

LEXSTAT 1-2 Bender's Immigration and Nationality Act Service Section 212, 8
U.S.C. 1182

Bender's Immigration and Nationality Act Service
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The Immigration and Nationality Act 8 U.S.C.

TITLE II IMMIGRATION

Chapter 2 Qualifications for Admission of Aliens: Travel Control of Citizens and
Aliens

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Section 212, 8 U.S.C. 1182 General Classes of Aliens Ineligible to Receive Visas
and Ineligible for Admission; Waivers of Inadmissibility 5

(a)--Classes of Aliens Ineligible for Visas or Admission

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

(1)--Health-Related Grounds

(A)--In General

Any alien--

(i)--

who is determined (in accordance with regulations prescribed by the Secretary of
Health and Human Services) to have a communicable disease of public health
significance, which shall include infection with the etiologic agent for
acquired immune deficiency syndrome,ⁿ⁶

(ii)--

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

(iii)--

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

(I)--

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

(II)--

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

(iv)--

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

is inadmissible.

(B)--Waiver Authorized

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

(C)--Exception from immunization requirement for adopted children 10 years of age or younger.n6.1

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

(i)--

is 10 years of age or younger,

(ii)--

is described in section 101(b)(1)(F), and

(iii)--

is seeking an immigrant visa as an immediate relative under section 201(b), if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the provisions of subparagraph (A)(ii) and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in such subparagraph.

(2)--Criminal and Related Grounds

(A)--Conviction of Certain Crimes

(i)--In General

Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of--

(I)--

a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II)--

n7 a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)),

is inadmissible.

(ii)--Exception

Clause (i)(I) shall not apply to an alien who committed only one crimen7.1 if--

(I)--

the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II)--

the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B)--Multiple Criminal Convictionsn8

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

(C)--Controlled Substance Traffickersn8.1

Any alien who the consular officer or the Attorney General knows or has reason to believe--

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(i)--

is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii)--

is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,

is inadmissible.

(D)--Prostitution and Commercialized Vice

Any alien who--

(i)--

is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii)--

directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

(iii)--

is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is inadmissible.

(E)--Certain Aliens Involved in Serious Criminal Activity Who Have Asserted Immunity from Prosecution

Any alien--

(i)--

who has committed in the United States at any time a serious criminal offense (as defined in section 101(h)),

(ii)--

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for whom immunity from criminal jurisdiction was exercised with respect to that offense,

(iii)--

who as a consequence of the offense and exercise of immunity has departed from the United States, and

(iv)--

who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense,

is inadmissible.

(F)--Waiver Authorized

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

(G)--Foreign Government Officials Who Have Engaged in Particularly Severe Violations of Religious Freedom^{n8.2}

Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time during the preceding 24-month period, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998, and the spouse and children, if any, are inadmissible.

(H)-- Significant Traffickers in Persons^{n8.3}

(i)--In General

Any alien who is listed in a report submitted pursuant to section 111(b) of the Trafficking Victims Protection Act of 2000 [sec. 111(b), div. A, Pub. L. No. 106-386], or who the consular officer or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the [sic] section 103 of such Act, is inadmissible.

(ii)--Beneficiaries of Trafficking

Except as provided in clause (iii), any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(iii)--Exception for Certain Sons and Daughters

Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.

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(I)-- Money Laundering^{n8.3a}

Any alien--

(i)--

who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of title 18, United States Code (relating to laundering of monetary instruments); or

(ii)--

who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;

is inadmissible.

(3)--Security and Related Grounds

(A)--In General

Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in--

(i)--

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

(ii)--

any other unlawful activity, or

(iii)--

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

is inadmissible.

(B)--Terrorist Activities

(i)--In General^{n8.4}

Any alien who--

(I)--

has engaged in a terrorist activity,

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(II)--

a consular officer or the Attorney General knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv)),

(III)--

has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity,

(IV)--

is a representative (as defined in clause (v)) of--

(aa)--

a foreign terrorist organization, as designated by the Secretary of State under section 219, or

(bb)--

a political, social or other similar group whose public endorsement of acts of terrorist activity the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities,

(V)--

is a member of a foreign terrorist organization, as designated by the Secretary under section 219, which the alien knows or should have known is a terrorist organizationn8.5 orn8.5a

(VI)--

has used the alien's position of prominence within any country to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities, orn8.5b

(VII)--

is the spouse or child of an alien who is inadmissible under this section, if the activity causing the alien to be found inadmissible occurred within the last 5 years,n8.5c

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

(ii)-- Exceptionn8.5d

Subclause (VII) of clause (i) does not apply to a spouse or child--

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(I)--

who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(II)--

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

(iii)--Terrorist Activity Definedn8.5e

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

(I)--

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

(II)--

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

(III)--

A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

(IV)--

An assassination.

(V)--

The use of any--(a) biological agent, chemical agent, or nuclear weapon or device, or (b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI)--

A threat, attempt, or conspiracy to do any of the foregoing.

(iv)--Engage in Terrorist Activity Definedn8.5f

As used in this chapter, the term "engage in terrorist activity" means, in an individual capacity or as a member of an organization--

(I)--

to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

(II)--

to prepare or plan a terrorist activity;

(III)--

to gather information on potential targets for terrorist activity;

(IV)--

to solicit funds or other things of value for--

(aa)--

a terrorist activity;

(bb)--

a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc)--

a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate that he did not know, and should not reasonably have known, that the solicitation would further the organization's terrorist activity;

(V)--

to solicit any individual--

(aa)--

to engage in conduct otherwise described in this clause;

(bb)--

for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc)--

for membership in a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate that he did not know, and should not reasonably have known, that the solicitation would further the organization's terrorist activity; or

(VI)--

to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training--

(aa)--

for the commission of a terrorist activity;

(bb)--

to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

(cc)--

to a terrorist organization described in clause (vi)(I) or (vi)(II); or

(dd)--

to a terrorist organization described in clause (vi)(III), unless the actor can demonstrate that he did not know, and should not reasonably have known, that the act would further the organization's terrorist activity.

This clause shall not apply to any material support the alien afforded to an organization or individual that has committed terrorist activity, if the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, concludes in his sole unreviewable discretion, that this clause should not apply.

(v)--Representative Definedn8.5g

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

(vi)--Terrorist Organization Definedn8.5h

As used in clause (i)(VI) and clause (iv), the term ''terrorist organization'' means an organization--

(I)--

designated under section 219;

(II)--

otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General, as a terrorist organization, after finding that the organization engages in the

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activities described in subclause (I), (II), or (III) of clause (iv), or that the organization provides material support to further terrorist activity; or

(III)--

that is a group of two or more individuals, whether organized or not, which engages in the activities described in subclause (I), (II), or (III) of clause (iv).

(C)--Foreign Policy

(i)--In General

An alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is excludable.

(ii)--Exception for Officials

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

(iii)--Exception for Other Aliens

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

(iv)--Notification of Determinations

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

(D)--Immigrant Membership in Totalitarian Party

(i)--In General

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

(ii)--Exception for Involuntary Membership

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

(iii)--Exception for Past Membership

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

(I)--

the membership or affiliation terminated at least--

(a)--

2 years before the date of such application, or

(b)--

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

(II)--

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

(iv)--Exception for Close Family Members

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

(E)--Participants in Nazi Persecutions or Genocide

(i)--Participation in Nazi Persecutions

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

(I)--

the Nazi government of Germany,

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(II)--

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

(III)--

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

(IV)--

any government which was an ally of the Nazi government of Germany,

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

(ii)--Participation in Genocide

Any alien who has engaged in conduct that is defined as genocide for purposes of the International Convention on the Prevention and Punishment of Genocide is inadmissible.

(F)--Association with Terrorist Organizationsn8.5i

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

(4)--Public Charge

(A)--In General

Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.n9

(B)--Factors to be Taken into Account

(i)--

In determining whether an alien is excludable under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's--

(I)--

age;

(II)--

health;

(III)--

family status;

(IV)--

assets, resources, and financial status; and

(V)--

education and skills.

(ii)--

In addition to the factors under clause (i), the consular officer or the Attorney General may also consider any affidavit of support under section 213A for purposes of exclusion under this paragraph.

(C)--Family-Sponsored Immigrants

Any alien who seeks admission or adjustment of status under a visa number issued under section 201(b)(2) or 203(a) is excludable under this paragraph unless--

(i)--

the alien has obtained--

(I)--

status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A), or

(II)--

classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B); or

(ii)--

n9.1 the person petitioning for the alien's admission (and any additional sponsor required under section 213A(f) or any alternative sponsor permitted under paragraph (5)(B) of such section) has executed an affidavit of support described in section 213A with respect to such alien.

(D)--Certain Employment-Based Immigrants

Any alien who seeks admission or adjustment of status under a visa number issued under section 203(b) by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is excludable under this paragraph unless such relative has executed an affidavit of support described in section 213A with respect to such alien.

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(5)--Labor Certification and Qualifications for Certain Immigrantsn9.2

(A)--Labor Certification

(i)--In General

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

(I)--

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

(II)--

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

(ii)--Certain Aliens Subject to Special Rule

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

(I)--

is a member of the teaching profession, or

(II)--

has exceptional ability in the sciences or the arts.

(iii)--Professional Athletes

(I)--In General

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

(II)--Definition

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

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

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

(iv)-- Long Delayed Adjustment Applicantsn10

A certification made under clause (i) with respect to an individual whose petition is covered by section 204(j) shall remain valid with respect to a new job accepted by the individual after the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the certification was issued.

(B)--Unqualified Physicians

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

(C)--Uncertified Foreign Health-Care Workers

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

(i)--

the alien's education, training, license, and experience--

(I)--

meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;

(II)--

are comparable with that required for an American health-care worker of the same type; and

(III)--

are authentic and, in the case of a license, unencumbered;

(ii)--

the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and

(iii)--

if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test or has passed such an examination.

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

(D)--Application of Grounds

The grounds of inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 203(b).

(6)--Illegal Entrants and Immigration Violators

(A)--Aliens Present Without Permission or Parolen10.1

(i)--In General

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

(ii)--Exception for Certain Battered Women and Childrenn10.2

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

(I)--

the alien qualifies for immigrant status under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 204(a)(1),

(II)--

(a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or (b) the alien's child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the

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spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and

(III)--

there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States.

(B)--Failure to Attend Removal Proceedingn10.3

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

(C)--Misrepresentation

(i)--In General

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.n11

(ii)--Falsely Claiming Citizenshipn11.1

(I)-- In general

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II)-- Exception

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

(iii)--Waiver Authorized

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

(D)--Stowaways

Any alien who is a stowaway is inadmissible.

(E)--Smugglersn12

(i)--In General

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

(ii)--Special Rule in the Case of Family Reunificationⁿ¹³

Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii)--Waiver Authorized

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

(F)--Subject of Civil Penalty

(i)--In General

An alien who is the subject of a final order for violation of section 274C is inadmissible.

(ii)--Waiver Authorized

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

(G)--Student Visa Abusersⁿ¹⁴

An alien who obtains the status of a nonimmigrant under section 101(a)(15)(F)(i) and who violates a term or condition of such status under section 214(I) is excludable until the alien has been outside the United States for a continuous period of 5 years after the date of the violation.

