visa under section 1182(*l*) of this title or section 1187 of this title.

(As amended Nov. 6, 1986, Pub. L. 99-603, title III, § 313(d), 100 Stat. 3439.)

AMENDMENTS

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

§ 1259. Record of admission for permanent residence in the case of certain aliens who entered the United States prior to January 1, 1972

A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien, as of the date of the approval of his application or, if entry occurred prior to July 1, 1924, as of the date of such entry, if no such record is otherwise available and such alien shall satisfy the Attorney General that he is not inadmissible under section 1182(a) of this title insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens, and he establishes that he—

(a) entered the United States prior to January 1, 1972;

(b) has had his residence in the United States continuously since such entry;

(c) is a person of good moral character; and

(d) is not ineligible to citizenship.

(As amended Nov. 6, 1986, Pub. L. 99-603, title II, § 203(a), 100 Stat. 3405.)

AMENDMENTS

1986—Par. (a). Pub. L. 99-603 substituted "January 1, 1972" for "June 30, 1948" in par. (a).

APPLICABILITY OF NUMERICAL LIMITATIONS

Section 203(c) of Pub. L. 99-603 provided that: "The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act [8 U.S.C. 1151, 1152] shall not apply to aliens provided lawful permanent resident status under section 249 of that Act [8 U.S.C. 1259]."

PART VII—REGISTRATION OF ALIENS

§ 1301. Alien seeking entry; contents

No visa shall be issued to any alien seeking to enter the United States until such alien has been registered in accordance with section 1201(b) of this title.

(As amended Nov. 14, 1986, Pub. L. 99-653, § 8, 100 Stat. 3657.)

AMENDMENTS

1986—Pub. L. 99-653 amended section generally, striking out "and fingerprinted" after "has been registered" and substituting "section 1201(b) of this title" for "section 1201(b) of this title, unless such alien has been exempted from being fingerprinted as provided in that section".

§ 1302. Registration of aliens

(a) It shall be the duty of every alien now or hereafter in the United States, who (1) is fourteen years of age or older, (2) has not been registered and fingerprinted under section 30 or 31 of the Alien Registration Act, 1940, and (3) remains in the United States for thirty days or longer, to apply for registration and to be fingerprinted before the expiration of such thirty days.

[*See main edition for text of* (b)]

(As amended Nov. 14, 1986, Pub. L. 99-653, § 9, 100 Stat. 3657.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-653 struck out "section 1201(b) of this title or" after "registered and fingerprinted under".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1304 of this title.

§ 1304. Forms for registration and fingerprinting

(a) Preparation; contents

The Attorney General and the Secretary of State jointly are authorized and directed to prepare forms for the registration of aliens under section 1301 of this title, and the Attorney General is authorized and directed to prepare forms for the registration and fingerprinting of aliens under section 1302 of this title. Such forms shall contain inquiries with respect to (1) the date and place of entry of the alien into the United States; (2) activities in which he has been and intends to be engaged; (3) the length of time he expects to remain in the United States; (4) the police and criminal record, if any, of such alien; and (5) such additional matters as may be prescribed.

[*See main edition for text of* (b) *to* (e)]

(As amended Nov. 14, 1986, Pub. L. 99-653, § 10, 100 Stat. 3657.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-653 amending first sentence generally, striking out "and fingerprinting" before "of aliens under section 1301".

PART VIII—GENERAL PENALTY PROVISIONS

§ 1321. Prevention of unauthorized landing of aliens

[*See main edition for text of (a) and (b)*]

(c) Liability of owners and operators of international bridges and toll roads

(1) Any owner or operator of a railroad line, international bridge, or toll road who establishes to the satisfaction of the Attorney General that the person has acted diligently and reasonably to fulfill the duty imposed by subsection (a) of this section shall not be liable for the penalty described in such subsection, notwithstanding the failure of the person to prevent the unauthorized landing of any alien.

(2)(A) At the request of any person described in paragraph (1), the Attorney General shall inspect any facility established, or any method utilized, at a point of entry into the United States by such person for the purpose of complying with subsection (a) of this section. The Attorney General shall approve any such facility or method (for such period of time as the Attorney General may prescribe) which the Attorney General determines is satisfactory for such purpose.

(B) Proof that any person described in paragraph (1) has diligently maintained any facility, or utilized any method, which has been approved by the Attorney General under subparagraph (A) (within the period for which the approval is effective) shall be prima facie evidence that such person acted diligently and reasonably to fulfill the duty imposed by subsection (a) of this section (within the meaning of paragraph (1) of this subsection).

(As amended Nov. 6, 1986, Pub. L. 99-603, title I, § 114, 100 Stat. 3383.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-603 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1330, 1356 of this title.

§ 1323. Unlawful bringing of aliens into United States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1201, 1225, 1330, 1356 of this title.

§ 1324. Bringing in and harboring certain aliens

(a) Criminal penalties

(1) Any person who—

(A) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has reeeived prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(B) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(C) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation; or

(D) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law,

shall be fined in accordance with title 18, imprisoned not more than five years, or both, for each alien in respect to whom any violation of this subsection occurs.

(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each transaction constituting a violation of this paragraph, regardless of the number of aliens involved—

(A) be fined in accordance with title 18 or imprisoned not more than one year, or both; or

(B) in the case of—

(i) a second or subsequent offense,

(ii) an offense done for the purpose of commercial advantage or private financial gain, or

(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

be fined in accordance with title 18 or imprisoned not more than five years, or both.

(b) Seizure and forfeiture of conveyances; exceptions; officers and authorized persons; disposition of forfeited conveyances; suits and actions

(1) Any conveyance, including any vessel, vehicle, or aircraft, which has been or is being used in the commission of a violation of subsection (a) of this section shall be seized and subject to forfeiture, except that—

[*See main edition for text of (A) and (B)*]

(2) Any conveyance subject to seizure under this section may be seized without warrant if there is probable cause to believe the conveyance has been or is being used in a violation of subsection (a) of this section and circumstances

exist where a warrant is not constitutionally required.

(3) All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for the violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof, except that duties imposed on customs officers or other persons regarding the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures carried out under the provisions of this section by such officers or persons authorized for that purpose by the Attorney General.

(4) Whenever a conveyance is forfeited under this section the Attorney General may—

(A) retain the conveyance for official use;

(B) sell the conveyance, in which case the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs;

(C) require that the General Services Administration, or the Federal Maritime Commission if appropriate under section 484(i) of title 40 take custody of the conveyance and remove it for disposition in accordance with law; or

(D) dispose of the conveyance in accordance with the terms and conditions of any petition of remission or mitigation of forfeiture granted by the Attorney General.

(5) In all suits or actions brought for the forfeiture of any conveyance seized under this section, where the conveyance is claimed by any person, the burden of proof shall lie upon such claimant, except that probable cause shall be first shown for the institution of such suit or action. In determining whether probable cause exists, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(B) Official records of the Service or of the Department of State showing that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that the alien was not entitled to enter, or reside within, the United States.

[*See main edition for text of* (c)]

(As amended Nov. 6, 1986, Pub. L. 99-603, title I, § 112, 100 Stat. 3381.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-603, § 112(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Any person, including the owner, operator, pilot, master, commanding officer, agent, or consignee of any means of transportation who—

"(1) brings into or lands in the United States, by any means of transportation or otherwise, or attempts, by himself or through another, to bring into or land in the United States, by any means of transportation or otherwise;

"(2) knowing that he is in the United States in violation of law, and knowing or having reasonable grounds to believe that his last entry into the United States occurred less than three years prior thereto, transports, or moves, or attempts to transport or move, within the United States by means of transportation or otherwise, in furtherance of such violation of law;

"(3) willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation; or

"(4) willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of—

any alien, including an alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this chapter or any other law relating to the immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs: *Provided, however*, That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring."

Subsec. (b)(1). Pub. L. 99-603, § 112(b)(1), (2), substituted "has been or is being used" for "is used" and "seized and subject to" for "subject to seizure and" in provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 99-603, § 112(b)(3), inserted "or is being" after "has been".

Subsec. (b)(3). Pub. L. 99-603, § 112(b)(4), substituted "property" for "conveyances".

Subsec. (b)(4)(C). Pub. L. 99-603, § 112(b)(5), inserted ", or the Federal Maritime Commission if appropriate under section 484(i) of title 40,".

Subsec. (b)(4)(D). Pub. L. 99-603, § 112(b)(6), added subpar. (D).

Subsec. (b)(5). Pub. L. 99-603, § 112(b)(7)-(9), substituted ", except that" for ": *Provided*, That" in provisions preceding subpar. (A), substituted "had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law" for "was not lawfully entitled to enter, or reside within, the United States" wherever appearing, and inserted "or of the Department of State" in subpar. (B).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1324b of this title; title 10 section 374.

§ 1324a. Unlawful employment of aliens

(a) Making employment of unauthorized aliens unlawful

(1) In general

It is unlawful for a person or other entity to hire, or to recruit or refer for a fee, for employment in the United States—

(A) an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3) of this section) with respect to such employment, or

(B) an individual without complying with the requirements of subsection (b) of this section.

(2) Continuing employment

It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

(3) Defense

A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) of this section with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

(4) Use of labor through contract

For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after November 6, 1986, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (h)(3) of this section) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

(5) Use of State employment agency documentation

For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) of this section with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3) of this section) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) of this section with respect to the individual's referral.

(b) Employment verification system

The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) of this section are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

(1) Attestation after examination of documentation

(A) In general

The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining—

(i) a document described in subparagraph (B), or

(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of such sentence, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such a document.

(B) Documents establishing both employment authorization and identity

A document described in this subparagraph is an individual's—

(i) United States passport;

(ii) certificate of United States citizenship;

(iii) certificate of naturalization;

(iv) unexpired foreign passport, if the passport has an appropriate, unexpired endorsement of the Attorney General authorizing the individual's employment in the United States; or

(v) resident alien card or other alien registration card, if the card—

(I) contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection, and

(II) is evidence of authorization of employment in the United States.

(C) Documents evidencing employment authorization

A document described in this subparagraph is an individual's—

(i) social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States);

(ii) certificate of birth in the United States or establishing United States nationality at birth, which certificate the Attorney General finds, by regulation, to be acceptable for purposes of this section; or

(iii) other documentation evidencing authorization of employment in the United States which the Attorney General finds,

by regulation, to be acceptable for purposes of this section.

(D) Documents establishing identity of individual

A document described in this subparagraph is an individual's—

(i) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section; or

(ii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (ii), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

(2) Individual attestation of employment authorization

The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this chapter or by the Attorney General to be hired, recruited, or referred for such employment.

(3) Retention of verification form

After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, three years after the date of the recruiting or referral, and

(B) in the case of the hiring of an individual—

(i) three years after the date of such hiring, or

(ii) one year after the date the individual's employment is terminated,

whichever is later.

(4) Copying of documentation permitted

Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

(5) Limitation on use of attestation form

A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter and sections 1001, 1028, 1546, and 1621 of title 18.

(c) No authorization of national identification cards

Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

(d) Evaluation and changes in employment verification system

(1) Presidential monitoring and improvements in system

(A) Monitoring

The President shall provide for the monitoring and evaluation of the degree to which the employment verification system established under subsection (b) of this section provides a secure system to determine employment eligibility in the United States and shall examine the suitability of existing Federal and State identification systems for use for this purpose.

(B) Improvements to establish secure system

To the extent that the system established under subsection (b) of this section is found not to be a secure system to determine employment eligibility in the United States, the President shall, subject to paragraph (3) and taking into account the results of any demonstration projects conducted under paragraph (4), implement such changes in (including additions to) the requirements of subsection (b) of this section as may be necessary to establish a secure system to determine employment eligibility in the United States. Such changes in the system may be implemented only if the changes conform to the requirements of paragraph (2).

(2) Restrictions on changes in system

Any change the President proposes to implement under paragraph (1) in the verification system must be designed in a manner so the verification system, as so changed, meets the following requirements:

(A) Reliable determination of identity

The system must be capable of reliably determining whether—

(i) a person with the identity claimed by an employee or prospective employee is eligible to work, and

(ii) the employee or prospective employee is claiming the identity of another individual.

(B) Using of counterfeit-resistant documents

If the system requires that a document be presented to or examined by an employer, the document must be in a form which is resistant to counterfeiting and tampering.

(C) Limited use of system

Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.

(D) Privacy of information

The system must protect the privacy and security of personal information and identifiers utilized in the system.

