

Showing How the USA Patriot Act (P.L. 107-56) Changes Title 8 of the U.S. Code
(Additions Underscored; Deletions Stricken)

UNITED STATES CODE ANNOTATED
TITLE 8. ALIENS AND NATIONALITY
CHAPTER 12--IMMIGRATION AND NATIONALITY
SUBCHAPTER I--GENERAL PROVISIONS

Current through P.L. 107-56, approved 10-26-01

§ 1105. Liaison with internal security officers data exchange

3 (a) The Commissioner and the Administrator shall have authority to maintain direct and continuous liaison with the Directors of the Federal Bureau of Investigation and the Central Intelligence Agency and with other internal security officers of the Government for the purpose of obtaining and exchanging information for use in enforcing the provisions of this chapter in the interest of the internal and border security of the United States. The Commissioner and the Administrator shall maintain direct and continuous liaison with each other with a view to a coordinated, uniform, and efficient administration of this chapter, and all other immigration and nationality laws.

(b)(1) The Attorney General and the Director of the Federal Bureau of Investigation shall provide the Department of State and the Service access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index (NCIC-III), Wanted Persons File, and to any other files maintained by the National Crime Information Center that may be mutually agreed upon by the Attorney General and the agency receiving the access, for the purpose of determining whether or not a visa applicant or applicant for admission has a criminal history record indexed in any such file.

(2) Such access shall be provided by means of extracts of the records for placement in the automated visa lookout or other appropriate database, and shall be provided without any fee or charge.

(3) The Federal Bureau of Investigation shall provide periodic updates of the extracts at intervals mutually agreed upon with the agency receiving the access. Upon receipt of such updated extracts, the receiving agency shall make corresponding updates to its database and destroy previously provided extracts.

(4) Access to an extract does not entitle the Department of State to obtain the full content of the corresponding automated criminal history record. To obtain the full content of a criminal history record, the Department of State shall submit the applicant's fingerprints and any appropriate fingerprint processing fee authorized by law to the Criminal Justice Information Services Division of the Federal Bureau of Investigation.

(c) The provision of the extracts described in subsection (b) may be reconsidered by the Attorney General and the receiving agency upon the development and deployment of a more cost-effective and efficient means of sharing the information.

(d) For purposes of administering this section, the department of State shall, prior to receiving access to ncic data but not later than 4 months after the date of enactment of this subsection, promulgate final regulations--

(1) to implement procedures for the taking of fingerprints; and

(2) to establish the conditions for the use of the information received from the Federal Bureau of Investigation, in order--

(A) to limit the redissemination of such information;

(B) to ensure that such information is used solely to determine whether or not to issue a visa to an alien or to admit an alien to the United States;

(C) to ensure the security, confidentiality, and destruction of such information; and

(D) to protect any privacy rights of individuals who are subjects of such information.

Notes

Reporting Requirement

Not later than 2 years after the date of enactment of this Act [Oct. 26, 2001], the Attorney General and the Secretary of State jointly shall report to Congress on the implementation of the amendments made by this section [enacting section 1379 of this title, amending this section, and enacting provisions set out as notes under this section].

Statutory Construction

Nothing in this section [enacting section 1379 of this title, amending this section, and enacting provisions set out as notes under this section], or in any other law, shall be construed to limit the authority of the Attorney General or the Director of the Federal Bureau of Investigation to provide access to the criminal history record information contained in the National Crime Information Center's (NCIC) Interstate Identification Index (NCIC-III), or to any other information maintained by the NCIC, to any Federal agency or officer authorized to enforce or administer the immigration laws of the United States, for the purpose of such enforcement or administration, upon terms that are consistent with the National Crime Prevention and Privacy Compact Act of 1998 (subtitle A of title II of Public Law 105-251; 42 U.S.C. 14611- 16) and section 552a of title 5, United States Code.

UNITED STATES CODE ANNOTATED
TITLE 8. ALIENS AND NATIONALITY
CHAPTER 12--IMMIGRATION AND NATIONALITY
SUBCHAPTER II--IMMIGRATION
PART II--ADMISSION QUALIFICATIONS FOR ALIENS; TRAVEL CONTROL OF
CITIZENS AND ALIENS

Current through P.L. 107-56, approved 10-26-01

§ 1182. Inadmissible aliens

(a) Classes of aliens ineligible for visas or admission

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

(1) Health-related grounds

(A) In general

Any alien--

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

(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) 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) of this section.

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

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

(i) is 10 years of age or younger,

(ii) is described in section 1101(b)(1)(F) of this title, and

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

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

(2) Criminal and related grounds

(A) Conviction of certain crimes

(i) In general

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

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

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21),

is inadmissible.

(ii) Exception

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

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

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

(B) Multiple criminal convictions

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

(C) Controlled substance traffickers

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

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 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 1101(h) of this title),

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

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

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

is inadmissible.