(7)--Documentation Requirements

(A)--Immigrants

(i)--In General

Except as otherwise specifically provided in this Act, any immigrant at the time of application for admission--

(I)--

who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the

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regulations issued by the Attorney General under section 211(a), or

(II)--

whose visa has been issued without compliance with the provisions of section 203,

is excludable.

(ii)--Waiver Authorized

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

(B)--Nonimmigrants

(i)--In General

Any nonimmigrant who--

(I)--

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

(II)--

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

is inadmissible.

(ii)--General Waiver Authorized

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

(iii)--Guam Visa Waiver

For provision authorizing waiver of clause (i) in the case of visitors to Guam, see subsection (l).

(iv)--Visa Waiver Programn14.1

For authority to waive the requirement of clause (i) under a program, see section 217.

(8)--Ineligible for Citizenship

(A)--In General

Any immigrant who is permanently ineligible to citizenship is inadmissible.

(B)--Draft Evadersn15

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

(9)--Aliens Previously Removed

(A)--Certain Aliens Previously Removed

(i)--Arriving Aliens

Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii)--Other Aliens

Any alien not described in clause (i) who--

(I)--

has been ordered removed under section 240 or any other provision of law, or

(II)--

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

(iii)--Exception

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

(B)--Aliens Unlawfully Present

(i)--In General

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

(I)--

was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II)--

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

(ii)--Construction of Unlawful Presence

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

(iii)--Exceptions

(I)--Minors

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

(II)--Asylees

No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

(III)--Family Unity

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

(IV)--Battered Women and Children

Clause (i) shall not apply to an alien who would be described in paragraph (6)(A)(ii) if 'violation of the terms of the alien's nonimmigrant visa' were substituted for 'unlawful entry into the United States' in subclause (III) of that paragraph.

(iv)--Tolling for Good Cause

In the case of an alien who--

(I)--

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has been lawfully admitted or paroled into the United States,

(II)--

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

(III)--

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

(v)--Waiver

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

(C)--Aliens Unlawfully Present After Previous Immigration Violations

(i)--In General

Any alien who--

(I)--

has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II)--

has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

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

(ii)--Exceptionn15.1

Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission. The Attorney General in the Attorney General's discretion may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Attorney General has granted

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classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between--

(1)--

the alien's having been battered or subjected to extreme cruelty; and

(2)--

the alien's--

(A)--

removal;

(B)--

departure from the United States;

(C)--

reentry or reentries into the United States; or

(D)--

attempted reentry into the United States.

(10)--Miscellaneous

(A)--Practicing Polygamists

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

(B)--Guardian Required to Accompany Helpless Alien

Any alien--

(i)--

who is accompanying another alien who is inadmissible and who is certified to be helpless from sickness, mental or physical disability, or infancy pursuant to section 232(c), and

(ii)--

whose protection or guardianship is determined to be required by the alien described in clause (i),

is inadmissible.

(C)--International Child Abduction

(i)--In Generaln16

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

(ii)--Aliens supporting abductors and relatives of abductorn17

Any alien who--

(I)--

is known by the Secretary of State to have intentionally assisted an alien in the conduct described in clause (i),

(II)--

is known by the Secretary of State to be intentionally providing material support or safe haven to an alien described in clause (i), or

(III)--

is a spouse (other than the spouse who is the parent of the abducted child), child (other than the abducted child), parent, sibling, or agent of an alien described in clause (i), if such person has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion, is inadmissible until the child described in clause (i) is surrendered to the person granted custody by the order described in that clause, and such person and child are permitted to return to the United States or such person's place of residence.

(iii)--Exceptionsn17.1

Clauses (i) and (ii) shall not apply--

(I)--

to a government official of the United States who is acting within the scope of his or her official duties;

(II)--

to a government official of any foreign government if the official has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion; or

(III)--

so long as the child is located in a foreign state that is a party to the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.

(D)--Unlawful Votersn17.2

(i)-- In general

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

(ii)--Exception

In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such violation.

(E)--Former Citizens who Renounced Citizenship to Avoid Taxation

Any alien who is a former citizen of the United States who officially renounces United States citizenship and who is determined by the Attorney General to have renounced United States citizenship for the purpose of avoiding taxation by the United States is excludable.

[See Note 1 at the end of *INA § 212.*]

(b)--Notices of Denialsn18

(1)--

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

(A)--

states the determination, and

(B)--

lists the specific provision or provisions of law under which the alien is inadmissiblen19 or adjustment of status.

(2)--

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

(3)--

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

(c)--[*Repealed.*]n20

(d)--Temporary Admission of Nonimmigrantsn21

(1)--

The Attorney General shall determine whether a ground for exclusion exists with respect to a nonimmigrant described in section 101(a)(15)(S). The Attorney General, in the Attorney General's discretion, may waive the application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 101(a)(15)(S), if the Attorney General considers it to be in the national interest to do so. Nothing in this section shall be regarded as prohibiting the Immigration and Naturalization Service from instituting removal proceedings against an alien admitted as a nonimmigrant under section 101(a)(15)(S) for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General, prior to the alien's admission and a nonimmigrant under section 101(a)(15)(S).

(2)--

[*Repealed.*]

(3)--

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

(4)--

Either or both of the requirements of paragraph (7)(B)(i) of subsection (a) may be waived by the Attorney General and the Secretary of State acting jointly

(A)--

on the basis of unforeseen emergency in individual cases, or

(B)--

on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals, or

(C)--

in the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in section 238(c).

(5)--

(A)--

n22 The Attorney General may, except as provided in subparagraph (B) or in section 214(f), in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(B)--

n23 The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.

(6)--

[Repealed]

(7)--

The provisions of subsection (a) (other than paragraph (7)) shall be applicable to any alien who shall leave Guam, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States. Any alien described in this paragraph, who is denied admission to the United States, shall be immediately removed in the manner provided by section 241(c) of this Act.

(8)--

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

(9) --

[*Repealed*]

(10) --

[*Repealed*]

(11) --

n24 The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action wasn25 the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(12) --

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

(A) --

in the case of an alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation or removal and who is otherwise admissible to the United States as a returning resident under section 211(b), and

(B) --

in the case of an alien seeking admission or adjustment of status under section 201(b)(2)(A) or under section 203(a),

if no previous civil money penalty was imposed against the alien under section 274C and the offense was committed solely to assist, aid, or support the alien's spouse or child (and not another individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this paragraph.

(13) -- n25.1

(A) --

The Attorney General shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(T).

(B)--

In addition to any other waiver that may be available under this section, in the case of a nonimmigrant described in *section 101(a)(15)(T)*, if the Attorney General considers it to be in the national interest to do so, the Attorney General, in the Attorney General's discretion, may waive the application of--

(i)--

paragraphs (1) and (4) of subsection (a); and

(ii)--

any other provision of such subsection (excluding paragraphs (3), (10)(C), and (10(E)) if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in *section 101(a)(15)(T)(i)(I)*.

(13)--

n25.2 The Attorney General shall determine whether a ground of inadmissibility exists with respect to a nonimmigrant described in *section 101(a)(15)(U)*. The Attorney General, in the Attorney General's discretion, may waive the application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in *section 101(a)(15)(U)*, if the Attorney General considers it to be in the public or national interest to do so.

(e)--Educational Visitor Status; Foreign Residence Requirement; Waiver n26

No person admitted under *section 101(a)(15)(J)* 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 101(a)(15)(J)* was a national or resident of a country which the Director of the United States Information Agency, n27 pursuant to regulations proscribed 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, n29 shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under *section 101(a)(15)(H)* or *section 101(a)(15)(L)* until it is established that such person has resided and been physically present in the country of his nationality or his last residence n30 for an aggregate of at least two years following departure from the United States: *Provided*, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), n31 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,ⁿ³² the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(k):ⁿ³³ And provided further,ⁿ³⁴ that, except in the case of an alien described in clause (iii),ⁿ³⁵ the Attorney General may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

(f)--Suspension of Entry or Imposition of Restrictions by President

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

(g)--Bond and Conditions for Admission for Permanent Residence of Mentally Retarded, Tubercular, and Mentally Ill but Cured Aliensⁿ³⁷

The Attorney General may waive the application of--

(1)--

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

(A)--

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

(B)--

has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe; or

(C)--

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qualifies for classification under clause (iii) or (iv) of section 204(a)(1)(A) or classification under clause (ii) or (iii) of section 204(a)(1)(B);

(2)--

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

(A)--

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

(B)--

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

(C)--

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

(3)--

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

(h)--Waiver of Subsection (a)(2)(A)(i)(I), (II), (B), (D) and (E)n38

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

(1)--

(A)--

in the case of any immigrant it is established to the satisfaction of the Attorney General that--

(i)--

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

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(ii)--

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

(iii)--

the alien has been rehabilitated; or

(B)--

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

(C)--

the alien qualifies for classification under clause (iii) or (iv) of section 204(a)(1)(A) or classification under clause (ii) or (iii) of section 204(a)(1)(B); and

(2)--

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

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.n39

(i)--Admission of Immigrant Excludable for Fraud or Willful Misrepresentation of Material Factn40

(1)--

The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the refusal of admission to the United

States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

(2)--

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

(j)--Limitation on Immigration of Foreign Medical Graduatesn41

(1)--

The additional requirements referred to in section 101(a)(15)(J) of this title for an alien who is coming to the United States under a program under which he will receive graduate medical education or training are as follows,

(A)--

A school of medicine or of one of the other health professions, which is accredited by a body or bodies approved for the purpose by the Secretary of Education, has agreed in writing to provide the graduate medical education or training under the program for which the alien is coming to the United States or to assume responsibility for arranging for the provision thereof by an appropriate public or nonprofit private institution or agency, except that, in the case of such an agreement by a school of medicine, any one or more of its affiliated hospitals which are to participate in the provision of the graduate medical education or training must join in the agreement.

(B)--

n43 Before making such agreement, the accredited school has been satisfied that the alien (i) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States); or (ii)(I) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services, (II) has competency in oral and written English, (III) will be able to adapt to the educational and cultural environment in which he will be receiving his education or training, and (IV) has adequate prior education and training to participate satisfactorily in the program for which he is coming to the United States. For the purposesn44 of this subparagraph, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C)--

The alien has made a commitment to return to the country of his nationality or last residence upon completion of the education or training for which he is

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coming to the United States, and the government of the country of his nationality or last residence has provided a written assurance, satisfactory to the Secretary of Health and Human Services, that there is a need in that country for persons with the skills the alien will acquire in such education or training.

(D)--

n45 The duration of the alien's participation in the program of graduate medical education or training for which the alien is coming to the United States is limited to the time typically required to complete such program, as determined by the Director of the United States Information Agency at the time of the alien's admission into the United States, based on criteria which are established in coordination with the Secretary of Health and Human Services and which take into consideration the published requirements of the medical specialty board which administers such education or training program; except that--

(i)--

such duration is further limited to seven years unless the alien has demonstrated to the satisfaction of the Director that the country to which the alien will return at the end of such specialty education or training has an exceptional need for an individual trained in such specialty, and

(ii)--

the alien may, once and not later than two years after the date the alien is admitted to the United States as an exchange visitor or acquires exchange visitor status, change the alien's designated program of graduate medical education or training if the Director approves the change and if a commitment and written assurance with respect to the alien's new program have been provided in accordance with subparagraph (C);

(E)--

n46 The alien furnishes the Attorney General each year with an affidavit (in such form as the Attorney General shall prescribe) that attests that the alien (i) is in good standing in the program of graduate medical education or training in which the alien is participating, and (ii) will return to the country of his nationality or last residence upon completion of the education or training for which he came to the United States.