(E) Limited denial of verification

A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

(F) Limited use for law enforcement purposes

The system may not be used for law enforcement purposes, other than for enforcement of this chapter or sections 1001, 1028, 1546, and 1621 of title 18.

(G) Restriction on use of new documents

If the system requires individuals to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this chapter (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18) nor to be carried on one's person.

(3) Notice to Congress before implementing changes

(A) In general

The President may not implement any change under paragraph (1) unless at least—

(i) 60 days,

(ii) one year, in the case of a major change described in subparagraph (D)(iii), or

(iii) two years, in the case of a major change described in clause (i) or (ii) of subparagraph (D),

before the date of implementation of the change, the President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the Committee on the Judiciary of the Senate a written report setting forth the proposed change. If the President proposes to make any change regarding social security account number cards, the President shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the Federal Register the substance of any major change (described in subparagraph (D)) proposed and reported to Congress.

(B) Contents of report

In any report under subparagraph (A) the President shall include recommendations for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system.

(C) Congressional review of major changes

(i) Hearings and review

The Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of any major change described in subparagraph (D), shall hold hearings respecting the feasibility and desirability of implementing such a change, and, within the two year period before implementation, shall report to their respective Houses findings on whether or not such a change should be implemented.

(ii) Congressional action

No major change may be implemented unless the Congress specifically provides, in an appropriations or other Act, for funds for implementation of the change.

(D) Major changes requiring two years notice and congressional review

As used in this paragraph, the term "major change" means a change which would—

(i) require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral,

(ii) provide for a telephone verification system under which an employer, recruiter, or referrer must transmit to a Federal official information concerning the immigration status of prospective employees and the official transmits to the person, and the person must record, a verification code, or

(iii) require any change in any card used for accounting purposes under the Social Security Act [42 U.S.C. 301 et seq.], including any change requiring that the only social security account number cards which may be presented in order to comply with subsection (b)(1)(C)(i) of this section are such cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act [42 U.S.C. 405(c)(2)(D)].

(E) General revenue funding of social security card changes

Any costs incurred in developing and implementing any change described in subparagraph (D)(iii) for purposes of this subsection shall not be paid for out of any trust fund established under the Social Security Act [42 U.S.C. 301 et seq.].

(4) Demonstration projects

(A) Authority

The President may undertake demonstration projects (consistent with paragraph (2)) of different changes in the requirements of subsection (b) of this section. No such project may extend over a period of longer than three years.

(B) Reports on projects

The President shall report to the Congress on the results of demonstration projects conducted under this paragraph.

(e) Compliance

(1) Complaints and investigations

The Attorney General shall establish procedures—

(A) for individuals and entities to file written, signed complaints respecting potential violations of subsection (a) of this section,

(B) for the investigation of those complaints which, on their face, have a substantial probability of validity,

(C) for the investigation of such other violations of subsection (a) of this section as the Attorney General determines to be appropriate, and

(D) for the designation in the Service of a unit which has, as its primary duty, the prosecution of cases of violations of subsection (a) of this section under this subsection.

(2) Authority in investigations

In conducting investigations and hearings under this subsection—

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated, and

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing.

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(3) Hearing

(A) In general

Before imposing an order described in paragraph (4) or (5) against a person or entity under this subsection for a violation of subsection (a) of this section, the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) Conduct of hearing

Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

(C) Issuance of orders

If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated subsection (a) of this section, the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (4) or (5).

(4) Cease and desist order with civil money penalty for hiring, recruiting, and referral violations

With respect to a violation of subsection (a)(1)(A) or (a)(2) of this section, the order under this subsection—

(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of—

(i) not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred,

(ii) not less than $2,000 and not more than $5,000 for each such alien in the case of a person or entity previously subject to one order under this subparagraph, or

(iii) not less than $3,000 and not more than $10,000 for each such alien in the case of a person or entity previously subject to more than one order under this subparagraph; and

(B) may require the person or entity—

(i) to comply with the requirements of subsection (b) of this section (or subsection (d) of this section if applicable) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years, and

(ii) to take such other remedial action as is appropriate.

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(5) Order for civil money penalty for paperwork violations

With respect to a violation of subsection (a)(1)(B) of this section, the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(6) Administrative appellate review

The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless, within 30 days, the Attorney General modifies or vacates the decision and order, in which case the decision and order of the Attorney General shall become a final order under this subsection. The Attorney General may not delegate the Attorney General's authority under this paragraph to any entity which has review authority over immigration-related matters.

(7) Judicial review

A person or entity adversely affected by a final order respecting an assessment may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(8) Enforcement of orders

If a person or entity fails to comply with a final order issued under this subsection against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(f) Criminal penalties and injunctions for pattern or practice violations

(1) Criminal penalty

Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) of this section shall be fined not more than $3,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(2) Enjoining of pattern or practice violations

Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a) of this section, the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

(g) Prohibition of indemnity bonds

(1) Prohibition

It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

(2) Civil penalty

Any person or entity which is determined, after notice and opportunity for an administrative hearing, to have violated paragraph (1) shall be subject to a civil penalty of $1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

(h) Miscellaneous provisions

(1) Documentation

In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

(2) Preemption

The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

(3) Definition of unauthorized alien

As used in this section, the term "unauthorized alien" means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or by the Attorney General.

(i) Effective dates

(1) 6-month public information period

During the six-month period beginning on the first day of the first month after November 6, 1986—

(A) the Attorney General, in cooperation with the Secretaries of Agriculture, Commerce, Health and Human Services, Labor, and the Treasury and the Administrator of the Small Business Administration, shall disseminate forms and information to employers, employment agencies, and organizations representing employees and provide for public education respecting the requirements of this section, and

(B) the Attorney General shall not conduct any proceeding, nor issue any order, under this section on the basis of any violation alleged to have occurred during the period.

(2) 12-month first citation period

In the case of a person or entity, in the first instance in which the Attorney General has reason to believe that the person or entity may have violated subsection (a) of this section during the subsequent 12-month period, the Attorney General shall provide a citation to the person or entity indicating that such a violation or violations may have occurred and shall not conduct any proceeding, nor issue

any order, under this section on the basis of such alleged violation or violations.

(3) Deferral of enforcement with respect to seasonal agricultural services

(A) In general

Except as provided in subparagraph (B), before the end of the application period (as defined in subparagraph (C)(i)), the Attorney General shall not conduct any proceeding, nor impose any penalty, under this section on the basis of any violation alleged to have occurred with respect to employment of an individual in seasonal agricultural services.

(B) Prohibition of recruitment outside the United States

(i) In general

During the application period, it is unlawful for a person or entity (including a farm labor contractor) or an agent of such a person or entity, to recruit an unauthorized alien (other than an alien described in clause (ii)) who is outside the United States to enter the United States to perform seasonal agricultural services.

(ii) Exception

Clause (i) shall not apply to an alien who the person or entity reasonably believes meets the requirements of section 1160(a)(2) of this title (relating to performance of seasonal agricultural services).

(iii) Penalty for violation

A person, entity, or agent that violates clause (i) shall be deemed to be subject to a [1] order under this section in the same manner as if it had violated paragraph (1)(A), without regard to paragraph (2) of this subsection.

(C) Definitions

In this paragraph:

(i) Application period

The term "application period" means the period described in section 1160(a)(1) of this title.

(ii) Seasonal agricultural services

The term "seasonal agricultural services" has the meaning given such term in section 1160(h) of this section.

(j) General Accounting Office reports

(1) In general

Beginning one year after November 6, 1986, and at intervals of one year thereafter for a period of three years after such date, the Comptroller General of the United States shall prepare and transmit to the Congress and to the taskforce established under subsection (k) of this section a report describing the results of a review of the implementation and enforcement of this section during the preceding twelve-month period, for the purpose of determining if—

(A) such provisions have been carried out satisfactorily;

(B) a pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment; and

(C) an unnecessary regulatory burden has been created for employers hiring such workers.

(2) Determination on discrimination

In each report, the Comptroller General shall make a specific determination as to whether the implementation of that section has resulted in a pattern of discrimination in employment (against other than unauthorized aliens) on the basis of national origin.

(3) Recommendations

If the Comptroller General has determined that such a pattern of discrimination has resulted, the report—

(A) shall include a description of the scope of that discrimination, and

(B) may include recommendations for such legislation as may be appropriate to deter or remedy such discrimination.

(k) Review by taskforce

(1) Establishment of joint taskforce

The Attorney General, jointly with the Chairman of the Commission on Civil Rights and the Chairman of the Equal Employment Opportunity Commission, shall establish a taskforce to review each report of the Comptroller General transmitted under subsection (j)(1) of this section.

(2) Recommendations to Congress

If the report transmitted includes a determination that the implementation of this section has resulted in a pattern of discrimination in employment (against other than unauthorized aliens) on the basis of national origin, the taskforce shall, taking into consideration any recommendations in the report, report to Congress recommendations for such legislation as may be appropriate to deter or remedy such discrimination.

(3) Congressional hearings

The Committees on the Judiciary of the House of Representatives and of the Senate shall hold hearings respecting any report of the taskforce under paragraph (2) within 60 days after the date of receipt of the report.

(l) Termination date for employer sanctions

(1) If report of widespread discrimination and congressional approval

The provisions of this section shall terminate 30 calendar days after receipt of the last report required to be transmitted under subsection (j) of this section, if—

(A) the Comptroller General determines, and so reports in such report, that a widespread pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment solely from the implementation of this section; and

[1] So in original. Probably should be "an".

(B) there is enacted, within such period of 30 calendar days, a joint resolution stating in substance that the Congress approves the findings of the Comptroller General contained in such report.

(2) Senate procedures for consideration

Any joint resolution referred to in clause (B) of paragraph (1) shall be considered in the Senate in accordance with subsection (n) of this section.

(m) Expedited procedures in House of Representatives

For the purpose of expediting the consideration and adoption of joint resolutions under subsection (*l*) of this section, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(n) Expedited procedures in Senate

(1) Continuity of session

For purposes of subsection (*l*) of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated.

(2) Rulemaking power

Paragraphs (3) and (4) of this subsection are enacted—

(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of joint resolutions referred to in subsection (*l*) of this section, and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

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

(3) Committee consideration

(A) Motion to discharge

If the committee of the Senate to which has been referred a joint resolution relating to the report described in subsection (*l*) of this section has not reported such joint resolution at the end of ten calendar days after its introduction, not counting any day which is excluded under paragraph (1) of this subsection, it is in order to move either to discharge the committee from further consideration of the joint resolution or to discharge the committee from further consideration of any other joint resolution introduced with respect to the same report which has been referred to the committee, except that no motion to discharge shall be in order after the committee has reported a joint resolution with respect to the same report.

(B) Consideration of motion

A motion to discharge under subparagraph (A) of this paragraph may be made only by a Senator favoring the joint resolution, is privileged, and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the joint resolution, the time to be divided equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(4) Motion to proceed to consideration

(A) In general

A motion in the Senate to proceed to the consideration of a joint resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate on resolution

Debate in the Senate on a joint resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate on motion

Debate in the Senate on any debatable motion or appeal in connection with a joint resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a joint resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(D) Motions to limit debate

A motion in the Senate to further limit debate on a joint resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a joint resolution is in order in the Senate.

(June 27, 1952, ch. 477, title II, ch. 8, § 274A, as added Nov. 6, 1986, Pub. L. 99-603, title I, § 101(a)(1), 100 Stat. 3360.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(3)(D)(iii), (E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

CODIFICATION

In subsec. (j)(1), "November 6, 1986" was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 99-603, which enacted this section, to reflect the probable intent of Congress.

INTERIM REGULATIONS

Section 101(a)(2) of Pub. L. 99-603 provided that: "The Attorney General shall, not later than the first day of the seventh month beginning after the date of the enactment of this Act [Nov. 6, 1986], first issue, on an interim or other basis, such regulations as may be necessary in order to implement this section [enacting this section, amending sections 1802, 1813, 1816, and 1851 of Title 29, Labor, and enacting provisions set out as notes under this section, section 1802 of Title 29, and section 405 of Title 42, The Public Health and Welfare]."

GRANDFATHER PROVISION FOR CURRENT EMPLOYEES

Section 101(a)(3) of Pub. L. 99-603 provided that:

"(A) Section 274A(a)(1) of the Immigration and Nationality Act [8 U.S.C. 1324a(a)(1)] shall not apply to the hiring, or recruiting or referring of an individual for employment which has occurred before the date of the enactment of this Act [Nov. 6, 1986].