(F) Waiver authorized

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

(G) Foreign government officials who have engaged in particularly severe violations of religious freedom

Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time during the preceding 24- month period, particularly severe violations of religious freedom, as defined in section 6402 of Title 22, and the spouse and children, if any, are inadmissible.

(H) Significant traffickers in persons

(i) In general

Any alien who is listed in a report submitted pursuant to section 7108(b) of Title 22, 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 section 7102 of Title 22, is inadmissible.

(ii) Beneficiaries of trafficking

Except as provided in clause (iii), any alien who the consular officer or the 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.

(I) Money laundering

Any alien--

(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of Title 18 (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

Any alien who--

(I) has engaged in a terrorist activity,

(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 ~~(iii)~~(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 ~~(iv)~~(v)) of--

(aa) a foreign terrorist organization, as designated by the Secretary of State under section 1189 of this title, 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 1189 of this title, or which the alien knows or should have known is a terrorist organization

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

(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, or

(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,

(ii) Exception

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

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

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

(iii) "Terrorist activity"(ii) "~~Terrorist activity~~' defined

As used in this chapter, the term '~~terrorist activity~~' "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) 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 or firearm~~, 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.

(iii)

(iv) Engage in terrorist activity defined

As used in this chapter, the term engage in terrorist activity means ~~to commit~~, in an individual capacity or as a member of an organization, ~~an act of terrorist activity or an act which--~~

(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 to any individual, organization, or government in conducting a terrorist activity at any time, including any of the following acts:

"(I) The preparation or planning of a terrorist activity.

"(II) The gathering of information on potential targets for terrorist activity.

"(III) The providing of any type of 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 has reason to believe, or reasonably should know, has committed or plans to commit a terrorist activity;

"(IV) The soliciting of funds or other things of value for terrorist activity or for any terrorist organization.

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"(V) ~~The solicitation of any individual for membership in~~
(cc) to a terrorist organization, terrorist government, or to engage in a 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.

~~(iv)-(v)~~ "Representative" defined

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

(vi) Terrorist organization defined

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

(I) designated under section 1189 of this title;

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

(ii) Exception for officials

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

(iii) Exception for other aliens

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

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,

(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.

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(F) Association with terrorist organizations

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

Note

RETROACTIVE APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Except as otherwise provided in this sub-section, 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).

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(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.

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Current through P.L. 107-56, approved 10-26-01

§ 1187. Visa waiver program for certain visitors

(a) Establishment of program

The Attorney General and the Secretary of State are authorized to establish a program (hereinafter in this section referred to as the "program") under which the requirement of paragraph (7)(B)(i)(II) of section 1182(a) of this title may be waived by the Attorney General, in consultation with the Secretary of State and in accordance with this section, in the case of an alien who meets the following requirements:

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

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

(2) National of program country

The alien is a national of, and presents a passport issued by, a country which--

(A) extends (or agrees to extend), either on its own or in conjunction with one or more other countries that are described in subparagraph (B) and that have established with it a

common area for immigration admissions, reciprocal privileges to citizens and nationals of the United States, and

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

(3) Machine readable passport

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(A) In general

Except as provided in subparagraph (B), on and ~~On or~~ after October 1, 2007 2003, the alien at the time of application for admission is in possession of a valid unexpired machine-readable passport that satisfies the internationally accepted standard for machine readability.

(B) Limited waiver authority

For the period beginning October 1, 2003, and ending September 30, 2007, the Secretary of State may waive the requirement of subparagraph (A) with respect to nationals of a program country (as designated under subsection (c)), if the Secretary of State finds that the program country--

(i) is making progress toward ensuring that passports meeting the requirement of subparagraph (A) are generally available to its nationals; and

(ii) has taken appropriate measures to protect against misuse of passports the country has issued that do not meet the requirement of subparagraph (A).

(4) Executes immigration forms

The alien before the time of such admission completes such immigration forms as the Attorney General shall establish.

(5) Entry into the United States

If arriving by sea or air, the alien arrives at the port of entry into the United States on a carrier, including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations which has entered into an agreement with the Attorney General pursuant to subsection

(e). The Attorney General is authorized to require a carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a domestic corporation conducting operations under part 91 of that title, to give suitable and proper bond, in such reasonable amount and containing such conditions as the Attorney General may deem sufficient to ensure compliance with the indemnification requirements of this section, as a term of such an agreement.

(6) Not a safety threat

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

(7) No previous violation

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

(8) Round-trip ticket

The alien is in possession of a round-trip transportation ticket (unless this requirement is waived by the Attorney General under regulations or the alien is arriving at the port of entry on an aircraft operated under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations).

(9) Automated system check

The identity of the alien has been checked using an automated electronic database containing information about the inadmissibility of aliens to uncover any grounds on which the alien may be inadmissible to the United States, and no such ground has been found.