(2)--

n47 An alien who is a graduate of a medical school and who is coming to the United States to perform services as a member of the medical profession may not be admitted as a nonimmigrant under section 101(a)(15)(H)(i)(b) unless--

(A)--

the alien 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

(B)--

(i)--

the alien has passed the Federation licensing examination (administered by the Federation of State Medical Boards of the United States) or an equivalent examination as determined by the Secretary of Health and Human Services, and

(ii)--

(I)--

has competency in oral and written English or

(II)--

is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States).

(3)--

n48 The Director of the United States Information Agency annually shall transmit to the Congress a report on aliens who have submitted affidavits described in paragraph (1)(E), and shall include in such report the name and address of each such alien, the medical education or training program in which such alien is participating, and the status of such alien in that program.

(k)--Attorney General's Discretion to Admit Otherwise Excludable Aliens Who Possess Immigrant Visasn49

Any alien, inadmissible fromn50 the United States under paragraph (5)(A) or (7)(A)(i) of subsection (a), who is in possession of an immigrant visa may, if otherwise admissible, be admitted in the discretion of the Attorney General if the Attorney General is satisfied that exclusion was not known to, and could not have been ascertained by the exercise of reasonable diligence by, the immigrant before the time of departure of the vessel or aircraft from the last port outside the United States and outside foreign contiguous territory or, in the case of an immigrant coming from foreign contiguous territory, before the time of the immigrant's application for admission.

(l)--Guam; Waiver of Requirement; Nonimmigrant Visitorsn51

(1)--

The requirement of paragraph (7)(B)(i) of subsection (a) 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 jointly determined that--

(A)--

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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 Act 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 removal of 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.

(m)--Requirements for Admission of Nonimmigrant Nurses During Five-Year Periodn52

(1)--

The qualifications referred to in section 101(a)(15)(H)(i)(c), with respect to an alien who is coming to the United States to perform nursing services for a facility, are that the alien--

(A)--

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

(B)--

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

(C)--

is fully qualified and eligible under the laws (including such temporary or

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

(2)--

(A)--

The attestation referred to in section 101(a)(15)(H)(i)(c), with respect to a facility for which an alien will perform services, is an attestation as to the following:

(i)--

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

(ii)--

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

(iii)--

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

(iv)--

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

(v)--

There is not a strike or lockout in the course of a labor dispute, the facility did not lay off and will not lay off a registered nurse employed by the facility within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

(vi)--

At the time of the filing of the petition for registered nurses under section 101(a)(15)(H)(i)(c), notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to the registered nurses employed at the facility through posting in conspicuous locations.

(vii)--

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The facility will not, at any time, employ a number of aliens issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(c) that exceeds 33 percent of the total number of registered nurses employed by the facility.

(viii)--

The facility will not, with respect to any alien issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(c)--

(I)--

authorize the alien to perform nursing services at any worksite other than a worksite controlled by the facility; or

(II)--

transfer the place of employment of the alien from one worksite to another.

Nothing in clause (iv) shall be construed as requiring a facility to have taken significant steps described in such clause before the date of the enactment of the Nursing Relief for Disadvantaged Areas Act of 1999. A copy of the attestation shall be provided, within 30 days of the date of filing, to registered nurses employed at the facility on the date of filing.

(B)--

For purposes of subparagraph (A)(iv), each of the following shall be considered a significant step reasonably designed to recruit and retain registered nurses:

(i)--

Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.

(ii)--

Providing career development programs and other methods of facilitating health care workers to become registered nurses.

(iii)--

Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area.

(iv)--

Providing reasonable opportunities for meaningful salary advancement by registered nurses.

The steps described in this subparagraph shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of subparagraph (A)(iv). Nothing in this subparagraph shall require a facility

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to take more than one step if the facility can demonstrate that taking a second step is not reasonable.

(C)--

Subject to subparagraph (E), an attestation under subparagraph (A)--

(i)--

shall expire on the date that is the later of--

(I)--

in the end of the one-year period beginning on the date of its filing with the Secretary of Labor; or

(II)--

the end of the period of admission under section 101(a)(15)(H)(i)(c) of the last alien with respect to whose admission it was applied (in accordance with clause (ii)); and

(ii)--

shall apply to petitions filed during the one-year period beginning on the date of its filing with the Secretary of Labor if the facility states in each such petition that it continues to comply with the conditions in the attestation.

(D)--

A facility may meet the requirements under this paragraph with respect to more than one registered nurse in a single petition.

(E)--

(i)--

The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a list identifying facilities which have filed petitions for nonimmigrants under section 101(a)(15)(H)(i)(c) and, for each such facility, a copy of the facility's attestation under subparagraph (A) (and accompanying documentation) and each such petition filed by the facility.

(ii)--

The Secretary of Labor shall establish a process, including reasonable time limits, for the receipt, investigation, and disposition of complaints respecting a facility's failure to meet conditions attested to or a facility's misrepresentation of a material fact in an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary). The Secretary shall conduct an investigation under this clause if there is reasonable cause to believe that a facility fails to meet conditions attested to. Subject to the time limits

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established under this clause, this subparagraph shall apply regardless of whether an attestation is expired or unexpired at the time a complaint is filed.

(iii)--

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

(iv)--

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

(v)--

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

(F)--

(i)--

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

(ii)--

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

(iii)--

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

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(3) --

The period of admission of an alien under section 101(a)(15)(H)(i)(c) shall be 3 years.

(4) --

The total number of nonimmigrant visas issued pursuant to petitions granted under section 101(a)(15)(H)(i)(c) in each fiscal year shall not exceed 500. The number of such visas issued for employment in each State in each fiscal year shall not exceed the following:

(A) --

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

(B) --

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

(C) --

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

(5) --

A facility that has filed a petition under section 101(a)(15)(H)(i)(c) to employ a nonimmigrant to perform nursing services for the facility--

(A) --

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

(B) --

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

(C) --

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

(6) --

For purposes of this subsection and section 101(a)(15)(H)(i)(c), the term "facility" means a subsection (d) hospital (as defined in section

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1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) that meets the following requirements:

(A)--

As of March 31, 1997, the hospital was located in a health professional shortage area (as defined in section 332 of the Public Health Service Act (42 U.S.C. 254e)).

(B)--

Based on its settled cost report filed under title XVIII of the Social Security Act for its cost reporting period beginning during fiscal year 1994--

(i)--

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

(ii)--

the number of the hospital's inpatient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of such title is not less than 35 percent of the total number of such hospital's acute care inpatient days for such period; and

(iii)--

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

(7)--

For purposes of paragraph (2)(A)(v), the term ''lay off'', with respect to a worker--

(A)--

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

(B)--

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

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

(n)--Labor Condition Application

(1)--

n55 No alien may be admitted or provided status as an H-1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

(A)-- n56

The employer--

(i)--

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

(I)--

n57 the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

(II)--

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

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

(ii)--

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

(B)--

There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

(C)--

The employer, at the time of filing the application--

(i)--

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

(ii)--

n57.1 if there is no such bargaining representative, has provided notice of

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filling in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which H-1B nonimmigrants are sought.

(D)--

n58 The application shall contain a specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.

(E)-- n58.1

(i)--

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

(ii)--

An application described in this clause is an application filed on or after the date final regulations are first promulgated to carry out this subparagraph, and before October 1, 2003, by an H-1B-dependent employer (as defined in paragraph (3)) or by an employer that has been found, on or after the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998, under paragraph (2)(C) or (5) to have committed a willful failure or misrepresentation during the 5-year period preceding the filing of the application. An application is not described in this clause if the only H-1B nonimmigrants sought in the application are exempt H-1B nonimmigrants.

(F)--

n58.2 In the case of an application described in subparagraph (E)(ii), the employer will not place the nonimmigrant with another employer (regardless of whether or not such other employer is an H-1B-dependent employer) where--

(i)--

the nonimmigrant performs duties in whole or in part at one or more worksites owned, operated, or controlled by such other employer; and

(ii)--

there are indicia of an employment relationship between the nonimmigrant and such other employer;

unless the employer has inquired of the other employer as to whether, and has no knowledge that, within the period beginning 90 days before and ending 90 days after the date of the placement of the nonimmigrant with the other employer, the other employer has displaced or intends to displace a United States worker employed by the other employer.

(G)-- n58.3

(i)--

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

(I)--

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

(II)--

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

(ii)--

The conditions described in clause (i) shall not apply to an application filed with respect to the employment of an H-1B nonimmigrant who is described in subparagraph (A), (B), or (C) of section 203(b)(1).

The employer shall make available for public examination, within one working day after the date on which an application under this paragraph is filed, at the employer's principal place of business or worksite, a copy of each such application (and such accompanying documents as are necessary). The Secretary shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under this subsection. Such list shall include the wage rate, number of aliens sought, period of intended employment, and date of need. The Secretary shall make such list available for public examination in Washington, D.C. The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall provide the certification described in section 101(a)(15)(H)(i)(b) within 7 days of the date of the filing of the application. The application form shall include a clear statement explaining the liability under subparagraph (F) of a placing employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph. Nothing in subparagraph (G) shall be construed to prohibit an employer from using legitimate selection criteria relevant to the job that are normal or customary to the type of job involved, so long as such criteria are not applied in a discriminatory manner.n58.4

(2)--

(A)--

n58.5 Subject to paragraph (5)(A), the Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting a

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

(B)--

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

(C)-- n59

(i)--

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

(I)--

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

(II)--

the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 1 year for aliens to be employed by the employer.

(ii)--

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

(I)--

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

(II)--

the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 2 years for aliens to be employed by the employer.

(iii)--

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

(I)--

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

(II)--

the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 3 years for aliens to be employed by the employer.

(iv)--

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

(v)--

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

(vi)--

(I)--

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

(II)--

It is a violation of this clause for an employer who has filed an application under this subsection to require an alien who is the subject of a petition filed under section 214(c)(1), for which a fee is imposed under section 214(c)(9), to reimburse, or otherwise compensate, the employer for part or all of the cost of such fee. It is a violation of this clause for such an employer otherwise to accept such reimbursement or compensation from such an alien.

(III)--

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

(vii)--

(I)--

It is a failure to meet a condition of paragraph (1)(A) for an employer, who has filed an application under this subsection and who places an H-1B nonimmigrant designated as a full-time employee on the petition filed under section 214(c)(1) by the employer with respect to the nonimmigrant, after the nonimmigrant has entered into employment with the employer, in nonproductive status due to a decision by the employer (based on factors such as lack of work), or due to the nonimmigrant's lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such nonproductive time.