"(B) Section 274A(a)(2) of the Immigration and Nationality Act shall not apply to continuing employment of an alien who was hired before the date of the enactment of this Act."

STUDY OF USE OF TELEPHONE VERIFICATION SYSTEM FOR DETERMINING EMPLOYMENT ELIGIBILITY OF ALIENS

Section 101(d) of Pub. L. 99-603 provided that:

"(1) The Attorney General, in consultation with the Secretary of Labor and the Secretary of Health and Human Services, shall conduct a study for use by the Department of Justice in determining employment eligibility of aliens in the United States. Such study shall concentrate on those data bases that are currently available to the Federal Government which through the use of a telephone and computation capability could be used to verify instantly the employment eligibility status of job applicants who are aliens.

"(2) Such study shall be conducted in conjunction with any existing Federal program which is designed for the purpose of providing information on the resident or employment status of aliens for employers. The study shall include an analysis of costs and benefits which shows the differences in costs and efficiency of having the Federal Government or a contractor perform this service. Such comparisons should include reference to such technical capabilities as processing techniques and time, verification techniques and time, back up safeguards, and audit trail performance.

"(3) Such study shall also concentrate on methods of phone verification which demonstrate the best safety and service standards, the least burden for the employer, the best capability for effective enforcement, and procedures which are within the boundaries of the Privacy Act of 1974 [5 U.S.C. 552a, 552a note].

"(4) Such study shall be conducted within twelve months of the date of enactment of this Act [Nov. 6, 1986].

"(5) The Attorney General shall prepare and transmit to the Congress a report—

"(A) not later than six months after the date of enactment of this Act, describing the status of such study; and

"(B) not later than twelve months after such date, setting forth the findings of such study."

FEASIBILITY STUDY OF SOCIAL SECURITY NUMBER VALIDATION SYSTEM

Section 101(e) of Pub. L. 99-603 provided that: "The Secretary of Health and Human Services, acting through the Social Security Administration and in cooperation with the Attorney General and the Secretary of Labor, shall conduct a study of the feasibility and costs of establishing a social security number validation system to assist in carrying out the purposes of section 274A of the Immigration and Nationality Act [8 U.S.C. 1324a], and of the privacy concerns that would be raised by the establishment of such a system. The Secretary shall submit to the Committees on Ways and Means and Judiciary of the House of Representatives and to the Committees on Finance and Judiciary of the Senate, within 2 years after the date of the enactment of this Act [Nov. 6, 1986], a full and complete report on the results of the study together with such recommendations as may be appropriate."

REPORTS ON UNAUTHORIZED ALIEN EMPLOYMENT

Section 402 of Pub. L. 99-603 provided that: "The President shall transmit to Congress annual reports on the implementation of section 274A of the Immigration and Nationality Act [8 U.S.C. 1324a] (relating to unlawful employment of aliens) during the first three years after its implementation. Each report shall include—

"(1) an analysis of the adequacy of the employment verification system provided under subsection (b) of that section;

"(2) a description of the status of the development and implementation of changes in that system under subsection (d) of that section, including the results of any demonstration projects conducted under paragraph (4) of such subsection; and

"(3) an analysis of the impact of the enforcement of that section on—

"(A) the employment, wages, and working conditions of United States workers and on the economy of the United States,

"(B) the number of aliens entering the United States illegally or who fail to maintain legal status after entry, and

"(C) the violation of terms and conditions of nonimmigrant visas by foreign visitors."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1186, 1324b of this title.

§ 1324b. Unfair immigration-related employment practices

(a) Prohibition of discrimination based on national origin or citizenship status

(1) General rule

It is an unfair immigration-related employment practice for .. person or other entity to discriminate against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(A) because of such individual's national origin, or

(B) in the case of a citizen or intending citizen (as defined in paragraph (3)), because of such individual's citizenship status.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a person or other entity that employs three or fewer employees,

(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is cov-

ered under section 703 of the Civil Rights Act of 1964 [42 U.S.C. 2000e-2], or

(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(3) Definition of citizen or intending citizen

As used in paragraph (1), the term "citizen or intending citizen" means an individual who—

(A) is a citizen or national of the United States, or

(B) is an alien who—

(i) is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 1255a(a)(1) of this title, is admitted as a refugee under section 1157 of this title, or is granted asylum under section 1158 of this title, and

(ii) evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen;

but does not include (I) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986, and (II) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

(4) Additional exception providing right to prefer equally qualified citizens

Notwithstanding any other provision of this section, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit, or refer an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

(b) Charges of violations

(1) In general

Except as provided in paragraph (2), any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice (or a person on that person's behalf) or an officer of the Service alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel (appointed under subsection (c) of this section). Charges shall be in writing under oath or affirmation and shall contain such information as the Attorney General requires. The Special Counsel by certified mail shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within 10 days.

(2) No overlap with EEOC complaints

No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) of this section if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.], unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this subsection, unless the charge is dismissed under this section as being outside the scope of this section.

(c) Special Counsel

(1) Appointment

The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for Immigration-Related Unfair Employment Practices (hereinafter in this section referred to as the "Special Counsel") within the Department of Justice to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President may designate the officer or employee who shall act as Special Counsel during such vacancy.

(2) Duties

The Special Counsel shall be responsible for investigation of charges and issuance of complaints under this section and in respect of the prosecution of all such complaints before administrative law judges and the exercise of certain functions under subsection (j)(1) of this section.

(3) Compensation

The Special Counsel is entitled to receive compensation at a rate not to exceed the rate now or hereafter provided for grade GS-17 of the General Schedule, under section 5332 of title 5.

(4) Regional offices

The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out his duties.

(d) Investigation of charges

(1) By Special Counsel

The Special Counsel shall investigate each charge received and, within 120 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge.

The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and subject to paragraph (3), file a complaint before such a judge.

(2) Private actions

If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within such 120-day period, the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge.

(3) Time limitations on complaints

No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1) of this section.

(e) Hearings

(1) Notice

Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, an administrative law judge shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing, upon the motion of the party filing the complaint, in the judge's discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

(2) Judges hearing cases

Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Attorney General as having special training respecting employment discrimination and, to the extent practicable, before such judges who only consider cases under this section.

(3) Complainant as party

Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a party to any complaint before an administrative law judge respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the judge conducting the hearing, any other person may be allowed to intervene in the said proceeding and to present testimony.

(f) Testimony and authority of hearing officers

(1) Testimony

The testimony taken by the administrative law judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further testimony or hear argument.

(2) Authority of administrative law judges

In conducting investigations and hearings under this subsection and in accordance with regulations of the Attorney General, the Special Counsel and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated. The administrative law judges by subpoena may compel the attendance of witnesses and the production of evidence at any designated place or hearing. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the administrative law judge, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(g) Determinations

(1) Order

The administrative law judge shall issue and cause to be served on the parties to the proceeding an order, which shall be final unless appealed as provided under subsection (i) of this section.

(2) Orders finding violations

(A) In general

If, upon the preponderance of the evidence, an administrative law judge determines that that [2] any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice.

(B) Contents of order

Such an order also may require the person or entity—

(i) to comply with the requirements of section 1324a(b) of this title with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

(ii) to retain for the period referred to in clause (i) and only for purposes consistent with section 1324(b)(5) of this title, the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for re-

[2] So in original.

cruiting or referring for a fee, for employment in the United States;

(iii) to hire individuals directly and adversely affected, with or without back pay; and

(iv)(I) except as provided in subclause (II), to pay a civil penalty of not more than $1,000 for each individual discriminated against, and

(II) in the case of a person or entity previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.

(C) Limitation on back pay remedy

In providing a remedy under subparagraph (B)(iii), back pay liability shall not accrue from a date more than two years prior to the date of the filing of a charge with an administrative law judge. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable under such paragraph. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

(D) Treatment of distinct entities

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(3) Orders not finding violations

If upon the preponderance of the evidence an administrative law judge determines that the person or entity named in the complaint has not engaged or is not engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.

(h) Awarding of attorneys' fees

In any complaint respecting an unfair immigration-related employment practice, an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

(i) Review of final orders

(1) In general

Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(2) Further review

Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(j) Court enforcement of administrative orders

(1) In general

If an order of the agency is not appealed under subsection (i)(1) of this section, the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge) may petition the United States district court for the district in which a violation of the order is alleged to have occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the administrative law judge, by filing in such court a written petition praying that such order be enforced.

(2) Court enforcement order

Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the administrative law judge. In such a proceeding, the order of the administrative law judge shall not be subject to review.

(3) Enforcement decree in original review

If, upon appeal of an order under subsection (i)(1) of this section, the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the administrative law judge.

(4) Awarding of attorneys' fees

In any judicial proceeding under subsection (i) of this section or this subsection, the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs but only if the losing party's argument is without reasonable foundation in law and fact.

(k) Termination dates

(1) This section shall not apply to discrimination in hiring, recruiting, or referring, or discharging of individuals occurring after the date of any termination of the provisions of section 1324a of this title, under subsection (*l*) of that section.

(2) The provisions of this section shall terminate 30 calendar days after receipt of the last report required to be transmitted under section 1324a(j) of this title if—

(A) the Comptroller General determines, and so reports in such report that—

(i) no significant discrimination has resulted, against citizens or nationals of the United States or against any eligible workers seeking employment, from the implementation of section 1324a of this title, or

(ii) such section has created an unreasonable burden on employers hiring such workers; and

(B) there has been enacted, within such period of 30 calendar days, a joint resolution stating in substance that the Congress approves the findings of the Comptroller General contained in such report.

The provisions of subsections (m) and (n) of section 1324a of this title shall apply to any joint resolution under subparagraph (B) in the same manner as they apply to a joint resolution under subsection (*l*) of such section.

(June 27, 1952, ch. 477, title II, ch. 8, § 274B, as added Nov. 6, 1986, Pub. L. 99-603, title I, § 102(a), 100 Stat. 3374.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (b)(2), is Pub. L. 88-352, July 2, 1964, 78 Stat. 252, as amended. Title VII of the Civil Rights Act of 1964 is classified generally to subchapter VI (§ 2000e et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

NO EFFECT ON EEOC AUTHORITY

Section 102(b) of Pub. L. 99-603 provided that: "Except as may be specifically provided in this section, nothing in this section shall be construed to restrict the authority of the Equal Employment Opportunity Commission to investigate allegations, in writing and under oath or affirmation, of unlawful employment practices, as provided in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5), or any other authority provided therein."

§ 1325. Entry of alien at improper time or place; misrepresentation and concealment of facts

(a) Any alien who (1) enters the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offenses, be guilty of a misdemeanor and upon conviction thereof be punished by imprisonment for not more than six months, or by a fine of not more than $500, or by both, and for a subsequent commission of any such offenses shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than two years, or by a fine of not more than $5,000, or both.

(b) Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.

(As amended Nov. 10, 1986, Pub. L. 99-639, § 2(d), 100 Stat. 3542.)

AMENDMENTS

1986—Pub. L. 99-639 designated existing provisions as subsec. (a) and added subsec. (b).

PART IX—MISCELLANEOUS

§ 1351. Nonimmigrant visa fees

AGREEMENTS ON PASSPORT VISA FEES

The United States has various bilateral agreements reciprocally waiving or reducing passport fees for nonimmigrants from foreign countries.