(II)--

It is a failure to meet a condition of paragraph (1)(A) for an employer, who has filed an application under this subsection and who places an H-1B nonimmigrant designated as a part-time employee on the petition filed under section 214(c)(1) by the employer with respect to the nonimmigrant, after the nonimmigrant has entered into employment with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated on such petition consistent with the rate of pay identified on such petition.

(III)--

In the case of an H-1B nonimmigrant who has not yet entered into employment with an employer who has had approved an application under this subsection, and a petition under section 214(c)(1), with respect to the nonimmigrant, the provisions of subclauses (I) and (II) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States pursuant to the petition, or 60 days after the date the nonimmigrant becomes eligible to work for the employer (in the case of a nonimmigrant who is present in the United States on the date of the approval of the petition).

(IV)--

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

(V)--

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

(aa)--

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

(bb)--

the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to violate any condition of the nonimmigrant's authorization under this Act to remain in the United States.

(VI)--

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

(viii)--

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

(D)--

n60 If the Secretary finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified under the application and required under paragraph (1), the Secretary shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed.

(E)--

n60.1 If an H-1B-dependent employer places a nonexempt H-1B nonimmigrant with another employer as provided under paragraph (1)(F) and the other employer has displaced or displaces a United States worker employed by such other employer during the period described in such paragraph, such displacement shall be considered for purposes of this paragraph a failure, by the placing employer, to meet a condition specified in an application submitted under paragraph (1); except that the Attorney General may impose a sanction described in subclause (II) of subparagraph (C)(i), (C)(ii), or (C)(iii) only if the Secretary of Labor found that such placing employer--

(i)--

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

(ii)--

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

(F)--

n60.2 The Secretary may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date (on or after the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998) on which the employer is found by the Secretary to have committed a willful failure to meet a condition of paragraph (1) (or has been found under paragraph (5) to have committed a willful failure to meet the condition of paragraph (1)(G)(i)(II)) or to have made a willful misrepresentation of material fact in an application. The preceding sentence shall apply to an employer regardless of whether or not the employer is an H-1B-dependent employer. The authority of the Secretary under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

(G)-- n60.3

(i)--

If the Secretary receives specific credible information from a source, who is likely to have knowledge of an employer's practices or employment conditions, or an employer's compliance with the employer's labor condition application under paragraph (1), and whose identity is known to the Secretary, and such information provides reasonable cause to believe that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(E),

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(1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary may conduct a 30-day investigation into the alleged failure or failures. The Secretary (or the Acting Secretary in the case of the Secretary's absence or disability) shall personally certify that the requirements for conducting such an investigation have been met and shall approve commencement of the investigation. The Secretary may withhold the identity of the source from the employer, and the source's identity shall not be subject to disclosure under section 552 of title 5, United States Code.

(ii)--

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

(iii)--

Any investigation initiated or approved by the Secretary under clause (i) shall be based on information that satisfies the requirements of such clause and that (I) originates from a source other than an officer or employee of the Department of Labor, or (II) was lawfully obtained by the Secretary of Labor in the course of lawfully conducting another Department of Labor investigation under this Act or any other Act.

(iv)--

The receipt by the Secretary of information submitted by an employer to the Attorney General or the Secretary for purposes of securing the employment of an H-1B nonimmigrant shall not be considered a receipt of information for purposes of clause (i).

(v)--

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

(vi)--

The Secretary shall provide notice to an employer with respect to whom the Secretary has received information described in clause (i), prior to the commencement of an investigation under such clause, of the receipt of the information and of the potential for an investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that to do so would interfere with an effort by the Secretary to secure

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

(vii)--

If the Secretary determines under this subparagraph that a reasonable basis exists to make a finding that a failure described in clause (i) has occurred, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing, in accordance with section 556 of title 5, *United States Code*, within 60 days after the date of the determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 60 days after the date of the hearing.

(H)--

n60.4 Nothing in this subsection shall be construed as superseding or preempting any other enforcement-related authority under this Act (such as the authorities under section 274B), or any other Act.

(3)-- n60.5

(A)--

For purposes of this subsection, the term ''H-1B-dependent employer'' means an employer that--

(i)--

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

(ii)--

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

(iii)--

(I) has at least 51 full-time equivalent employees who are employed in the United States; and (II) employs H-1B nonimmigrants in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.

(B)--

For purposes of this subsection--

(i)--

the term ''exempt H-1B nonimmigrant'' means an H-1B nonimmigrant who--

(I)--

receives wages (including cash bonuses and similar compensation) at an annual

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rate equal to at least \$ 60,000; or

(II)--

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

(ii)--

the term ''nonexempt H-1B nonimmigrant'' means an H-1B nonimmigrant who is not an exempt H-1B nonimmigrant.

(C)--

For purposes of subparagraph (A)--

(i)--

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

(I)--

the 6-month period beginning on the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998; or

(II)--

the period beginning on the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998 and ending on the date final regulations are issued to carry out this paragraph; and

(ii)--

any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer.

(4)--

n60.6 For purposes of this subsection:

(A)--

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

(B)--

In the case of an application with respect to one or more H-1B nonimmigrants by

an employer, the employer is considered to "displace" a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the job for which the nonimmigrant or nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

(C)--

The term "H-1B nonimmigrant" means an alien admitted or provided status as a nonimmigrant described in section 101(a)(15)(H)(i)(b).

(D)--

(i)--

The term "lays off", with respect to a worker--

(I)--

means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in subparagraph (E) or (F) of paragraph (1)); but

(II)--

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

(ii)--

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

(E)--

The term "United States worker" means an employee who--

(i)--

is a citizen or national of the United States; or

(ii)--

is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under section 208, or is an

immigrant otherwise authorized, by this Act or by the Attorney General, to be employed.

(5)-- n60.7

(A)--

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

(B)--

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

(C)--

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

(D)--

(i)--

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

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(ii)--

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

(iii)--

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

(E)--

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

(i)--

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

(ii)--

the Attorney General is authorized to not approve petitions filed, with respect to that employer and for aliens to be employed by the employer, under section 204 or 214(c)--

(I)--

during a period of not more than 1 year; or

(II)--

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

(F)--

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

(o)--[Terminated]n61

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(p)--Computation of Prevailing Wage Leveln61.1

(1)--

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

(A)--

an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965), or a related or affiliated nonprofit entity; or

(B)--

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

(2)--

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

(p)--Public Chargen61.1a

In determining whether an alien described in subsection (a)(4)(C)(i) is inadmissible under subsection (a)(4) or ineligible to receive an immigrant visa or otherwise to adjust to the status of permanent resident by reason of subsection (a)(4), the consular officer or the Attorney General shall not consider any benefits the alien may have received that were authorized under section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1641(c)).

(q)--Academic Honorariann61.2

Any alien admitted under section 101(a)(15)(B) may accept an honorarium payment and associated incidental expenses for a usual academic activity or activities (lasting not longer than 9 days at any single institution), as defined by the Attorney General in consultation with the Secretary of Education, if such payment is offered by an institution or organization described in subsection (p)(1) and is made for services conducted for the benefit of that institution or entity and if the alien has not accepted such payment or expenses from more than 5 institutions or organizations in the previous 6-month period.

(r)--Certification for Certain Alien Nursesn61.3

Subsection (a)(5)(C) shall not apply to an alien who seeks to enter the United States for the purpose of performing labor as a nurse who presents to the consular officer (or in the case of an adjustment of status, the Attorney General) a certified statement from the Commission on Graduates of Foreign

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Nursing Schools (or an equivalent independent credentialing organization approved for the certification of nurses under subsection (a)(5)(C) by the Attorney General in consultation with the Secretary of Health and Human Services)n61.4 that--

(1)--

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

(2)--

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

(3)--

the alien is a graduate of a nursing program--

(A)--

in which the language of instruction was English;

(B)--

located in a country--

(i)--

designated by such commission not later than 30 days after the date of the enactment of the Nursing Relief for Disadvantaged Areas Act of 1999, based on such commission's assessment that the quality of nursing education in that country, and the English language proficiency of those who complete such programs in that country, justify the country's designation; or

(ii)--

designated on the basis of such an assessment by unanimous agreement of such commission and any equivalent credentialing organizations which have been approved under subsection (a)(5)(C) for the certification of nurses under this subsection; and

(C)--

(i)--

which was in operation on or before the date of the enactment of the Nursing Relief for Disadvantaged Areas Act of 1999; or

(ii)--

has been approved by unanimous agreement of such commission and any equivalent credentialing organizations which have been approved under subsection (a)(5)(C) for the certification of nurses under this subsection.

Note 1--

Sec. 601(c) of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978, requires the Attorney General and the Secretary of State to develop ''protocols and guidelines for updating lookout books and the automated visa lookout system and similar mechanisms'' for the screening of aliens applying for visas for admission, or for admission to the United States. The Section reads as follows:

(c) Review of Exclusion Lists.--The Attorney General and the Secretary of State shall develop protocols and guidelines for updating lookout books and the automated visa lookout system and similar mechanisms for the screening of aliens applying for visas for admission, or for admission, to the United States. Such protocols and guidelines shall be developed in a manner that ensures that in the case of an alien--

(1) whose name is in such system, and

(2) who either (A) applies for entry after the effective date of the amendments made by this section, or (B) requests (in writing to a local consular office after such date) a review, without seeking admission, of the alien's continued excludability under the Immigration and Nationality Act, if the alien is no longer excludable because of an amendment made by this section the alien's name shall be removed from such books and system and the alien shall be informed of such removal and if the alien continues to be excludable the alien shall be informed of such determination.

Note 2--

Sec. 3, Nursing Relief for Disadvantaged Areas Act of 1999, Act of Nov. 12, 1999, Pub. L. No. 106-95, 113 Stat. 1312, provided as follows:

Sec. 3. Recommendations for Alternative Remedy for Nursing Shortage.

Not later than the last day of the 4-year period described in section 2(e),^{n61.5} the Secretary of Health and Human Services and the Secretary of Labor shall jointly submit to the Congress recommendations (including legislative specifications) with respect to the following:

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

(2) A method of enforcing the requirements imposed on facilities under sections 101(a)(15)(H)(i)(c) and 212(m) of the Immigration and Nationality Act (as amended by section 2) that would be more effective than the process described in section 212(m)(2)(E) of such Act (as so amended).

Note 3--

Sec. 1000(a)(7) [Appendix G (H.R. 3427), Div. A, Title VIII, sec. 801], Act of Nov. 29, 1999, Pub. L. No. 106-113, 113 Stat. 1501, although not part of the

Immigration and Nationality Act, has been classified to the U.S. Code as 8 U.S.C. § 1182e. The section provides as follows:

Sec. 801. Denial of Entry into United States of Foreign Nationals Engaged in Establishment or Enforcement of Forced Abortion or Sterilization Policy.

(a) Denial of entry--Notwithstanding any other provision of law, the Secretary of State may not issue any visa to, and the Attorney General may not admit to the United States, any foreign national whom the Secretary finds, based on credible and specific information, to have been directly involved in the establishment or enforcement of population control policies forcing a woman to undergo an abortion against her free choice or forcing a man or woman to undergo sterilization against his or her free choice, unless the Secretary has substantial grounds for believing that the foreign national has discontinued his or her involvement with, and support for, such policies.