Country	Date signed	Entered into force	Citation
Albania	May 7, 1926	June 1, 1926	
Argentina	April 15, 1942	June 1, 1942	56 Stat. 1578.
Australia	Feb. 10, 1950	Feb. 10, 1950	1 UST 457.
	July 29, Aug. 9, 17, 20, 1955.	Aug. 20, 1955	6 UST 6225.
	Mar. 13, June 1, Aug. 19, 1959.	Aug. 19, 1959	11 UST 2049.
Austria	June 10, 28, July 12, 1949.	July 12, 1949	63 Stat. 2740.
Bahamas	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Barbados	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Belgium	May 3, 23, 1962.	May 23, 1962	13 UST 1246.
	Mar. 9, Apr. 20, 1971.		22 UST 678.
Brazil	Dec. 16, 17, 1937.	Jan. 1, 1938	186 LNTS 413.
	May 26, 1965	July 25, 1965	16 UST 1006.
Chile	Aug. 29, 1950	Sept. 1, 1950	1 UST 719.
China	Jan. 7, 1981	Jan. 7, 1981	32 UST 4533.
	Dec. 2, 1985	Jan. 2, 1986	T1AS.
Colombia	June 13, 26, 1956, May 22, 1957.	June 21, 1957	10 UST 1250.
	June 5, 11, 1957.		10 UST 1250.
Congo (Brazzaville).	Aug. 19, Sept. 4, 5, 16, 1947.	Sept. 16, 1947	61 Stat. 3776.
Costa Rica	June 29, 1925	July 25, 1925	
Cyprus	July 11, 1962, Jan. 11, 1963.	Jan. 11, 1963	14 UST 6.
Czechoslovakia.	Dec. 18, 21, 1962.	Dec. 21, 1962	13 UST 3842.
	June 20, 1978	June 20, 1978	30 UST 1593.
Denmark	July 2, Sept. 29, 1925.	Aug. 6, 1925	
	June 9, 21, July 7, 8, 1947.	July 8, 1947	62 Stat. 4068.
	Apr. 30, May 1, 1958.		
Dominican Republic.	Dec. 14, 16, 1955.	Feb. 1, 1956	7 UST 135.
Ecuador	Dec. 11, 1962, Jan 7, 1963.	Jan. 7, 1963	14 UST 757.
Egypt	June 3, Aug. 1, 1963.	Aug. 1, 1963	14 UST 1191.
El Salvador	Dec. 7, 15, 1953.	Jan. 14, 1954	5 UST 859.
Estonia	Apr. 8, July 28, 1925.	July 28, 1925	
Fiji	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Finland	July 7, Aug. 26, Dec. 14, 1955.	Dec. 14, 1955	9 UST 1175.
	Feb. 15, 20, 1956.		9 UST 1179.
	Aug. 15, 1958	Aug. 15, 1958	9 UST 1183.
France	Aug. 19, Sept. 4, 5, 16, 1947.	Sept. 16, 1947	61 Stat. 3776.
	Mar. 16, 31, 1949.	Mar. 31, 1949	63 Stat. 2737.
	Sept. 1, 21, 1961.	Sept. 21, 1961	12 UST 3197.
Germany (FRG).	Dec. 12, 30, 1952, Jan. 9, 1953.	Feb. 1, 1953	4 UST 126.
Greece	Jan. 7, 29, 1949.	Jan 29, 1949	63 Stat. 2905.
Grenada	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Guatemala	May 30, 1958	May 30, 1956	7 UST 1075.
Guyana	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
	May 20, July 16, 1970.	Jan. 18, 1971	22 UST 233.
Honduras	May 20, 27, 1925.	June 1, 1925	
Hungary	Mar. 29, Apr. 7, 1976.	Apr. 7, 1976	28 UST 1311.
	Feb. 10, 1978	Apr. 11, 1978	30 UST 248.

Country	Date signed	Entered into force	Citation
Iceland	Nov. 3, Dec. 21, 1925, June 11, 19, 21, 1926.	June 21, 1926	
	June 4, 1956	June 4, 1956	7 UST 1017.
India	July 19, Aug. 11, 1948.	Aug. 11, 1948	5 UST 193.
Iran	Mar. 27, Apr. 20, 21, 1926.	Apr. 21, 1926	
	Dec. 13, 16, 1976.	Dec. 16, 1976	28 UST 8161.
Iraq	Feb. 27, 1939	Feb. 27, 1939	
	June 6, 1956	June 6, 1956	7 UST 1067.
Ireland	Aug. 1, 1949	Aug. 1, 1949	63 Stat. 2807.
Israel	Mar. 27, June 1, 1951.	June 1, 1951	3 UST 4796.
	Feb. 14, 28, Mar. 2, 1955.	Mar. 2, 1955	7 UST 2125.
Italy	Feb. 11, 21, 26, 1929.	Mar. 1, 1929	
	Sept. 28, 29, 1948.	Sept. 29, 1948	62 Stat. 3480.
Jamaica	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Japan	May 21, Aug. 12, 26, Sept. 18, 1952.	Sept. 16, 1952	5 UST 363.
	Aug. 9, 23, 1966.	Sept. 22, 1966	17 UST 1228.
Kiribati	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Korea	Mar. 28, 1968	Apr. 27, 1968	19 UST 4789.
Kuwait	Dec. 11, 27, 1960.	Dec. 27, 1960	11 UST 2650.
Latvia	Feb. 18, Mar. 27, 1935.	Mar. 27, 1935	
Lesotho	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Liberia	Aug. 31, 1925	Aug. 31, 1925	
	Oct. 27, 28, 1947.	Oct. 28, 1947	62 Stat. 3930.
Liechtenstein.	Apr. 22, June 18, 30, 1926.	June 30, 1926	
	Oct. 22, 31, Nov. 4, 13, 1947.	Nov. 13, 1947	6 UST 93.
Lithuania	Apr. 17, 1937	Apr. 17, 1937	
Luxembourg	Apr. 25, May 22, 26, 1936.	May 26, 1936	
Madagascar	Aug. 19, Sept. 4, 5, 16, 1947.	Sept. 16, 1947	61 Stat. 3776.
Malaysia	Oct. 15, 22, 1954.		
	Mar. 5, 12, 1958.		
Malta	Oct. 31, Dec. 12, 1949.	Dec. 12, 1949	64 Stat. B137.
Mexico	Oct. 28, Nov. 10, 12, 1953.	Nov. 12, 1953	5 UST 174.
	May 29, 1974		25 UST 1172.
Monaco	Mar. 31, 1952	Mar. 31, 1952	3 UST 3942.
Morocco	Mar. 16, 31, 1949.	Mar. 31, 1949	63 Stat. 2737.
Netherlands	Jan. 21, Feb. 11, Mar. 5, 13, 1946.	Apr. 15, 1946	61 Stat. 3834.
	July 30, Aug. 20, 1947.	Aug. 20, 1947	61 Stat. 3838.
New Zealand.	Mar. 14, 1949	Mar. 14, 1949	63 Stat. 2538.
	Dec. 16, 1957, May 2, 5, 1958.	May 5, 1958	9 UST 913.
	May 13, 1958		9 UST 919.
Nicaragua	July 6, Sept. 30, Oct. 22, 1955.	Oct. 22, 1955	10 UST 1696.
Norway	July 7, 29, 1947.	July 29, 1947	61 Stat. 3101.
	Apr. 25, 1958		
	Sept. 10, Oct. 19, 1948.	Oct. 19, 1948	62 Stat. 3649.
Pakistan	Oct. 10, 18, 1949.	Oct. 18, 1949	3 UST 365.
	Aug. 16, Oct. 11, Nov. 19, Dec. 16, 29, 1952, Mar. 19, Apr. 8, 1953.		4 UST 11.
	Aug. 4, Oct. 20, Nov. 25, 29, 1955.		6 UST 6107.
	Mar. 16, June 27, 1959.	June 27, 1959	12 UST 1685.
Panama	Mar. 27, May 22, 25, 1956.	June 1, 1956	7 UST 905.
	June 14, 17, 1971.	June 17, 1971	22 UST 815.
Peru	Apr. 6, Sept. 26, Oct. 9, 1956.	Sept. 26, 1956	8 UST 468.
	Jan. 4, 7, 1957		8 UST 468.
	Mar. 18, Apr. 23, 1970.	Apr. 23, 1970	21 UST 1317.
Philippines	Nov. 24, 1952	Nov. 24, 1952	3 UST 5196.
Poland	Dec. 17, 1962, Jan 21, 1963.	Jan. 21, 1963	14 UST 118.
Portugal	June 7, 1983	July 7, 1983	TIAS 10723.
Romania	Apr. 20, May 14, 26, 1962.	May 26, 1962	13 UST 1192.
	May 31, June 17, 1967.		18 UST 1266.
	Sept. 12, Oct. 10, 1977.	Oct. 10, 1977	29 USC 4705.
Saint Lucia	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Singapore	Oct. 15, 22, 1954.		
	Mar. 5, 12, 1958.		
South Africa.	Mar. 26, Apr. 3, 1956.	May 1, 1956	7 UST 631.
	Mar. 31, 1958		9 UST 1023.
Spain	Jan. 21, 1952	Jan. 21, 1952	3 UST 2927.
	May 11, July 5, 1963.		14 UST 1206.
Sri Lanka (Ceylon).	Aug. 25, Sept. 7, 1956.	Sept. 7, 1956	8 UST 83.
Surinam	Jan. 21, Feb. 11, Mar. 5, 13, 1946.	Apr. 15, 1946	61 Stat. 3834.
Sweden	Apr. 10, 30, 1947.	Apr. 30, 1947	61 Stat. 4050.
Switzerland	May 11, 1925	May 11, 1925	
	Oct. 22, 31, Nov. 4, 13, 1947.	Nov. 13, 1947	6 UST 93.
Thailand	Sept. 19, 1925	Sept. 19, 1925	
Tonga	Nov. 9, 12, 1946.	Nov. 12, 1948	62 Stat. 3824.
Trinidad and Tobago.	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
	Oct. 28, Nov. 12, 1969.	Nov. 12, 1969	21 UST 1995.
Tunisia	Mar. 16, 31, 1949.	Mar. 31, 1949	63 Stat. 2737.
Turkey	June 27, Aug. 8, Sept. 27, Oct. 11, 1955.	Oct. 11, 1955	7 UST 337.
Tuvalu	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Union of Soviet Socialist Republics.	Mar. 26, Aug. 11, 20, 1958.	Aug. 20, 1958	9 UST 1413.
	Sept. 29, 1975	Sept. 29, 1975	27 UST 4258.
	July 30, 1984	July 30, 1984	TIAS.
	Oct. 31, 1986	Oct. 31, 1986	TIAS.
United Kingdom.	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3624.
Uruguay	Nov. 3, 8, 1949	Nov. 10, 1949	64 Stat. B128.
Venezuela	Jan. 5, 12, 1937.	Jan. 12, 1937	
Yugoslavia	Dec. 24, 29, 1925.	Feb. 1, 1926	
	Mar. 23, 25, 1950.	Mar. 25, 1950	1 UST 471.
	Dec. 30, 1963, Mar. 27, Apr. 4, 1964.	Apr. 15, 1964	15 UST 355.
China (Taiwan [1]).	Dec. 20, 1955, Feb. 20, 1956.	Feb. 20, 1956	7 UST 585.
	July 11, Oct. 17, Dec. 7, 1956.		18 UST 3167.
	May 8, June 9, 15, 1970.		21 UST 2213.

[1] These agreements are administered on a nongovernmental basis by the American Institute in Taiwan pursuant to 22 U.S.C. 3305, as a result of the termination of relations with the governing authorities on Taiwan on Jan. 1, 1979.

§ 1353a. Officers and employees; overtime services; extra compensation; length of working day

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1353a, 1353d, 1356 of this title; title 5 section 5549.

§ 1356. Disposition of moneys collected under the provisions of this subchapter

[See main edition for text of (a) to (c)]

(d) Schedule of fees

In addition to any other fee authorized by law, the Attorney General shall charge and collect $5 per individual for the immigration inspection of each passenger arriving at a port of entry in the United States, or for the preinspection of a passenger in a place outside of the United States prior to such arrival, aboard a commercial aircraft or commercial vessel.

(e) Limitations on fees

(1) No fee shall be charged under subsection (d) of this section for immigration inspection or preinspection provided in connection with the arrival of any passenger whose journey originated in the following:

(A) Canada,

(B) Mexico,

(C) a territory or possession of the United States, or

(D) any adjacent island (within the meaning of section 1101(b)(5) of this title).

(2) No fee may be charged under subsection (d) of this section with respect to the arrival of any passenger—

(A) who is in transit to a destination outside the United States, and

(B) for whom immigration inspection services are not provided.

(f) Collection

(1) Each person that issues a document or ticket to an individual for transportation by a commercial vessel or commercial aircraft into the United States shall—

(A) collect from that individual the fee charged under subsection (d) of this section at the time the document or ticket is issued; and

(B) identify on that document or ticket the fee charged under subsection (d) of this section as a Federal inspection fee.

(2) If—

(A) a document or ticket for transportation of a passenger into the United States is issued in a foreign country; and

(B) the fee charged under subsection (d) of this section is not collected at the time such document or ticket is issued;

the person providing transportation to such passenger shall collect such fee at the time such passenger departs from the United States and shall provide such passenger a receipt for the payment of such fee.