(b) Exceptions--The prohibitions in subsection (a) shall not apply in the case of a foreign national who is a head of state, head of government, or cabinet level minister.

(c) Waiver--The Secretary of State may waive the prohibitions in subsection (a) with respect to a foreign national if the Secretary--

(1) determines that it is important to the national interest of the United States to do so; and

(2) provides written notification to the appropriate congressional committees containing a justification for the waiver.

Note 4--

Retroactive Application of Amendments by Sec. 411 of USA PATRIOT ACT. Sec. 411(c), ''Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001'', Act of Oct. 26, 2001, Pub. L. No. 107-56, 115 Stat. 272, provided as follows:

(c) RETROACTIVE APPLICATION OF AMENDMENTS.

(1) IN GENERAL.--Except as otherwise provided in this subsection, the amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to--

(A) actions taken by an alien before, on, or after such date; and

(B) all aliens, without regard to the date of entry or attempted entry into the United States--

(i) in removal proceedings on or after such date (except for proceedings in which there has been a final administrative decision before such date); or

(ii) seeking admission to the United States on or after such date.

(2) SPECIAL RULE FOR ALIENS IN EXCLUSION OR DEPORTATION PROCEEDINGS.--Notwithstanding any other provision of law, sections 212(a)(3)(B)

and 237(a)(4)(B) of the Immigration and Nationality Act, as amended by this Act, shall apply to all aliens in exclusion or deportation proceedings on or after the date of the enactment of this Act (except for proceedings in which there has been a final administrative decision before such date) as if such proceedings were removal proceedings.

(3) SPECIAL RULE FOR SECTION 219 ORGANIZATIONS AND ORGANIZATIONS DESIGNATED UNDER SECTION 212(a)(3)(B)(vi)(II).

(A) IN GENERAL.--Notwithstanding paragraphs (1) and (2), no alien shall be considered inadmissible under section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)), or deportable under section 237(a)(4)(B) of such Act (8 U.S.C. 1227(a)(4)(B)), by reason of the amendments made by subsection (a), on the ground that the alien engaged in a terrorist activity described in subclause (IV)(bb), (V)(bb), or (VI)(cc) of section 212(a)(3)(B)(iv) of such Act (as so amended) with respect to a group at any time when the group was not a terrorist organization designated by the Secretary of State under section 219 of such Act (8 U.S.C. 1189) or otherwise designated under section 212(a)(3)(B)(vi)(II) of such Act (as so amended).

(B) STATUTORY CONSTRUCTION.--Subparagraph (A) shall not be construed to prevent an alien from being considered inadmissible or deportable for having engaged in a terrorist activity--

(i) described in subclause (IV)(bb), (V)(bb), or (VI)(cc) of section 212(a)(3)(B)(iv) of such Act (as so amended) with respect to a terrorist organization at any time when such organization was designated by the Secretary of State under section 219 of such Act or otherwise designated under section 212(a)(3)(B)(vi)(II) of such Act (as so amended); or

(ii) described in subclause (IV)(cc), (V)(cc), or (VI)(dd) of section 212(a)(3)(B)(iv) of such Act (as so amended) with respect to a terrorist organization described in section 212(a)(3)(B)(vi)(III) of such Act (as so amended).

(4) EXCEPTION.--The Secretary of State, in consultation with the Attorney General, may determine that the amendments made by this section shall not apply with respect to actions by an alien taken outside the United States before the date of the enactment of this Act upon the recommendation of a consular officer who has concluded that there is not reasonable ground to believe that the alien knew or reasonably should have known that the actions would further a terrorist activity.

FOOTNOTES:

[n1] Footnote 6. Reference to AIDS added by Section 2007, National Institutes of Health Revitalization Act of 1993, Act of June 10, 1993, Pub. L. No. 103-43, 107 Stat. 122, effective July 10, 1993.

[n2] Footnote 6.1. Subpar. (C) added by Act Nov. 12, 1997, Pub. L. No. 105-73, 111 Stat. 1459.

[n3] Footnote 7. As amended by Subtitle M, Antidrug Abuse Act of 1986, Oct. 27, 1986, Pub. L. No. 99-570, 100 Stat. 3207; Sec. 806(c), Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Pub. L. No. 100-204, 101 Stat.

1331; and Sec. 601 of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978.

[n4] Footnote 7.1. As amended by Sec. 601 of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978. The exception for an alien (facing a maximum penalty of imprisonment for one year and, if convicted, was not sentenced to a prison term in excess of 6 months) who committed only one crime was amended [to its form immediately prior to the Immigration Act of 1990 amendment] by the Omnibus Crime Control Act of Oct. 12, 1984, Pub. L. No. 98-473, 98 Stat. 1837. The 1984 amendment superseded the so-called "petty offense" provision originally enacted by the Act of Sept. 3, 1954, and amended by the Act of Sept. 26, 1961, Pub. L. No. 87-301, 75 Stat. 655.

[n5] Footnote 8. As amended by Sec. 322(a)(2)(B), Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. No. 104-208, 110 Stat. 3009, which struck "actually imposed" following "confinement". Sec. 322(c) of IIRAIRA provided the following with respect to effective date of amendments made by Sec. 322(a): "(c) Effective Date--The amendments made by subsection (a) shall apply to convictions and sentences entered before, on, or after the date of the enactment of this Act [September 30, 1996]. Subparagraphs (B) and (C) of section 240(c)(3) of the Immigration and Nationality Act, as inserted by section 304(a)(3) of this division, shall apply to proving such convictions."

[n6] Footnote 8.1. Par. (C) amended by Sec. 809, Intelligence Authorization Act for Fiscal Year 2000, Act of Dec. 3, 1999, Pub. L. No. 106-120, 113 Stat. 1606.

[n7] Footnote 8.2. Par. (G) added by Sec. 604(a), International Religious Freedom Act of 1998, Act of October 27, 1998, Pub. L. No. 105-292, 112 Stat. 2787; effective date [as provided in Sec. 604(b) of the aforesaid Act]: "(b) Effective Date.--The amendment made by subsection (a) shall apply to aliens seeking to enter the United States on or after the date of the enactment of this Act [October 27, 1998]."

[n8] Footnote 8.3. Par. (H) added by Sec. 111(d), div. A [Trafficking Victims Protection Act of 2000], Pub. L. No. 106-386 [Victims of Trafficking and Violence Protection Act of 2000], Act of Oct. 28, 2000, 114 Stat. 1464.

[n9] Footnote 8.3a. Par. (I) added by Sec. 1006(a), "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001", Act of Oct. 26, 2001, Pub. L. No. 107-56, 115 Stat. 272. Sec. 1006(b) of such Act provided as follows: "(b) MONEY LAUNDERING WATCHLIST.--Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall develop, implement, and certify to the Congress that there has been established a money laundering watchlist, which identifies individuals worldwide who are known or suspected of money laundering, which is readily accessible to, and shall be checked by, a consular or other Federal official prior to the issuance of a visa or admission to the United States. The Secretary of State shall develop and continually update the watchlist in cooperation with the Attorney General, the Secretary of the Treasury, and the Director of Central Intelligence."

[n10] Footnote 8.4. Subsec. (a)(3)(B)(i) amended by Sec. 411(1),

Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, Act of Apr. 24, 1996, 110 Stat. 1214; Sec. 342(a)(1), (2), and Sec. 355, Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. 104-208, Act of Sept. 30, 1996, 110 Stat. 3009. Note that insertion of subclause (III) [relating to incitement of terrorist activity] by IIRAIRA § 342(a)(2) ''shall take effect on the date of the enactment of this Act [Sept. 30, 1996] and shall apply to incitement regardless of when it occurs''; see IIRAIRA § 342(b). Further amended by the ''Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001'', Act of Oct. 26, 2001, Pub. L. No. 107-56, 115 Stat. 272, as follows: USA PATRIOT ACT § 411(a)(1)(A)(i), amending subclause (IV); USA PATRIOT ACT § 411(a)(1)(A)(ii), amending subclause (V); USA PATRIOT ACT § 411(a)(1)(A)(iii), adding subclauses (VI) and (VII); USA PATRIOT ACT § 411(a)(1)(C), amending subclause (II). Retroactive application of amendments made by Sec. 411 of USA PATRIOT ACT, see Note 4 following INA § 212.

[n11] Footnote 8.5. Although a comma probably should appear here, none was included when the words ''which the alien knows or should have known is a terrorist organization'' were inserted by IIRAIRA § 355. Note that this subclause (V) was originally inserted as ''(IV)'' by AEDPA § 411(1)(C), and later redesignated as ''(V)'' by IIRAIRA § 342(a)(1).

[n12] Footnote 8.5a. To reflect the presumed legislative intent of the amendment made by Sec. 411(a)(1)(A)(ii), USA PATRIOT ACT, Pub. L. No. 107-56, the word ''or'' has been inserted here, at the end of this subclause (V), rather than (as directed literally by the amendment) following ''section 219.''. Retroactive application of amendments made by Sec. 411 of USA PATRIOT ACT, see Note 4 following INA § 212.

[n13] Footnote 8.5b. Subclauses (VI) and (VII), which were added by Sec. 411(a)(1)(A)(iii), USA PATRIOT ACT, Pub. L. No. 107-56, have been inserted here, rather than (as directed literally by the amendment) at end of clause (i), to reflect the presumed legislative intent. Retroactive application of amendments made by Sec. 411 of USA PATRIOT ACT, see Note 4 following INA § 212.

[n14] Footnote 8.5c. Subclauses (VI) and (VII), which were added by Sec. 411(a)(1)(A)(iii), USA PATRIOT ACT, Pub. L. No. 107-56, have been inserted here rather than (as directed literally by the amendment) at end of clause (i), to reflect the presumed legislative intent. Retroactive application of amendments made by Sec. 411 of USA PATRIOT ACT, see Note 4 following INA § 212.

[n15] Footnote 8.5d. Clause (ii) inserted by Sec. 411(a)(1)(D), ''Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001'', Act of Oct. 26, 2001, Pub. L. No. 107-56, 115 Stat. 272. Retroactive application of amendments made by Sec. 411 of USA PATRIOT ACT, see Note 4 following INA § 212.

[n16] Footnote 8.5e. Former clauses (ii), (iii), and (iv) redesignated as (iii), (iv), and (v), respectively, by Sec. 411(a)(1)(B), ''Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001'', Act of Oct. 26, 2001, Pub. L. No. 107-56, 115 Stat. 272. As so redesignated by the USA PATRIOT ACT, this clause (iii) was amended by Sec. 411(a)(1)(E)(i) [amending introductory text] and (ii) [amending subclause (V)(b)] of such USA PATRIOT ACT. Retroactive

application of amendments made by Sec. 411 of USA PATRIOT ACT, see Note 4 following INA § 212.

[n17] Footnote 8.5f. Former clauses (ii), (iii), and (iv) redesignated as (iii), (iv), and (v), respectively, by Sec. 411(a)(1)(B), ''Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001'', Act of Oct. 26, 2001, Pub. L. No. 107-56, 115 Stat. 272. As so redesignated, this clause (iv) was amended by USA PATRIOT ACT § 411(a)(1)(F). Retroactive application of amendments made by Sec. 411 of USA PATRIOT ACT, see Note 4 following INA § 212.

[n18] Footnote 8.5g. Former clauses (ii), (iii), and (iv) redesignated as (iii), (iv), and (v), respectively, by Sec. 411(a)(1)(B), ''Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001'', Act of Oct. 26, 2001, Pub. L. No. 107-56, 115 Stat. 272. Retroactive application of amendments made by Sec. 411 of USA PATRIOT ACT, see Note 4 following INA § 212.

[n19] Footnote 8.5h. Clause (vi) added by Sec. 411(a)(1)(G), ''Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001'', Act of Oct. 26, 2001, Pub. L. No. 107-56, 115 Stat. 272. Retroactive application of amendments made by Sec. 411 of USA PATRIOT ACT, see Note 4 following INA § 212.

[n20] Footnote 8.5i. Subsec. (a)(3)(F) added by Sec. 411(a)(2), ''Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001'', Act of Oct. 26, 2001, Pub. L. No. 107-56, 115 Stat. 272. Retroactive application of amendments made by Sec. 411 of USA PATRIOT ACT, see Note 4 following INA § 212.

[n21] Footnote 9. Sec. 308(d)(1)(C) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. No. 104-208, 110 Stat. 3009, changes ''is excludable'' to ''is inadmissible'', but IIRAIRA § 531 rewrites the entire paragraph using ''is excludable''. The use of ''is inadmissible'' as set forth here in the text follows the manner in which the amendments are executed in U.S. Code, 1994 Edition, Supplement IV. The amendments made by IIRAIRA § 531 ''shall apply to applications submitted on or after such date, not earlier than 30 days and not later than 60 days after the date the Attorney General promulgates under section 551(e) a standard form for an affidavit of support, as the Attorney General shall specify, but subparagraphs (C) and (D) of section 212(a)(4) of the Immigration and Nationality Act, as so amended, shall not apply to applications with respect to which an official interview with an immigration officer was conducted before such effective date.''

[n22] Footnote 9.1. Subsec. (a)(4)(C)(ii) amended by Sec. 2(a)(2), Family Sponsor Immigration Act of 2002, Act of Mar. 13, 2002, Pub. L. No. 107-150, 116 Stat. 74, replacing the parenthesized text which formerly read: ''(including any additional sponsor required under section 213A(f))''. Effective date of amendment by Sec. 2(a), Pub. L. No. 107-150, as provided in Sec. 2(b) of such Act: ''(b) EFFECTIVE DATE-- The amendments made by subsection (a) shall apply with respect to deaths occurring before, on, or after the date of the enactment of this Act, except that, in the case of a death occurring before such date, such amendments shall apply only if (1) the sponsored alien (A) requests the

Attorney General to reinstate the classification petition that was filed with respect to the alien by the deceased and approved under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) before such death; and (B) demonstrates that he or she is able to satisfy the requirement of section 212(a)(4)(C)(ii) of such Act (8 U.S.C. 1182(a)(4)(C)(ii)) by reason of such amendments; and (2) the Attorney General reinstates such petition after making the determination described in section 213A(f)(5)(B)(ii) of such Act (as amended by subsection (a)(1) of this Act) [subparagraph breaks omitted].''

[n23] Footnote 9.2. As amended by Sec. 601, and as further amended by Sec. 162 of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978; however, the changes made by Sec. 162(e)(1) were repealed by Sec. 302(e)(6) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Pub. L. No. 102-232, 105 Stat. 1733, effective as though that paragraph had not been enacted. The restored subparagraph (C) of § 212(a)(5) was then amended by Sec. 307(a)(6) of Pub. L. No. 102-232. Further amended by Sec. 4(a)(2), Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. No. 106-95, Act of Nov. 12, 1999, 113 Stat. 1312, which substituted, at beginning of par. (C), ''Subject to subsection (r), any alien who seeks'' for ''Any alien who seeks'', with effective date pursuant to Sec. 4(b) of such Act, which provided that ''The amendments made by subsection (a) [amending INA § 212(a)(5)(C) and adding INA § 212(r)] shall take effect on the date of the enactment of this Act [Nov. 12, 1999], without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

[n24] Footnote 10. Clause (iv) added by Sec. 106(c)(2), title I [American Competitiveness in the Twenty-first Century Act of 2000], Pub. L. No. 106-313, Act of Oct. 17, 2000, 114 Stat. 1251.

[n25] Footnote 10.1. INA § 212(a)(6)(A) and (B) amended by Sec. 301(c)(1) of IIRAIRA. Regarding subclauses (II) and (III) of INA § 212(a)(6)(A)(ii), as inserted by such amendment, note that Sec. 301(c)(2) of IIRAIRA provided for transition as follows: ''(2) Transition for Battered Spouse or Child Provision. The requirements of subclauses (II) and (III) of section 212(a)(6)(A)(ii) of the Immigration and Nationality Act, as inserted by paragraph (1), shall not apply to an alien who demonstrates that the alien first arrived in the United States before the title III-A effective date (described in section 309(a) of this division [Sec. 309(a) of IIRAIRA]).'' As so described in Sec. 309(a) of IIRAIRA, the ''title III-A effective date'' is ''the first day of the first month beginning more than 180 days after the date of the enactment of this Act [enacted Sept. 30, 1996]''.

[n26] Footnote 10.2. Regarding subclauses (II) and (III) of this INA § 212(a)(6)(A)(ii), note that Sec. 301(c)(2) of IIRAIRA provided for transition as follows: ''(2) Transition for Battered Spouse or Child Provision. The requirements of subclauses (II) and (III) of section 212(a)(6)(A)(ii) of the Immigration and Nationality Act, as inserted by paragraph (1), shall not apply to an alien who demonstrates that the alien first arrived in the United States before the title III-A effective date (described in section 309(a) of this division [Sec. 309(a) of IIRAIRA]).'' As so described in Sec. 309(a) of IIRAIRA, the ''title III-A effective date'' is ''the first day of the first month beginning more than 180 days after the date of the enactment of this Act [enacted Sept. 30, 1996]''.

[n27] Footnote 10.3. *INA § 212(a)(6)(A)* and *(B)* amended by Sec. 301(c)(1) of IIRAIRA.

[n28] Footnote 11. As amended by Sec. 601 of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978. Sec. 6(a), Act of Nov. 10, 1986, Pub. L. No. 99-639, 100 Stat. 3537, 3543 added the bar to those seeking ''other benefit'' (referring e.g., to marriage fraud).

[n29] Footnote 11.1. This provision was added by § 344(a) of IIRAIRA and applies only to representations made on or after the date of enactment (September 30, 1996). Amended by Sec. 201(b)(2), title II, Child Citizenship Act of 2000, Pub. L. No. 106-395, Act of Oct. 30, 2000, 114 Stat. 1631; effective date: Sec. 201(b)(3) of such title II of such Act provided in pertinent part that ''The amendment made by [Sec. 201(b)(2)] shall be effective as if included in the enactment of section 344 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-637) and shall apply to representations made on or after September 30, 1996. Such amendment[] shall apply to individuals in proceedings under the Immigration and Nationality Act on or after September 30, 1996.''

[n30] Footnote 12. As amended by Sec. 601 of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978.

[n31] Footnote 13. Clause (ii) added by Section 307(a)(8) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Pub. L. No. 102-232, 105 Stat. 1733, which also redesignated original clause (ii) as clause (iii).

[n32] Footnote 14. Added by Sec. 346 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. No. 104-208, 110 Stat. 3009, effective for ''aliens who obtain the status of a nonimmigrant under section 101(a)(15)(F) of the Immigration and Nationality Act after the end of the 60-day period beginning on the date of the enactment of [IIRIRA], including aliens whose status as such a nonimmigrant is extended after the end of such period.''

[n33] Footnote 14.1. Sec. 101(b), title I, Visa Waiver Permanent Program Act, Pub. L. No. 106-396, Act of Oct. 30, 2000, 114 Stat. 1637, struck ''Pilot'' and ''pilot'' in the caption and in the text.

[n34] Footnote 15. The word ''person'' was substituted for ''alien'', following ''Any'', by Sec. 307(a)(9), Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Pub. L. No. 102-232, 105 Stat. 1735.

[n35] Footnote 15.1. Amended by Sec. 1505(a), title V [Battered Immigrant Women Protection Act of 2000], div. B [Violence Against Women Act of 2000], Pub. L. No. 106-386 [Victims of Trafficking and Violence Protection Act of 2000], Act of Oct. 28, 2000, 114 Stat. 1464.

[n36] Footnote 16. As amended by Section 307(a)(10)(A) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Pub. L. No. 102-232, 105 Stat. 1733.

[n37] Footnote 17. Subpars. (C)(ii) and (iii) inserted by Sec. 2226(a), Title XXII, Foreign Affairs Reform and Restructuring Act of 1998, Division G, Pub. L. No. 105-277, Act of Oct. 21, 1998, 112 Stat. 2681; as so inserted, these Subpars. (C)(i) and (ii) replaced a former Subpar. (C)(ii) [there was no Subpar. (C)(iii)] which related to inapplicability of clause (i) so long as the child is located in a foreign state that is a party to the Hague Convention on the Civil Aspects of International Child Abduction; *effective date provision* [Sec. 2226(b)]: the amendment made by Sec. 2226(a) shall apply to aliens seeking admission to the United States on or after the date of enactment of the Foreign Affairs Reform and Restructuring Act of 1998.

[n38] Footnote 17.1. Subpars. (C)(ii) and (iii) inserted by Sec. 2226(a), Title XXII, Foreign Affairs Reform and Restructuring Act of 1998, Division G, Pub. L. No. 105-277, Act of Oct. 21, 1998, 112 Stat. 2681; as so inserted, these Subpars. (C)(i) and (ii) replaced a former Subpar. (C)(ii) [there was no Subpar. (C)(iii)] which related to inapplicability of clause (i) so long as the child is located in a foreign state that is a party to the Hague Convention on the Civil Aspects of International Child Abduction; *effective date provision* [Sec. 2226(b)]: the amendment made by Sec. 2226(a) shall apply to aliens seeking admission to the United States on or after the date of enactment of the Foreign Affairs Reform and Restructuring Act of 1998.

[n39] Footnote 17.2. As amended by Sec. 201(b)(1), title II, Child Citizenship Act of 2000, Pub. L. No. 106-395, Act of Oct. 30, 2000, 114 Stat. 1631; *effective date*: Sec. 201(b)(3) of such title II of such Act provided in pertinent part that "'The amendment made by [Sec. 201(b)(1)] shall be effective as if included in the enactment of section 347 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-638) and shall apply to voting occurring before, on, or after September 30, 1996. ... Such amendment[] shall apply to individuals in proceedings under the Immigration and Nationality Act on or after September 30, 1996.''

[n40] Footnote 18. As amended and reorganized by Sec. 601(b) of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978, applicable to individuals entering the United States on or after June 1, 1991. Further amended by Sec. 412, Act of April 24, 1996, Pub. L. No. 104-132, 110 Stat. 1214; Sec. 308(d)(1)(E), (F), Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), Pub. L. No. 104-208, 110 Stat. 3009.