(3) The person who collects fees under paragraph (1) or (2) shall remit those fees to the Attorney General at any time before the date that is thirty-one days after the close of the calendar quarter in which the fees are collected. Regulations issued by the Attorney General under this subsection with respect to the collection of the fees charged under subsection (d) of this section and the remittance of such fees to the Treasury of the United States shall be consistent with the regulations issued by the Secretary of the Treasury for the collection and remittance of the taxes imposed by subchapter C of chapter 33 of title 26, but only to the extent the regulations issued with respect to such taxes do not conflict with the provisions of this section.

(g) Provision of immigration inspection and preinspection services

Notwithstanding section 1353(a)[2] of this title, or any other provision of law, the immigration services required to be provided to passengers upon arrival in the United States on scheduled airline flights shall be adequately provided when needed and at no cost (other than the fees imposed under subsection (d) of this section) to airlines and airline passengers at:

(1) immigration serviced airports, and

(2) places located outside of the United States at which an immigration officer is stationed for the purpose of providing such immigration services.

(h) Disposition of receipts

(1)(A) All of the fees collected under subsection (d) of this section shall be deposited in a separate account within the general fund of the Treasury of the United States. Such account shall be known as the "Immigration User Fee Account." At the end of each 2-year period, beginning with the creation of this account, the Attorney General, following a public rulemaking with opportunity for notice and comment, shall submit a report to the Congress concerning the status of the account, including any balances therein, and recommend any adjustment in the prescribed fee that may be required to ensure that the receipts collected from the fee charged for the succeeding two years equal, as closely as possible, the cost of providing these services.

(B) Notwithstanding any other provisions of law, all fines, penalties, liquidated damages or expenses collected pursuant to sections 1321 and 1323 of this title shall be deposited in the "Immigration User Fee Account."

(2)(A) The Secretary of the Treasury shall refund out of the Immigration User Fee Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Attorney General in providing immigration inspection and preinspection services for commercial aircraft or vessels and:

(i) providing overtime immigration inspection services for commercial aircraft or vessels;

(ii) administration of debt recovery, including the establishment and operation of a national collections office;

(iii) expansion, operation and maintenance of information systems for nonimmigrant control and debt collection;

(iv) detection of fraudulent documents used by passengers traveling to the United States;

(v) providing detention and deportation services for excludable aliens arriving on commercial aircraft and vessels.

(B) The amounts which are required to be refunded under subparagraph (A) shall be refunded at least quarterly on the basis of estimates made by the Attorney General of the expenses referred to in subparagraph (A). Proper adjustments shall be made in the amounts subsequently refunded under subparagraph (A) to

[2] So in original. Probably should be section 1353a.

the extent prior estimates were in excess of, or less than, the amount required to be refunded under subparagraph (A).

(i) Reimbursement of certain immigration inspection services

Notwithstanding any other provision of law, the Attorney General is authorized to receive reimbursement from the owner, operator, or agent of a private or commercial aircraft or vessel, or from any airport or seaport authority for expenses incurred by the Attorney General in providing immigration inspection services which are rendered at the request of such person or authority (including the salary and expenses of individuals employed by the Attorney General to provide such immigration inspection services). The Attorney General's authority to receive such reimbursement shall terminate immediately upon the provision for such services by appropriation.

(j) Regulations

The Attorney General may prescribe such rules and regulations as may be necessary to carry out the provisions of this section.

(k) Advisory committee

In accordance with the provisions of the Federal Advisory Committee Act, the Attorney General shall establish an advisory committee, whose membership shall consist of representatives from the airline and other transportation industries who may be subject to any fee or charge authorized by law or proposed by the Immigration and Naturalization Service for the purpose of covering expenses incurred by the Immigration and Naturalization Service. The advisory committee shall meet on a periodic basis and shall advise the Attorney General on issues related to the performance of the inspectional services of the Immigration and Naturalization Service. This advice shall include, but not be limited to, such issues as the time periods during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. The Attorney General shall give substantial consideration to the views of the advisory committee in the exercise of his duties.

(*l*) Effective dates

(1) The provisions of this section and the amendments made by this section, shall apply with respect to immigration inspection services rendered after November 30, 1986.

(2) Fees may be charged under subsection (d) of this section only with respect to immigration inspection services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after November 30, 1986.

(As amended Oct. 18, 1986, Pub. L. 99-500, § 101(b) [title II, § 205], 100 Stat. 1783-39, 1783-53, and Oct. 30, 1986, Pub. L. 99-591, § 101(b) [title II, § 205], 100 Stat. 3341-39, 3341-53; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

Section 1228(c) of this title, referred to in subsec. (a), was redesignated section 1228(b) of this title by Pub. L. 99-653, § 7(b), Nov. 14, 1986, 100 Stat. 3657.

Subchapter C of chapter 33 of title 26, referred to in subsec. (f)(3), is classified to section 4261 et seq. of Title 26, Internal Revenue Code.

The Federal Advisory Committee Act, referred to in subsec. (k), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The amendments made by this section, referred to in subsec. (*l*), probably means the amendments made by section 101(b) [title II, § 205] of Pub. L. 99-500 and Pub. L. 99-591, which enacted subsecs. (d) to (*l*) of this section.

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

1986—Subsecs. (d) to (*l*). Pub. L. 99-500 and Pub. L. 99-591 added subsecs. (d) to (*l*).

Subsec. (f)(3). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1357. Powers of immigration officers and employees

[*See main edition for text of* (*a*) *to* (*c*)]

(d)[3] Detainer of aliens for violation of controlled substances laws

In the case of an alien who is arrested by a Federal, State, or local law enforcement official for a violation of any law relating to controlled substances, if the official (or another official)—

(1) has reason to believe that the alien may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States,

(2) expeditiously informs an appropriate officer or employee of the Service authorized and designated by the Attorney General of the arrest and of facts concerning the status of the alien, and

(3) requests the Service to determine promptly whether or not to issue a detainer to detain the alien, the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien.

[3] So in original. Two subsecs. (d) have been enacted.

(d) [1] Restriction on warrantless entry in case of outdoor agricultural operations

Notwithstanding any other provision of this section other than paragraph (3) of subsection (a) of this section, an officer or employee of the Service may not enter without the consent of the owner (or agent thereof) or a properly executed warrant onto the premises of a farm or other outdoor agricultural operation for the purpose of interrogating a person believed to be an alien as to the person's right to be or to remain in the United States.

(As amended Oct. 27, 1986, Pub. L. 99-570, title I, § 1751(d), 100 Stat. 3207-47; Nov. 6, 1986, Pub. L. 99-603, title I, § 116, 100 Stat. 3384.)

AMENDMENTS

1986—Subsec. (d). Pub. L. 99-603 added subsec. (d) restricting warrantless entry in case of outdoor agricultural operations.

Pub. L. 99-570 added subsec. (d) relating to detainer of aliens for violation of controlled substances laws.

§ 1364. Triennial comprehensive report on immigration

(a) Triennial report

The President shall transmit to the Congress, not later than January 1, 1989, and not later than January 1 of every third year thereafter, a comprehensive immigration-impact report.

(b) Details in each report

Each report shall include—

(1) the number and classification of aliens admitted (whether as immediate relatives, special immigrants, refugees, or under the preferences classifications, or as nonimmigrants), paroled, or granted asylum, during the relevant period;

(2) a reasonable estimate of the number of aliens who entered the United States during the period without visas or who became deportable during the period under section 1251 of this title; and

(3) a description of the impact of admissions and other entries of immigrants, refugees, asylees, and parolees into the United States during the period on the economy, labor and housing markets, the educational system, social services, foreign policy, environmental quality and resources, the rate, size, and distribution of population growth in the United States, and the impact on specific States and local units of government of high rates of immigration resettlement.

(c) History and projections

The information (referred to in subsection (b) of this section) contained in each report shall be—

(1) described for the preceding three-year period, and

(2) projected for the succeeding five-year period, based on reasonable estimates substantiated by the best available evidence.

(d) Recommendations

The President also may include in such report any appropriate recommendations on changes in numerical limitations or other policies under subchapter II of this chapter bearing on the admission and entry of such aliens to the United States.

(Pub. L. 99-603, title IV, § 401, Nov. 6, 1986, 100 Stat. 1364.)

CODIFICATION

Section was enacted as part of the Immigration Reform and Control Act of 1986, and not as part of the Immigration and Nationality Act which comprises this chapter.

§ 1365. Reimbursement of States for costs of incarcerating illegal aliens and certain Cuban nationals

(a) Reimbursement of States

Subject to the amounts provided in advance in appropriation Acts, the Attorney General shall reimburse a State for the costs incurred by the State for the imprisonment of any illegal alien or Cuban national who is convicted of a felony by such State.

(b) Illegal aliens convicted of a felony

An illegal alien referred to in subsection (a) of this section is any alien who is any alien convicted of a felony who is in the United States unlawfully and—

(1) whose most recent entry into the United States was without inspection, or

(2) whose most recent admission to the United States was as a nonimmigrant and—

(A) whose period of authorized stay as a nonimmigrant expired, or

(B) whose unlawful status was known to the Government,

before the date of the commission of the crime for which the alien is convicted.

(c) Marielito Cubans convicted of a felony

A Marielito Cuban convicted of a felony referred to in subsection (a) of this section is a national of Cuba who—

(1) was allowed by the Attorney General to come to the United States in 1980,

(2) after such arrival committed any violation of State or local law for which a term of imprisonment was imposed, and

(3) at the time of such arrival and at the time of such violation was not an alien lawfully admitted to the United States—

(A) for permanent or temporary residence, or

(B) under the terms of an immigrant visa or a nonimmigrant visa issued,

under the laws of the United States.

(d) Authorization of Appropriation

There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

(e) "State" defined

The term 'State' has the meaning given such term in section 1101(a)(36) of this title.

(Pub. L. 99-603, title V, § 501, Nov. 6, 1986, 100 Stat. 3443.)

[1] So in original. Two subsecs. (d) have been enacted.

CODIFICATION

Section was enacted as part of the Immigration Reform and Control Act of 1986, and not as part of the Immigration and Nationality Act which comprises this chapter.

CROSS REFERENCES

Assistance to States and counties for costs of incarcerating certain Cuban nationals, see section 1522(f) of this title.

SUBCHAPTER III—NATIONALITY AND NATURALIZATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1101, 1161, 1186a, 1255a, 1438 of this title.

PART I—NATIONALITY AT BIRTH AND COLLECTIVE NATURALIZATION

§ 1401. Nationals and citizens of United States at birth

[*See main edition for text of (a) to (f)*]

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years: *Provided,* That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 288 of title 22 by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 288 of title 22, may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date.

(As amended Nov. 14, 1986, Pub. L. 99-653, § 12, 100 Stat. 3657.)

AMENDMENTS

1986—Subsec. (g). Pub. L. 99-653 substituted "five years, at least two" for "ten years, at least five".

§ 1408. Nationals but not citizens of the United States at birth

Unless otherwise provided in section 1401 of this title, the following shall be nationals, but not citizens, of the United States at birth:

[*See main edition for text of (1) to (3)*]

(4) A person born outside the United States and its outlying possessions of parents one of whom is an alien, and the other a national, but not a citizen, of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years—

(A) during which the national parent was not outside the United States or its outlying possessions for a continuous period of more than one year, and

(B) at least five years of which were after attaining the age of fourteen years.

The proviso of section 1401(g) of this title shall apply to the national parent under this paragraph in the same manner as it applies to the citizen parent under that section.

(As amended Aug. 27, 1986, Pub. L. 99-396, § 15(a), 100 Stat. 842.)

AMENDMENTS

1986—Par. (4). Pub. L. 99-396 added par. (4).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 15(b) of Pub. L. 99-396 provided that: "The amendment made by subsection (a) [amending this section] shall apply to persons born before, on, or after the date of the enactment of this Act [Aug. 27, 1986]. In the case of a person born before the date of the enactment of this Act—

"(1) the status of a national of the United States shall not be considered to be conferred upon the person until the date the person establishes to the satisfaction of the Secretary of State that the person meets the requirements of section 308(4) of the Immigration and Nationality Act [par. (4) of this section], and

"(2) the person shall not be eligible to vote in any general election in American Samoa earlier than January 1, 1987."

§ 1409. Children born out of wedlock

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 1401 of this title, and of paragraph (2) of section 1408, of this title shall apply as of the date of birth to a child born out of wedlock if a blood relationship between the child and the father is established by clear and convincing evidence, provided the father had the nationality of the United States at the time of the child's birth, the father unless deceased has agreed in writing to provide financial support for the child until such child reaches the age of eighteen years and if, while such child is under the age of eighteen years, (1) such child is legitimated under the law of the child's residence or domicile, or (2) the father acknowledges paternity of the child in writing under oath, or (3) paternity of the child is established by adjudication of a competent court.

[*See main edition for text of (b) and (c)*]

(As amended Nov. 14, 1986, Pub. L. 99-653, § 13, 100 Stat. 3657.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-653, § 13(a), made an amendment identical to Pub. L. 97-116, § 18(l)(1).

Pub. L. 99-653, § 13(b), substituted "if a blood relationship between the child and the father is established by clear and convincing evidence, provided the father had the nationality of the United States at the

time of the child's birth, the father unless deceased has agreed in writing to provide financial support for the child until such child reaches the age of eighteen years and if, while such child is under the age of eighteen years, (1) such child is legitimated under the law of the child's residence or domicile, or (2) the father acknowledges paternity of the child in writing under oath, or (3) paternity of the child is established by adjudication of a competent court" for "on or after the effective date of this chapter, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation".

PART II—NATIONALITY THROUGH NATURALIZATION

§ 1423. Requirements as to understanding the English language, history, principles and form of government of the United States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1255a of this title.

§ 1424. Prohibition upon the naturalization of persons opposed to government or law, or who favor totalitarian forms of government

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1427, 1433, 1435, 1441, 1451 of this title.

§ 1427. Requirements of naturalization

[*See main edition for text of (a) to (f)*]

(g) Persons making extraordinary contributions to national security

(1) Whenever the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration determine that a petitioner otherwise eligible for naturalization has made an extraordinary contribution to the national security of the United States or to the conduct of United States intelligence activities, the petitioner may be naturalized without regard to the residence and physical presence requirements of this section, or to the prohibitions of section 1424 of this title, and no residence within the jurisdiction of the court shall be required: *Provided*, That the petitioner has continuously resided in the United States for at least one year prior to naturalization: *Provided further*, That the provisions of this subsection shall not apply to any alien described in subparagraphs (A) through (D) of section 1253(h)(2) of this title.

(2) A petition for naturalization may be filed pursuant to this subsection in any district court of the United States, without regard to the residence of the petitioner. Proceedings under this subsection shall be conducted in a manner consistent with the protection of intelligence sources, methods and activities.

(3) The number of aliens naturalized pursuant to this subsection in any fiscal year shall not exceed five. The Director of Central Intelligence shall inform the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives within a reasonable time prior to the filing of each petition under the provisions of this subsection.

(As amended Dec. 4, 1985, Pub. L. 99-169, title VI, § 601, 99 Stat. 1007.)

AMENDMENTS

1985—Subsec. (g). Pub. L. 99-169 added subsec. (g).

§ 1431. Children born outside United States of one alien and one citizen parent; conditions for automatic citizenship

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such alien parent is naturalized, become a citizen of the United States, when—

(1) such naturalization takes place while such child is unmarried and under the age of eighteen years; and

[*See main edition for text of (2); (b)*]

(As amended Nov. 14, 1986, Pub. L. 99-653, § 14, 100 Stat. 3657.)

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99-653 inserted "unmarried and" after "such child is".

§ 1432. Children born outside of United States of alien parents; conditions for automatic citizenship

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

[*See main edition for text of (1) to (3)*]

(4) Such naturalization takes place while such child is unmarried and under the age of eighteen years; and

[*See main edition for text of (5); (b)*]

(As amended Nov. 14, 1986, Pub. L. 99-653, § 15, 100 Stat. 3658.)

AMENDMENTS

1986—Subsec. (a)(4). Pub. L. 99-653 inserted "unmarried and" after "such child is".

§ 1433. Children born outside United States

(a) Naturalization on petition of citizen parents; requirements

A child born outside of the United States, one or both of whose parents is at the time of petitioning for the naturalization of the child, a citizen of the United States, either by birth or naturalization, may be naturalized if unmarried and under the age of eighteen years and not otherwise disqualified from becoming a citizen by reason of section 1424, 1425, 1426, or 1429 of this title, and if residing permanently in the United States, with the citizen parent, pursuant to a lawful admission for permanent residence, on the petition of such citizen parent, upon compliance with all the provisions of this subchapter, except that no particular period of res-

idence or physical presence in the United States shall be required. If the child is of tender years he may be presumed to be of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States.

[*See main edition for text of* (b) *and* (c)]

(As amended Nov. 14, 1986, Pub. L. 99-653, § 16, 100 Stat. 3658.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-653 inserted "unmarried and" after "be naturalized if".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1448 of this title.

§ 1440. Naturalization through active-duty service in the Armed Forces during World War I, World War II, Korean hostilities, Vietnam hostilities, or other periods of military hostilities

EX. ORD. NO. 12582. NATURALIZATION REQUIREMENTS EXCEPTIONS FOR ALIENS AND NON-CITIZEN NATIONALS OF THE UNITED STATES WHO SERVED IN THE GRENADA CAMPAIGN

Ex. Ord. No. 12582, Feb. 2, 1987, 52 F.R. 3395, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 1440 of Title 8, United States Code, and in order to provide expedited naturalization for aliens and noncitizens who served in the Armed Forces in the Grenada campaign, it is hereby ordered as follows:

For the purpose of determining qualification for the exceptions from the usual requirements for naturalization, the period of Grenada military operations in which the Armed Forces of the United States were engaged in armed conflict with a hostile foreign force commenced on October 25, 1983, and terminated on November 2, 1983. Those persons serving honorably in active-duty status in the Armed Forces of the United States during this period, in the Grenada campaign, are eligible for naturalization in accordance with the statutory exceptions to the naturalization requirements, as provided in Section 1440(b) of Title 8, United States Code. Qualifying active-duty service includes service conducted, during this period, on the islands of Grenada, Carriacou, Green Hog, and those islands adjacent to Grenada in the Atlantic Seaboard where such service was in direct support of the military operations in Grenada. Qualifying active-duty service during this period also includes service conducted in the air space above Grenada, in the adjacent seas where operations were conducted, and at the Grantly Adams International Airport in Barbados.

RONALD REAGAN.

§ 1445. Petition for naturalization

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1423 of this title; title 20 section 955b; title 42 section 1381.

§ 1451. Revocation of naturalization

[*See main edition for text of* (a) *to* (c)]

(d) Foreign residence

If a person who shall have been naturalized shall, within one year after such naturalization, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such person to reside permanently in the United States at the time of filing his petition for naturalization, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the revocation and setting aside of the order admitting such person to citizenship and the cancellation of the certificate of naturalization as having been obtained by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively. The diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with statements of the names of those persons within their respective jurisdictions who have been so naturalized and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to revoke and set aside the order admitting to citizenship and to cancel the certificate of naturalization.

[*See main edition for text of* (e) *to* (j)]

(As amended Nov. 14, 1986, Pub. L. 99-653, § 17, 100 Stat. 3658.)

AMENDMENTS

1986—Subsec. (d). Pub. L. 99-653 substituted "one year" for "five years".

§ 1452. Certificates of citizenship or U.S. non-citizen national status; procedure

(a) Application to Attorney General for certificate of citizenship; proof; oath of allegiance

A person who claims to have derived United States citizenship through the naturalization of a parent or through the naturalization or citizenship of a husband, or who is a citizen of the United States by virtue of the provisions of section 1993 of the United States Revised Statutes, or of section 1993 of the United States Revised Statutes, as amended by section 1 of the Act of May 24, 1934 (48 Stat. 797), or who is a citizen of the United States by virtue of the provisions of subsection (c), (d), (e), (g), or (l) of section 201 of the Nationality Act of 1940, as amended (54 Stat. 1138), or of the Act of May 7, 1934 (48 Stat. 667), or of paragraph (c), (d), (e), or (g) of section 1401 of this title, or under the provisions of the Act of August 4, 1937 (50 Stat. 558), or under the provisions of section 203 or 205 of the Nationality Act of 1940 (54 Stat. 1139), or under the provisions of section 1403 of this title, may apply to the Attorney General for a certificate of citizenship. Upon proof to the satisfaction of the Attorney General that the applicant is a citizen, and that the applicant's alleged citizenship was derived as claimed, or acquired, as the case may be, and upon taking and subscribing before a member of the Service

within the United States to the oath of allegiance required by this chapter of a petitioner for naturalization, such individual shall be furnished by the Attorney General with a certificate of citizenship, but only if such individual is at the time within the United States.

(b) [2] Application to Secretary of State for certificate of non-citizen national status; proof; oath of allegiance

A person who claims to be a national, but not a citizen, of the United States may apply to the Secretary of State for a certificate of non-citizen national status. Upon—

(1) proof to the satisfaction of the Secretary of State that the applicant is a national, but not a citizen, of the United States, and

(2) in the case of such a person born outside of the United States or its outlying possessions, taking and subscribing, before an immigration officer within the United States or its outlying possessions, to the oath of allegiance required by this chapter of a petitioner for naturalization,

the individual shall be furnished by the Secretary of State with a certificate of non-citizen national status, but only if the individual is at the time within the United States or its outlying possessions.

(b) [2] Application to Attorney General for certificate of citizenship for adopted child

(1) The adoptive citizen parent or parents of a child described in paragraph (2) may apply to the Attorney General for a certificate of citizenship for the child. Upon proof to the satisfaction of the Attorney General that the applicant and spouse, if married, are citizens of the United States, whether by birth or by naturalization, and that the child is described in paragraph (2), the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship, but only if the child is at the time within the United States.

(2) A child described in this paragraph is a child born outside of the United States who—

(A) is under the age of 18 years,

(B) is adopted before the child reached the age of 16 years by a parent who is a citizen of the United States, either by birth or naturalization, and

(C) is residing in the United States in the custody of the adopting citizen parent, pursuant to a lawful admission for permanent residence.

(As amended Aug. 27, 1986, Pub. L. 99-396, § 16(a), 100 Stat. 843; Nov. 14, 1986, Pub. L. 99-653, § 22, 100 Stat. 3658.)

AMENDMENTS

1986—Pub. L. 99-396, § 16(a)(1), inserted reference to certificates of non-citizen national status in section catchline.

Subsec. (a). Pub. L. 99-396, § 16(a)(2), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 99-653 added subsec. (b) relating to application for certificate of citizenship for adopted child.

Pub. L. 99-396, § 16(a)(3), added subsec. (b) relating to application for certificate of non-citizen national status.

CERTIFICATES OF NON-CITIZEN NATIONAL STATUS; $35 LIMIT ON FEES FOR PROCESSING APPLICATIONS FILED BEFORE END OF FISCAL YEAR 1987

Section 16(c) of Pub. L. 99-396 provided that: "The Secretary of State may not impose a fee exceeding $35 for the processing of an application for a certificate of non-citizen national status under section 341(b) of the Immigration and Nationality Act [8 U.S.C. 1452(b)] filed before the end of fiscal year 1987."

PART III—LOSS OF NATIONALITY

§ 1481. Loss of nationality by native-born or naturalized citizen; voluntary action; burden of proof; presumptions

(a) From and after the effective date of this chapter a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality:— [1]

(1) obtaining naturalization in a foreign state upon his own application or upon an application filed by a duly authorized agent, after having attained the age of eighteen years; or

(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof, after having attained the age of eighteen years; or

(3) entering, or serving in, the armed forces of a foreign state if (a) such armed forces are engaged in hostilities against the United States, or (b) such persons serve as a commissioned or non-commissioned officer; or

(4)(A) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of eighteen years if he has or acquires the nationality of such foreign state; or (B) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of eighteen years for which office, post, or employment an oath, affirmation, or declaration of allegiance is required; or

[*See main edition for text of* (5) *to* (7)]

(b) Repealed. Pub. L. 99-653, § 19, Nov. 14, 1986, 100 Stat. 3658.

[*See main edition for text of* (c)]

(As amended Nov. 14, 1986, Pub. L. 99-653, §§ 18, 19, 100 Stat. 3658.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-653, § 18(a), inserted "voluntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "his nationality by".

[2] So in original. Two subsecs. (b) have been enacted.

[1] So in original.