[n41] Footnote 19. The phrase "'or ineligible for entry'" is presumed to be struck by Sec. 308(d)(1)(F) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009. The directory language of such Section 308(d)(1)(F) specified that the quoted text be struck "'in subsection (b)(2)", but the quoted text did not appear in that subsection. The quoted text did appear, however, in this subsection "'(b)(1)(B)"', which, it may be noted, had been designated subsection "'(b)(2)" prior to the amendment of subsection (b) generally by Sec. 412, Act of April 24, 1996, Pub. L. No. 104-132, 110 Stat. 1214. As the text of this subsection (b)(1)(B) now reads, it appears possible that the word "'adjustment'" should be preceded by "'ineligible for'".

[n42] Footnote 20. Repealed by Sec. 304(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009.

[n43] Footnote 21. As amended by Sec. 601(d)(2) of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978, which made numerous changes to subsection (d) including striking paragraphs (1), (2) and (6), without replacing them. Further amended by Secs. 306(a)(10) and 307(b) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Pub. L. No. 102-232, 105 Stat. 1733. Section 130003(b) of the Violent Crime Control and Law Enforcement Act of 1994, Act of September 13, 1994, Pub. L. No. 103-322, 108 Stat. 1796, replaced paragraph (1).

[n44] Footnote 22. Reference to Sec. 214(f) added by Sec. 202(b) of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978; effective ''60 days after the date of the enactment of this Act [January 28, 1991].''

[n45] Footnote 23. Subparagraph (B) was added by Sec. 203(f), Refugee Act of 1980, enacted March 17, 1980, Pub. L. No. 96-212, 94 Stat. 107. Subsection (f) of the 1980 Act also advanced the cutoff date for Sec. 5 of Pub. L. No. 95-412, below, to April 1, 1980. The 1980 Act inaugurated new provisions relating to refugees by adding Sections 207-209 of the Act of 1952 as amended. Section 5, Act of October 5, 1978, Pub. L. No. 95-412, 92 Stat. 909, previously provided for the grant of permanent residence to aliens admitted of conditional entrants. Sec. 209 of the Act of 1952, 8 U.S.C. 1159 now provides for adjustment of status of refugees.

[n46] Footnote 24. As enacted by Sec. 601 of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978. Sec. 601 of the Immigration Act of 1990 strikes paragraphs (9) and (10) of subsection (d) without replacing them and added a new subparagraph (11). As amended by Section 307(d) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Pub. L. No. 102-232, 105 Stat. 1733.

[n47] Footnote 25. Sec. 351 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. No. 104-208, 110 Stat. 3009, added the clarifying phrase ''an individual who at the time of such action was'' both here and in section 237(a)(1)(E)(iii). Effective ''for waivers filed before, on, or after the date of the enactment of [IIRAIRA], but shall not apply to such an application for which a final determination has been made as of the date of the enactment of [IIRAIRA].''

[n48] Footnote 25.1. First of two paragraphs designated ''(13)'', both added by Pub. L. No. 106-386. See, also, other par. (13), *infra*. This par. (13) added by Sec. 107(e)(3), div. A [Trafficking Victims Protection Act of 2000], Pub. L. No. 106-386 [Victims of Trafficking and Violence Protection Act of 2000], Act of Oct. 28, 2000, 114 Stat. 1464. *Statutory construction of amendments by Sec. 107, Pub. L. No. 106-386:* Sec. 107(e)(5), Pub. L. No. 106-386, provided: ''(5) Statutory Construction. Nothing in this section, or in the amendments made by this section, shall be construed as prohibiting the Attorney General from instituting removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) against an alien admitted as a nonimmigrant under section 101(a)(15)(T)(i) of that Act, as added by subsection (e), for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien's admission as a nonimmigrant under such section 101(a)(15)(T)(i).''

[n49] Footnote 25.2. Second of two paragraphs designated ''(13)'', both added by Pub. L. No. 106-386. See, also, other par. (13), *supra*. This par. (13) added by Sec. 1513(e), title V [Battered Immigrant Women Protection Act of 2000], div. B [Violence Against Women Act of 2000], Pub. L. No. 106-386 [Victims of Trafficking and Violence Protection Act of 2000], Act of Oct. 28, 2000, 114 Stat. 1464.

[n50] Footnote 26. Subsection (e) added by Act of Sept. 26, 1961, 75 Stat. 535, and amended by Sec. 2, Act of April 7, 1970, Pub. L. No. 91-225, 84 Stat. 116.

[n51] Footnote 27. Reference to the Director of the United States Information Agency was added by sec. 9(i), Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609. Before this amendment, the reference had been to the Secretary of State, although Reorganization Plan No. 2 of 1977, House Docs. 95-243, 251, 254, transferred this function in 1978 to the Director, International Communication Agency (USICA). In 1982 the name of this agency was changed to United States Information Agency (USIA) by the Act of Aug. 24, 1982, Pub. L. No. 97-241, 96 Stat. 273.

[n52] Footnote 29. Clause (iii) added by Sec. 601(c), Act of Oct. 12, 1976, Pub. L. No. 94-484, 90 Stat. 2301.

[n53] Footnote 30. The words ''or in another foreign country'' were deleted by Sec. 2, Act of April 7, 1970, Pub. L. No. 91-225, 84 Stat. 117.

[n54] Footnote 31. Clause within parentheses added by Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, § 220(a)(1), 108 Stat. 4305, 4319.

[n55] Footnote 32. Clause relating to persecution added by Sec. 2, Act of April 7, 1970, Pub. L. No. 91-225, 84 Stat. 117.

[n56] Footnote 33. As amended by Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, § 220(a)(2), 108 Stat. 4305, 4319; Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. No. 104-108, § 622(b). (Concerning the reference to ''section 214(k)'', it may be noted that while the currently designated section 214(k) relates to numerical limitations, period of admission, and conditions for admission and stay, there is a formerly designated section 214(k), now designated 214(l), which relates to restrictions on waivers and which therefore may constitute the ''section 214(k)'' contemplated by the reference thereto in the text of the statute in this instance. The redesignation from 214(k) to 214(l) was made by Sec. 671(a)(3)(A) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), resulting in two sections 214(l), the first relating to restrictions on waivers, as mentioned, and the second relating to foreign students.)

[n57] Footnote 34. Proviso relating to waiver added by Sec. 2, Act of April 7, 1970, Pub. L. No. 91-225, 84 Stat. 117, which deleted other provisions relating to 22 U.S.C. 2451.

[n58] Footnote 35. Preclusion of waiver for aliens coming to receive graduate medical education or training added by sec. 601(c), Act of Oct. 12, 1976, Pub.

L. No. 94-484, 90 Stat. 2301.

[n59] Footnote 37. As reorganized, redesignated, and amended by Sec. 601(d)(3) of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978, and subsequently amended substantially by Sec. 341(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. No. 104-208, 110 Stat. 3009, effective with respect to applications for immigrant visas or for adjustment of status to permanent residence filed after September 30, 1996. Further amended by Sec. 1505(d), title V [Battered Immigrant Women Protection Act of 2000], div. B [Violence Against Women Act of 2000], Pub. L. No. 106-386 [Victims of Trafficking and Violence Protection Act of 2000], Act of Oct. 28, 2000, 114 Stat. 1464.

[n60] Footnote 38. As amended by Sec. 601(d)(4) of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978. Subsection (h), as amended, has eliminated the requirement of "extreme hardship", and has added the requirement of rehabilitation. Subsection (h) was previously added by Sec. 14, Act of Sept. 26, 1961, 75 Stat. 655. Authority for waiver of excludability for aliens convicted of a single offense of simple possession of marihuana was added by Sec. 4(3), Act of Dec. 29, 1981, Pub. L. No. 97-116, 95 Stat. 1161. However, Subtitle M of the Antidrug Abuse Act of 1986, Oct. 27, 1986, Pub. L. No. 99-570, 100 Stat. 3207, amended Sec. 212(a)(23) to conform to the Controlled Substances Act (21 U.S.C. 802). Further amended by Section 307(f) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Pub. L. No. 102-232, 105 Stat. 1733; Sec. 1505(e), title V [Battered Immigrant Women Protection Act of 2000], div. B [Violence Against Women Act of 2000], Pub. L. No. 106-386 [Victims of Trafficking and Violence Protection Act of 2000], Act of Oct. 28, 2000, 114 Stat. 1464.

[n61] Footnote 39. The last two sentences of this section were added by Sec. 348, Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. No. 104-208, 110 Stat. 3009, effective "on the date of enactment of [IIRAIRA] and shall apply in the case of any alien who is in exclusion or deportation proceedings as of such date unless a final administrative order in such proceedings has been entered as of such date."

[n62] Footnote 40. As amended by Sec. 601(d)(5) of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978; Sec. 307(g) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Pub. L. No. 102-232, 105 Stat. 1733; Sec. 1505(c)(1), title V [Battered Immigrant Women Protection Act of 2000], div. B [Violence Against Women Act of 2000], Pub. L. No. 106-386 [Victims of Trafficking and Violence Protection Act of 2000], Act of Oct. 28, 2000, 114 Stat. 1464.

[n63] Footnote 41. Subsec. (j) added by Sec. 601(d), Health Professions Educational Assistance Act of 1976, Act of Oct. 12, 1976, Pub. L. No. 94-484, 90 Stat. 2243. Amended by Sec. 307(q)(2), Act of Aug. 1, 1977, Pub. L. No. 95-83, 91 Stat. 383; Sec. 404, Act of Dec. 17, 1980, Pub. L. No. 96-538, 94 Stat. 3183; Sec. 5, Act of Dec. 29, 1981, Pub. L. No. 97-116, 95 Stat. 1611; Secs. 303(a)(5)(b), 309(b)(7), Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Pub. L. No. 102-232, 105 Stat. 1733; Secs. 308(f)(1)(F) and (f)(3)(A) [both amending subsec. (j)(1)(D)], IIRAIRA, Pub. L. No. 104-208.

[n64] Footnote 43. Clause (i) inserted, and existing text designated as clause (ii), by Sec. 307(q)(2), Act of Aug. 1, 1977, Pub. L. No. 95-83, 91 Stat. 383. In clause (ii), the subclause (I) through (IV) designations were among the amendments made by Sec. 5(b)(7), Act of Dec. 29, 1981, Pub. L. No. 97-116, 95 Stat. 1611. The manner in which this subsec. (j)(1)(B) is presented in the U.S. Code, at 8 U.S.C. § 1182(j)(1)(B), as well as a review of the amendments themselves, appears to support the formatting of this provision as herein, with subdivisions running together in a single paragraph rather than indented separately.

[n65] Footnote 44. This sentence added by Sec. 5(a)(2), Act of Dec. 29, 1981, Pub. L. No. 97-116, 95 Stat. 1611.

[n66] Footnote 45. Subpar. (D) amended by Sec. 5(b)(5), Act of Dec. 29, 1981, Pub. L. No. 97-116, 95 Stat. 1611.

[n67] Footnote 46. Subpar. (E) added by Sec. 5(b)(6), Act of Dec. 29, 1981, Pub. L. No. 97-116, 95 Stat. 1611.