Subsec. (a)(1). Pub. L. 99-653, § 18(b), substituted "or upon an application filed by a duly authorized agent, after having attained the age of eighteen years" for "upon an application filed in his behalf by a parent, guardian, or duly authorized agent, or through the naturalization of a parent having legal custody of such person: *Provided* That nationality shall not be lost by any person under this section as the result of the naturalization of a parent or parents while such person is under the age of twenty-one years, or as the result of a naturalization obtained on behalf of a person under twenty-one years of age by a parent, guardian, or duly authorized agent, unless such person shall fail to enter the United States to establish a permanent residence prior to his twenty-fifth birthday: *And provided further*, That a person who shall have lost nationality prior to January 1, 1948, through the naturalization in a foreign state of a parent or parents, may, within one year from the effective date of this chapter, apply for a visa and for admission to the United States as a special immigrant under the provisions of section 1101(a)(27)(E) of this title".

Subsec. (a)(2). Pub. L. 99-653, § 18(c), inserted ", after having attained the age of eighteen years" after "political subdivision thereof".

Subsec. (a)(3). Pub. L. 99-653, § 18(d), substituted "if (a) such armed forces are engaged in hostilities against the United States, or (b) such persons serve as a commissioned or non-commissioned officer; or" for "unless, prior to such entry or service, such entry or service is specifically authorized in writing by the Secretary of State and the Secretary of Defense: *Provided*, That the entry into such service by a person prior to the attainment of his eighteenth birthday shall serve to expatriate such person only if there exists an option to secure a release from such service and such person fails to exercise such option at the attainment of his eighteenth birthday; or".

Subsec. (a)(4). Pub. L. 99-653, § 18(e), (f), inserted "after attaining the age of eighteen years" after "political subdivision thereof," in subpars. (A) and (B).

Subsec. (b). Pub. L. 99-653, § 19, struck out subsec. (b) which read: "Any person who commits or performs any act specified in subsection (a) of this section shall be conclusively presumed to have done so voluntarily and without having been subjected to duress of any kind, if such person at the time of the act was a national of the state in which the act was performed and had been physically present in such state for a period or periods totaling ten years or more immediately prior to such act."

§ 1483. Restrictions on expatriation

[*See main edition for text of (a)*]

(b) A national who within six months after attaining the age of eighteen years asserts his claim to United States nationality, in such manner as the Secretary of State shall by regulation prescribe, shall not be deemed to have expatriated himself by the commission, prior to his eighteenth birthday, of any of the acts specified in paragraph [2] (3) and (5) of section 1481(a) of this title.

(As amended Nov. 14, 1986, Pub. L. 99-653, § 20, 100 Stat. 3658.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-653 substituted "paragraph (3)" for "paragraphs (2), (4),".

[2] So in original. Probably should be "paragraphs".

PART IV—MISCELLANEOUS

§ 1503. Denial of rights and privileges as national

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1105a of this title.

SUBCHAPTER IV—REFUGEE ASSISTANCE

§ 1522. Authorization for programs for domestic resettlement of and assistance to refugees

(a) Conditions and considerations

[*See main edition for text of (1)*]

(2)(A) The Director and the Federal agency administering subsection (b)(1) of this section, together with the Coordinator, shall consult regularly (not less often than quarterly) with State and local governments and private nonprofit voluntary agencies concerning the sponsorship process and the intended distribution of refugees among the States and localities before their placement in those States and localities.

[*See main edition for text of (B)*]

(C) Such policies and strategies, to the extent practicable and except under such unusual circumstances as the Director may recognize, shall—

(i) insure that a refugee is not initially placed or resettled in an area highly impacted (as determined under regulations prescribed by the Director after consultation with such agencies and governments) by the presence of refugees or comparable populations unless the refugee has a spouse, parent, sibling, son, or daughter residing in that area,

(ii) provide for a mechanism whereby representatives of local affiliates of voluntary agencies regularly (not less often than quarterly) meet with representatives of State and local governments to plan and coordinate in advance of their arrival the appropriate placement of refugees among the various States and localities, and

(iii) take into account—

(I) the proportion of refugees and comparable entrants in the population in the area,

(II) the availability of employment opportunities, affordable housing, and public and private resources (including educational, health care, and mental health services) for refugees in the area,

(III) the likelihood of refugees placed in the area becoming self-sufficient and free from long-term dependence on public assistance, and

(IV) the secondary migration of refugees to and from the area that is likely to occur.

(D) With respect to the location of placement of refugees within a State, the Federal agency administering subsection (b)(1) of this section shall, consistent with such policies and strategies and to the maximum extent possible, take into account recommendations of the State.

[*See main edition for text of (3)*]

(4)(A) No grant or contract may be awarded under this section unless an appropriate proposal and application (including a description of the agency's ability to perform the services specified in the proposal) are submitted to, and approved by, the appropriate administering official. Grants and contracts under this section shall be made to those agencies which the appropriate administering official determines can best perform the services. Payments may be made for activities authorized under this subchapter in advance or by way of reimbursement. In carrying out this section, the Director, the Secretary of State, and any such other appropriate administering official are authorized—

(i) to make loans, and

(ii) to accept and use money, funds, property, and services of any kind made available by gift, devise, bequest, grant, or otherwise for the purpose of carrying out this section.

(B) No funds may be made available under this subchapter (other than under subsection (b)(1) of this section) to States or political subdivisions in the form of block grants, per capita grants, or similar consolidated grants or contracts. Such funds shall be made available under separate grants or contracts—

(i) for medical screening and initial medical treatment under subsection (b)(5) of this section,

(ii) for services for refugees under subsection (c)(1) of this section,

(iii) for targeted assistance project grants under subsection (c)(2) of this section, and

(iv) for assistance for refugee children under subsection (d)(2) of this section.

(C) The Director may not delegate to a State or political subdivision his authority to review or approve grants or contracts under this subchapter or the terms under which such grants or contracts are made.

[*See main edition for text of (5) to (8)*]

(9) The Secretary, the Secretary of Education, the Attorney General, and the Secretary of State may issue such regulations as each deems appropriate to carry out this subchapter.

[*See main edition for text of (10)*]

(b) Program of initial resettlement

(1)(A) For--

(i) fiscal years 1980 and 1981, the Secretary of State is authorized, and

(ii) fiscal year 1982 and succeeding fiscal years, the Director (except as provided in subparagraph (B)) is authorized,

to make grants to, and contracts with, public or private nonprofit agencies for initial resettlement (including initial reception and placement with sponsors) of refugees in the United States. Grants to, or contracts with, private nonprofit voluntary agencies under this paragraph shall be made consistent with the objectives of this subchapter, taking into account the different resettlement approaches and practices of such agencies. Resettlement assistance under this paragraph shall be provided in coordination with the Director's provision of other assistance under this subchapter. Funds provided to agencies under such grants and contracts may only be obligated or expended during the fiscal year in which they are provided (or the subsequent fiscal year or such subsequent fiscal period as the Federal contracting agency may approve) to carry out the purposes of this subsection.

(B) If the President determines that the Director should not administer the program under this paragraph, the authority of the Director under the first sentence of subparagraph (A) shall be exercised by such officer as the President shall from time to time specify.

[*See main edition for text of (2) to (5)*]

(6) The Comptroller General shall directly conduct an annual financial audit of funds expended under each grant or contract made under paragraph (1) for fiscal year 1986 and for fiscal year 1987.

(7) Each grant or contract with an agency under paragraph (1) shall require the agency to do the following:

(A) To provide quarterly performance and financial status reports to the Federal agency administering paragraph (1).

(B)(i) To provide, directly or through its local affiliate, notice to the appropriate county or other local welfare office at the time that the agency becomes aware that a refugee is offered employment and to provide notice to the refugee that such notice has been provided, and

(ii) upon request of such a welfare office to which a refugee has applied for cash assistance, to furnish that office with documentation respecting any cash or other resources provided directly by the agency to the refugee under this subsection.

(C) To assure that refugees, known to the agency as having been identified pursuant to paragraph (4)(B) as having medical conditions affecting the public health and requiring treatment, report to the appropriate county or other health agency upon their resettlement in an area.

(D) To fulfill its responsibility to provide for the basic needs (including food, clothing, shelter, and transportation for job interviews and training) of each refugee resettled and to develop and implement a resettlement plan including the early employment of each refugee resettled and to monitor the implementation of such plan.

(E) To transmit to the Federal agency administering paragraph (1) an annual report describing the following:

(i) The number of refugees placed (by county of placement) and the expenditures made in the year under the grant or contract, including the proportion of such expenditures used for administrative purposes and for provision of services.

(ii) The proportion of refugees placed by the agency in the previous year who are receiving cash or medical assistance described in subsection (e) of this section.

(iii) The efforts made by the agency to monitor placement of the refugees and the activities of local affiliates of the agency.

(iv) The extent to which the agency has coordinated its activities with local social service providers in a manner which avoids duplication of activities and has provided notices to local welfare offices and the reporting of medical conditions of certain aliens to local health departments in accordance with subparagraphs (B)(i) and (C).

(v) Such other information as the agency administering paragraph (1) deems to be appropriate in monitoring the effectiveness of agencies in carrying out their functions under such grants and contracts.

The agency administering paragraph (1) shall promptly forward a copy of each annual report transmitted under subparagraph (E) to the Committees on the Judiciary of the House of Representatives and of the Senate.

(8) The Federal agency administering paragraph (1) shall establish criteria for the performance of agencies under grants and contracts under that paragraph, and shall include criteria relating to an agency's—

(A) efforts to reduce welfare dependency among refugees resettled by that agency,

(B) collection of travel loans made to refugees resettled by that agency for travel to the United States,

(C) arranging for effective local sponsorship and other nonpublic assistance for refugees resettled by that agency,

(D) cooperation with refugee mutual assistance associations, local social service providers, health agencies, and welfare offices,

(E) compliance with the guidelines established by the Director for the placement and resettlement of refugees within the United States, and

(F) compliance with other requirements contained in the grant or contract, including the reporting and other requirements under subsection (b)(7) of this section.

The Federal administering agency shall use the criteria in the process of awarding or renewing grants and contracts under paragraph (1).

(c) Project grants and contracts for services for refugees

(1)(A) The Director is authorized to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—

(i) to assist refugees in obtaining the skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other recertification services;

(ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and

(iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services.

(B) The funds available for a fiscal year for grants and contracts under subparagraph (A) shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year.

(C) Any limitation which the Director establishes on the proportion of funds allocated to a State under this paragraph that the State may use for services other than those described in subsection (a)(1)(B)(ii) of this section shall not apply if the Director receives a plan (established by or in consultation with local governments) and determines that the plan provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 1516 of title 29.

(2)(A) The Director is authorized to make grants to States for assistance to counties and similar areas in the States where, because of factors such as unusually large refugee populations (including secondary migration), high refugee concentrations, and high use of public assistance by refugees, there exists and can be demonstrated a specific need for supplementation of available resources for services to refugees.

(B) Grants shall be made available under this paragraph—

(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency,

(ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity.

(d) Assistance for refugee children

(1) The Secretary of Education is authorized to make grants, and enter into contracts, for payments for projects to provide special educational services (including English language training) to refugee children in elementary and secondary schools where a demonstrated need has been shown.

[*See main edition for text of* (2)]

(e) Cash assistance and medical assistance for refugees

[*See main edition for text of* (1)]

(2)(A) Cash assistance provided under this subsection to an employable refugee is conditioned, except for good cause shown—

(i) on the refugee's registration with an appropriate agency providing employment services described in subsection (c)(1)(A)(i) of this section, or, if there is no such agency available, with an appropriate State or local employment service;

(ii) on the refugee's participation in any available and appropriate social service or targeted assistance program (funded under subsection (c) of this section) providing job or

language training in the area in which the refugee resides; and

(iii) on the refugee's acceptance of appropriate offers of employment.

[*See main edition for text of (B)*]

(C) In the case of a refugee who—

(i) refuses an offer of employment which has been determined to be appropriate either by the agency responsible for the initial resettlement of the refugee under subsection (b) of this section or by the appropriate State or local employment service,

(ii) refuses to go to a job interview which has been arranged through such agency or service, or

(iii) refuses to participate in a social service or targeted assistance program referred to in subparagraph (A)(ii) which such agency or service determines to be available and appropriate,

cash assistance to the refugee shall be terminated (after opportunity for an administrative hearing) for a period of three months (for the first such refusal) or for a period of six months (for any subsequent refusal).

[*See main edition for text of (3) to (6)*]

(7)(A) The Secretary shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers. The Secretary may permit alternative projects to cover specific groups of refugees who have been in the United States 36 months or longer if the Secretary determines that refugees in the group have been significantly and disproportionately dependent on welfare and need the services provided under the project in order to become self-sufficient and that their coverage under the projects would be cost-effective.

(B) Refugees covered under such alternative projects shall be precluded from receiving cash or medical assistance under any other paragraph of this subsection or under title XIX or part A of title IV of the Social Security Act [42 U.S.C. 1396 et seq., 601 et seq.].

(C) The Secretary, in consultation with the United States Coordinator for Refugee Affairs, shall report to Congress not later than October 31, 1985, on the results of these projects and on any recommendations respecting changes in the refugee assistance program under this section to take into account such results.

(D) To the extent that the use of such funds is consistent with the purposes of such provisions, funds appropriated under paragraph (1) or (2) of section 1524(a) of this title, part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], or title XIX of such Act [42 U.S.C. 1396 et seq.], may be used for the purpose of implementing and evaluating alternative projects under this paragraph.

(8) In its provision of assistance to refugees, a State or political subdivision shall consider the recommendations of, and assistance provided by, agencies with grants or contracts under subsection (b)(1) of this section.

(f) Assistance to States and counties for incarceration of certain Cuban nationals

(1) The Attorney General shall pay compensation to States and to counties for costs incurred by the States and counties to confine in prisons, during the fiscal year for which such payment is made, nationals of Cuba who—

(A) were paroled into the United States in 1980 by the Attorney General,

(B) after such parole committed any violation of State or county law for which a term of imprisonment was imposed, and

(C) at the time of such parole and such violation were not aliens lawfully admitted to the United States—

(i) for permanent residence, or

(ii) under the terms of an immigrant or a nonimmigrant visa issued,

under this chapter.

(2) For a State or county to be eligible to receive compensation under this subsection, the chief executive officer of the State or county shall submit to the Attorney General, in accordance with rules to be issued by the Attorney General, an application containing—

(A) the number and names of the Cuban nationals with respect to whom the State or county is entitled to such compensation, and

(B) such other information as the Attorney General may require.

(3) For a fiscal year the Attorney General shall pay the costs described in paragraph (1) to each State and county determined by the Attorney General to be eligible under paragraph (2); except that if the amounts appropriated for the fiscal year to carry out this subsection are insufficient to cover all such payments, each of such payments shall be ratably reduced so that the total of such payments equals the amounts so appropriated.

(4) The authority of the Attorney General to pay compensation under this subsection shall be effective for any fiscal year only to the extent and in such amounts as may be provided in advance in appropriation Acts.

(g) Priority for removal and return to Cuba of certain Cuban nationals

It shall be the policy of the United States Government that the President, in consultation with the Attorney General and all appropriate Federal, State, and county officials referred to in section 13 of this Act,[1] shall place top priority on seeking the expeditious removal from this country and the return to Cuba of such persons defined in subsection (f)(1) of this section by any reasonable and responsible means, and to this end the Attorney General may use the funds hereafter authorized by this section to conduct such policy.

(As amended Nov. 22, 1983, Pub. L. 98-164, title X, § 1011(b), 97 Stat. 1061; Oct. 12, 1984, Pub. L. 98-473, title I, § 101(d), 98 Stat. 1876, 1877; Nov.

[1] See References in Text note below.

6, 1986, Pub. L. 99-605, §§ 3-5(c), 6(a), (b), (d), 8, 9(a), (b), 10, 12, 13, 100 Stat. 3449-3451, 3453-3455.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (d)(2)(B)(i), (e)(4), (5), (7)(B), (D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts A and B of title IV of the Social Security Act are classified generally to part A (§ 601 et seq.) and part B (§ 620 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Titles XVI and XIX of the Social Security Act are classified generally to subchapters XVI (§ 1381 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 13 of this Act, referred to in subsec. (g), does not correspond to any provision in the Immigration and Nationality Act, act June 27, 1952, ch. 477, and probably refers to section 13 of the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605) which enacted subsecs. (f) and (g) of this section.

AMENDMENTS

1986—Subsec. (a)(2)(A). Pub. L. 99-605, § 4(1), inserted "and the Federal agency administering subsection (b)(1) of this section" after "The Director", "(not less often than quarterly)" after "shall consult regularly", and "before their placement in those States and localities" after "States and localities".

Subsec. (a)(2)(C)(iii). Pub. L. 99-605, § 4(2), added cl. (iii).

Subsec. (a)(2)(D). Pub. L. 99-605, § 4(3), added subpar. (D).

Subsec. (a)(4). Pub. L. 99-605, § 12, designated existing provision as subpar. (A), and in subpar. (A) as so designated, redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpars. (B) and (C).

Subsec. (a)(9). Pub. L. 99-605, § 3(b), inserted ", the Secretary of Education, the Attorney General," after "The Secretary".

Subsec. (b)(1)(A). Pub. L. 99-605, § 5(b)(2), struck out provisions which related to requirement in grants and contracts that agency provide notice to appropriate welfare office that refugee is offered employment, provide notice to the refugee about notice to the welfare office, and assure that refugees with medical conditions affecting public health and requiring treatment report to appropriate health agency in area of resettlement.

Subsec. (b)(6). Pub. L. 99-605, § 5(a), amended par. (6) generally, substituting "shall directly conduct an annual financial audit" for "shall conduct an annual audit", and "grant or contract made under paragraph (1) for fiscal year 1986 and for fiscal year 1987" for "grants and contracts made under this subsection".

Subsec. (b)(7). Pub. L. 99-605, § 5(b)(1), added par. (7).

Subsec. (b)(8). Pub. L. 99-605, § 5(c), added par. (8).

Subsec. (c)(1). Pub. L. 99-605, § 6(a), designated existing provision as par. (1)(A), and in par. (1)(A) as so designated, redesignated pars. (1) to (3) as cls. (i) to (iii), respectively, and added subpar. (B).

Subsec. (c)(1)(C). Pub. L. 99-605, § 6(b), added subpar. (C).

Subsec. (c)(2). Pub. L. 99-605, § 8(a), added par. (2).

Subsec. (d)(1). Pub. L. 99-605, § 3(a), substituted "Secretary of Education" for "Director".

Subsec. (e)(2)(A). Pub. L. 99-605, § 9(a)(1), struck out provisions, following cl. (iii), which related to termination of cash assistance to refugee with month in which refugee refuses offer of employment or participation in social service program.

Subsec. (e)(2)(A)(i). Pub. L. 99-605, § 6(d), substituted "(c)(1)(A)(i)" for "(c)(1)".

Subsec. (e)(2)(A)(ii). Pub. L. 99-605, § 8(b), inserted "or targeted assistance" after "social service".

Subsec. (e)(2)(C). Pub. L. 99-605, § 9(a)(2), added subpar. (C).

Subsec. (e)(7)(A). Pub. L. 99-605, § 10, added provisions which related to alternative projects for specific groups of refugees in the United States 36 months or longer if determined to be disproportionately dependent on welfare.

Subsec. (e)(8). Pub. L. 99-605, § 9(b), added par. (8).

Subsecs. (f), (g). Pub. L. 99-605, § 13, added subsecs. (f) and (g).

1984—Subsec. (e)(7). Pub. L. 98-473 added par. (7).

1983—Subsec. (b)(1)(B). Pub. L. 98-164 struck out first sentence directing the President to provide for a study of which agency is best able to administer the program of initial resettlement and to report to the Congress, not later than Mar. 1, 1981, on that study, and "after such study" after "If the President determines".

EFFECTIVE DATE OF 1986 AMENDMENT

Section 5(d) of Pub. L. 99-605 provided that:

"(1) Section 412(b)(7) (other than subparagraphs (B)(i), (C), and (D)) of the Immigration and Nationality Act [8 U.S.C. 1522(b)(7)], as added by subsection (b)(1) of this section, shall apply to grants and contracts made or renewed after the end of the 30-day period beginning on the date of the enactment of this Act [Nov. 6, 1986].

"(2) Section 412(b)(7)(D) of the Immigration and Nationality Act [8 U.S.C. 1522(b)(7)], as added by subsection (b)(1) of this section, shall apply to grants and contracts made or renewed after the end of the six-month period beginning on the date of the enactment of this Act [Nov. 6, 1986].

"(3) The criteria required under the amendment made by subsection (c) [enacting subsec. (b)(8) of this section] shall be established not later than 60 days after the date of the enactment of this Act [Nov. 6, 1986]."

Section 6(c) of Pub. L. 99-605 provided that: "The amendment made by subsection (a) [amending subsec. (c) of this section] shall apply to allocations of funds for fiscal years beginning with fiscal year 1987."

Section 9(c) of Pub. L. 99-605 provided that: "The amendments made by subsection (a) of this section [amending subsec. (e)(2) of this section] shall apply to aliens entering the United States as refugees on or after the first day of the first calendar quarter that begins more than 90 days after the date of the enactment of this Act [Nov. 6, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 101(d) of Pub. L. 98-473 provided in part that: "The amendment made by this paragraph [enacting subsec. (c)(7) of this section] shall take effect on October 1, 1984."

MAINTAINING FUNDING LEVEL OF MATCHING GRANT PROGRAM

Section 7 of Pub. L. 99-605 provided that:

"(a) MAINTAINING FUNDING LEVEL.—Subject to the availability of appropriations, the Director of the Office of Refugee Resettlement shall not reduce the maximum average Federal contribution level per refugee in the matching grant program and shall not increase the percentage grantee matching requirement under that program below the level, or above the percentage, in effect under the program for grants in fiscal year 1985.

"(b) MATCHING GRANT PROGRAM.—The 'matching grant program' referred to in subsection (a) is the voluntary agency program which is known as the matching grant program and is funded under section 412(c) of the Immigration and Nationality Act [8 U.S.C. 1522(c)]."

CROSS REFERENCES

Reimbursement of States for costs of incarcerating illegal aliens and certain Cuban nationals, see section 1365 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1523, 1524 of this title; title 42 section 1396s.

§ 1523. Congressional reports

(a) [*See main edition for text of (1)*]

(2) Each such report shall contain—

(A) an updated profile of the employment and labor force statistics for refugees who have entered the United States within the five-fiscal-year period immediately preceding the fiscal year within which the report is to be made and for refugees who entered earlier and who have shown themselves to be significantly and disproportionately dependent on welfare, as well as a description of the extent to which refugees received the forms of assistance or services under this subchapter during that period;

[*See main edition for text of (B) to (H); (b) to (d)*]

(As amended Nov. 6, 1986, Pub. L. 99-605, § 11, 100 Stat. 3455.)

AMENDMENTS

1986—Subsec. (a)(2)(A). Pub. L. 99-605 substituted "the United States within the five-fiscal-year period immediately preceding the fiscal year within which the report is to be made and for refugees who entered earlier and who have shown themselves to be significantly and disproportionately dependent on welfare" for "under this chapter since May 1975".

§ 1524. Authorization of appropriations

(a)(1) There are hereby authorized to be appropriated for each of fiscal years 1987 and 1988 such sums as may be necessary for the purpose of carrying out the provisions (other than those described in paragraphs (2) through (5)) of this chapter.

(2) There are hereby authorized to be appropriated for fiscal year 1987 $74,783,000 and for fiscal year 1988 $77,924,000 for the purpose of providing services with respect to refugees under section 1522(c)(1) of this title.

(3) There are hereby authorized to be appropriated for fiscal year 1987 $8,761,000 and for fiscal year 1988 $9,125,000 for the purpose of carrying out section 1522(b)(5) of this title.

(4) There are authorized to be appropriated for fiscal year 1987 $5,215,000 and for fiscal year 1988 $5,434,000 for the purpose of carrying out the provisions of section 1522(f) of this title.

[*See main edition for text of (b)*]

(As amended Nov. 6, 1986, Pub. L. 99-605, § 2, 100 Stat. 3449.)

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99-605, § 2(a), (b)(1), substituted "for each of fiscal years 1987 and 1988" for "for fiscal year 1983", and "(2) through (5)" for "(2) and (3)".

Subsec. (a)(2). Pub. L. 99-605, § 2(b)(2), amended par. (2) generally, substituting "1987 $74,783,000 and for fiscal year 1988 $77,924,000" for "1983 $100,000,000", and "1522(c)(1)" for "1522(c)".

Subsec. (a)(3). Pub. L. 99-605, § 2(b)(2), amended par. (3) generally, substituting "1987 $8,761,000 and for fiscal year 1988 $9,125,000" for "1983 $14,000,000".

Subsec. (a)(4). Pub. L. 99-605, § 2(b)(3), added par. (4).