[n68] Footnote 47. Former par. (2) struck, and new par. (2) inserted, by Section 303(a)(5)(B), Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Pub. L. No. 102-232, 105 Stat. 1733.

[n69] Footnote 48. Par. (3) added by Sec. 5(b)(8), Act of Dec. 29, 1981, Pub. L. No. 97-116, 95 Stat. 1161, and amended by Sec. 309(b)(7), Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Pub. L. No. 102-232, 105 Stat. 1733.

[n70] Footnote 49. Subsec. (k) added by Sec. 18(e)(2), Act of Dec. 29, 1981, Pub. L. No. 97-116, 95 Stat. 1611, and amended by Sec. 601(d)(6) of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978.

[n71] Footnote 50. Sic. Probably should be "to" rather than "from".

[n72] Footnote 51. Par. (1) added by the Act of Oct. 5, 1984, Pub. L. No. 98-454, 98 Stat. 1737, amended by the Act of Aug. 27, 1986, Pub. L. No. 99-396, 100 Stat. 842, and amended by Sec. 601(d)(7) of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978.

[n73] Footnote 52. Subsec. (m) was added by Sec. 3(b), Immigration Nursing Relief Act of 1989, Act of Dec. 18, 1989, Pub. L. No. 101-238, 103 Stat. 2099. Sec. 3(d) of such Act provided that the amendments made by the previous provisions of the section shall apply to classification petitions filed for nonimmigrant status only during the 5-year period beginning on the first day of the 9th month beginning after the date of the enactment of such Act [enacted Dec. 18, 1989]. Sec. 3(c) of such Act provided for the appointment of an advisory group to advise the Secretary of Labor on, inter alia, the advisability of extending the amendments made by the section beyond the 5-year period described in section 3(d). Subsec. (m) was further amended by Sec. 2(b), Nursing Relief for Disadvantaged Areas Act of 1999, Act of Nov. 12, 1999, Pub. L. 106-95, 113 Stat. 1312. Sec. 2(d) of such Act of Nov. 12, 1999, provided that "Not later than 90 days after the date of the enactment of this Act, the Secretary of Labor (in consultation, to the extent required, with the Secretary

of Health and Human Services) and the Attorney General shall promulgate final or interim final regulations to carry out section 212(m) of the Immigration and Nationality Act (as amended by subsection (b)).'' Sec. 2(e) of such Act of Nov. 12, 1999, provided that ''The amendments made by this section shall apply to classification petitions filed for nonimmigrant status only during the 4-year period beginning on the date that interim or final regulations are first promulgated under subsection (d).''

[n74] Footnote 55. Subsec. (n) added by Sec. 205(c)(3) of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978; effective October 1, 1991. Subsec. (n)(1) amended by Sec. 412(b)(2) of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681, which substituted ''an H-1B nonimmigrant'' for ''a nonimmigrant described in section 101(a)(15)(H)(i)(b)'' each place it appeared; effective date provision [Sec. 412(d) of the American Competitiveness and Workforce Improvement Act]: amendments made by Sec. 412(b) take effect on date of enactment.

[n75] Footnote 56. As amended by Section 303(a)(7)(B) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Pub. L. No. 102-232, 105 Stat. 1733.

[n76] Footnote 57. *Id.*

[n77] Footnote 57.1. As amended by Sec. 412(c) of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681; effective date provision [Sec. 412(d) of said Act]: amendments made by Sec. 412(c) take effect on date of enactment.

[n78] Footnote 58. Former last three sentences of subpar. (D) were repositioned to form the undesignated flush-left paragraph at end of subsec. (n)(1), and the sentences relating to review of application and providing of certification were added at end of said undesignated paragraph, by Section 303(a)(7)(B)(iii) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Pub. L. No. 102-232, 105 Stat. 1733.

[n79] Footnote 58.1. Subpars. (E), (F), and (G) added by Sec. 412(a)(1) of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681; effective date provision [Sec. 412(d) of said American Competitiveness and Workforce Improvement Act]: amendments made by Sec. 412(a) to apply to applications filed under section 212(n)(1) of the Immigration and Nationality Act on or after the date final regulations are issued to carry out such amendments. Subpar. (E)(ii) amended by Sec. 107(a), title I [American Competitiveness in the Twenty-first Century Act of 2000], Pub. L. No. 106-313, Act of Oct. 17, 2000, 114 Stat. 1251, substituting ''October 1, 2003'' for ''October 1, 2001''.

[n80] Footnote 58.2. Subpars. (E), (F), and (G) added by Sec. 412(a)(1) of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681; effective date provision [Sec. 412(d) of said American Competitiveness and Workforce Improvement Act]: amendments made by Sec. 412(a) to apply to applications filed

under section 212(n)(1) of the Immigration and Nationality Act on or after the date final regulations are issued to carry out such amendments.

[n81] Footnote 58.3. Subpars. (E), (F), and (G) added by Sec. 412(a)(1) of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681; effective date provision [Sec. 412(d) of said American Competitiveness and Workforce Improvement Act]: amendments made by Sec. 412(a) to apply to applications filed under section 212(n)(1) of the Immigration and Nationality Act on or after the date final regulations are issued to carry out such amendments.

[n82] Footnote 58.4. Former last three sentences of subpar. (D) were repositioned to form this undesignated flush-left paragraph at end of subsec. (n)(1), and the sentences relating to review of application and providing of certification were added at end of this undesignated paragraph, by Section 303(a)(7)(B)(iii) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Pub. L. No. 102-232, 105 Stat. 1733. Sentence relating to inclusion of clear statement explaining liability, and sentence relating to construction, added by Sec. 412(a), pars. (2) and (3), respectively, of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681; effective date provision [Sec. 412(d) of said American Competitiveness and Workforce Improvement Act]: amendments by Sec. 412(a) to apply to applications filed under section 212(n)(1) of the Immigration and Nationality Act on or after the date final regulations are issued to carry out such amendments.

[n83] Footnote 58.5. As amended by Sec. 413(b)(2) of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681.

[n84] Footnote 59. As amended by Section 303(a)(7)(B)(iv) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Pub. L. No. 102-232, 105 Stat. 1733; Sec. 413(a) of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681.

[n85] Footnote 60. As amended by Section 303(a)(7)(B)(v) and (vi) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Pub. L. No. 102-232, 105 Stat. 1733.

[n86] Footnote 60.1. Subpar. (2)(E) added by Sec. 413(c) of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681.

[n87] Footnote 60.2. Subpar. (2)(F) added by Sec. 413(d) of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681.

[n88] Footnote 60.3. Subpar. (2)(G) added by Sec. 413(e)(1) of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681; sunset provision [Sec. 413(e)(2), as amended by Sec. 107(b), title I (American Competitiveness in the Twenty-first Century Act of 2000), Pub. L. 106-313, Act of Oct. 17, 2000, 114

Stat. 1251]: the amendment made by Sec. 413(e)(1) [adding Subpar. (2)(G)] shall cease to be effective on September 30, 2003.

[n89] Footnote 60.4. Subpar. (2)(H) added by Sec. 413(f) of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681.

[n90] Footnote 60.5. Subpars. (3) and (4) added by Sec. 412(b)(1) of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681; effective date provision [Sec. 412(d)]: amendments made by Sec. 412(b) take effect on date of enactment.

[n91] Footnote 60.6. Subpars. (3) and (4) added by Sec. 412(b)(1) of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681; effective date provision [Sec. 412(d)]: amendments made by Sec. 412(b) take effect on date of enactment.

[n92] Footnote 60.7. Subpar. (5) added by Sec. 413(b)(1) of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681.

[n93] Footnote 61. Former subsec. (o), relating to requirements for receipt of immigrant visa within ninety days following departure, had been added by Sec. 506(a), Violent Crime Control Appropriations Act, 1995, Act of August 26, 1994, Pub. L. No. 103-317, 108 Stat. 1724. Sec. 506(c) of such Act, as amended by Sec. 111(b), Act of Nov. 26, 1997, Pub. L. No. 105-119, 111 Stat. 2440, provided as follows with respect to effective and termination dates: ''(c) The amendment made by subsection (a) [adding INA § 212(o)] shall take effect on October 1, 1994, and shall cease to have effect on October 1, 1997. The amendment made by subsection (b) [adding INA § 245(i)] shall take effect on October 1, 1994.'' The terminated former subsec. (o) provided as follows:

''(o) An alien who has been physically present in the United States shall not be eligible to receive an immigrant visa within ninety days following departure therefrom unless--

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

''(2) The alien is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986 at any date, who--

''(A) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986;

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

''(C) applied for benefits under section 301(a) of the Immigration Act of 1990.''

[n94] Footnote 61.1. See also other subsec. (p), ''Public Charge'', *infra*. This subsec. (p) added by Sec. 415(a) of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681; effective date provision [Sec. 415(b) of said Act]: the amendment made by Sec. 415(a) applies to prevailing wage computations made (1) for applications filed on or after the date of the enactment of the American Competitiveness and Workforce Improvement Act, and (2) for applications filed before such date, but only to the extent that the computation is subject to an administrative or judicial determination that is not final as of such date.

[n95] Footnote 61.1a. See also other subsec. (p), ''Computation of Prevailing Wage Level'', *supra*. This subsec. (p) added by Sec. 1505(f), title V [Battered Immigrant Women Protection Act of 2000], div. B [Violence Against Women Act of 2000], Pub. L. No. 106-386 [Victims of Trafficking and Violence Protection Act of 2000], Act of Oct. 28, 2000, 114 Stat. 1464.

[n96] Footnote 61.2. Added by Sec. 431(a) of the American Competitiveness and Workforce Improvement Act, Title IV of Division C of Pub. L. No. 105-277, Act of October 21, 1998, 112 Stat. 2681; effective date provision [Sec. 431(b) of said Act]: amendment made by Sec. 431(a) shall apply to activities occurring on or after the date of the enactment of the Act.

[n97] Footnote 61.3. Subsec. (r) added by Sec. 4(a)(1), Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. No. 106-95, Act of Nov. 12, 1999, 113 Stat. 1312, with effective date pursuant to Sec. 4(b) of such Act, which provided that ''The amendments made by subsection (a) [adding INA § 212(r) and amending INA § 212(a)(5)(C)] shall take effect on the date of the enactment of this Act [Nov. 12, 1999], without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

[n98] Footnote 61.4. Sec. 4(c), Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. No. 106-95, Act of Nov. 12, 1999, 113 Stat. 1312, provided: ''(c) Issuance of Certified Statements--The Commission on Graduates of Foreign Nursing Schools, or any approved equivalent independent credentialing organization, shall issue certified statements pursuant to the amendment under subsection (a) [adding INA § 212(r)] not more than 35 days after the receipt of a complete application for such a statement.''

[n99] Footnote 61.5. Sec. 2(e) of the Act reads: ''(e) Limiting Application of Nonimmigrant Changes to 4-Year Period--The amendments made by this section [amending INA §§ 101(a)(15)(H)(i) and 212(m)] shall apply to classification petitions filed for nonimmigrant status only during the 4-year period beginning on the date that interim or final regulations are first promulgated under subsection (d).''

5. As amended by Sec. 601 of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978; applicable to individuals entering the United States on or after June 1, 1991.