Operators of aircraft under part 135 of title 14, Code of Federal Regulations, or operators of noncommercial aircraft that are owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, carrying any alien passenger who will apply for admission under this section shall furnish such information as the Attorney General by regulation shall prescribe as necessary for the identification of any alien passenger being transported and for the enforcement of the immigration laws. Such information shall be electronically transmitted not less than one hour prior to arrival at the port of entry for purposes of checking for inadmissibility using the automated electronic database.

(b) Waiver of rights

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

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

(2) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

(c) Designation of program countries

(1) In general

The Attorney General, in consultation with the Secretary of State, may designate any country as a program country if it meets the requirements of paragraph (2).

(2) Qualifications

Except as provided in subsection (f) of this section, a country may not be designated as a program country unless the following requirements are met:

(A) Low nonimmigrant visa refusal rate--Either--

(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during--

(I) the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years; and

(II) either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year; or

(ii) such refusal rate for nationals of that country during the previous full fiscal year was less than 3.0 percent.

(B) Machine readable passport program

(i) In general

Subject to clause (ii), the government of the country certifies that it issues to its citizens machine-readable passports that satisfy the internationally accepted standard for machine readability.

(ii) Deadline for compliance for certain countries

In the case of a country designated as a program country under this subsection prior to May 1, 2000, as a condition on the continuation of that designation, the country—

(I) shall certify, not later than October 1, 2000, that it has a program to issue machine-readable passports to its citizens not later than October 1, 2003; and

(II) shall satisfy the requirement of clause (i) not later than October 1, 2003.

(C) Law enforcement and security interests

The Attorney General, in consultation with the Secretary of State--

(i) evaluates the effect that the country's designation would have on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

(ii) determines that such interests would not be compromised by the designation of the country; and

(iii) submits a written report to the Committee on the Judiciary and the Committee on International Relations of the House of Representatives and the Committee on the Judiciary and the Committee on Foreign Relations of the Senate regarding the country's qualification for designation that includes an explanation of such determination.

(3) Continuing and subsequent qualifications

For each fiscal year after the initial period--

(A) Continuing qualification

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

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

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

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

(B) New countries

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

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

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

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

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

(4) Initial period

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

(5) Written reports on continuing qualification; designation terminations

(A) Periodic evaluations

(i) In general

The Attorney General, in consultation with the Secretary of State, periodically (but not less than once every 5 years)--

(I) shall evaluate the effect of each program country's continued designation on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and

effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

(II) shall determine, based upon the evaluation in subclause (I), whether any such designation ought to be continued or terminated under subsection (d); and

(III) shall submit a written report to the Committee on the Judiciary and the Committee on International Relations of the House of Representatives and the Committee on the Judiciary and the Committee on Foreign Relations of the Senate regarding the continuation or termination of the country's designation that includes an explanation of such determination and the effects described in subclause (I).

(ii) Effective date

A termination of the designation of a country under this subparagraph shall take effect on the date determined by the Attorney General, in consultation with the Secretary of State.

(iii) Redesignation

In the case of a termination under this subparagraph, the Attorney General shall redesignate the country as a program country, without regard to subsection (f) or paragraph (2) or (3), when the Attorney General, in consultation with the Secretary of State, determines that all causes of the termination have been eliminated.

(B) Emergency termination

(i) In general

In the case of a program country in which an emergency occurs that the Attorney General, in consultation with the Secretary of State, determines threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States), the Attorney General shall immediately terminate the designation of the country as a program country.

(ii) Definition

For purposes of clause (i), the term "emergency" means--

(I) the overthrow of a democratically elected government;

(II) war (including undeclared war, civil war, or other military activity) on the territory of the program country;

(III) a severe breakdown in law and order affecting a significant portion of the program country's territory;

(IV) a severe economic collapse in the program country; or

(V) any other extraordinary event in the program country that threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States) and where the country's participation in the program could contribute to that threat.

(iii) Redesignation

The Attorney General may redesignate the country as a program country, without regard to subsection (f) or paragraph (2) or (3), when the Attorney General, in consultation with the Secretary of State, determines that--

(I) at least 6 months have elapsed since the effective date of the termination;

(II) the emergency that caused the termination has ended; and

(III) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the period of termination under this subparagraph was less than 3.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during such period.

(C) Treatment of nationals after termination

For purposes of this paragraph--

(i) nationals of a country whose designation is terminated under subparagraph (A) or (B) shall remain eligible for a waiver under subsection (a) until the effective date of such termination; and

(ii) a waiver under this section that is provided to such a national for a period described in subsection (a)(1) shall not, by such termination, be deemed to have been rescinded or otherwise rendered invalid, if the waiver is granted prior to such termination.

(6) Computation of visa refusal rates

For purposes of determining the eligibility of a country to be designated as a program country, the calculation of visa refusal rates shall not include any visa refusals which incorporate any procedures based on, or are otherwise based on, race, sex, or disability, unless otherwise specifically authorized by law or regulation. No court shall have

jurisdiction under this paragraph to review any visa refusal, the denial of admission to the United States of any alien by the Attorney General, the Secretary's computation of the visa refusal rate, or the designation or nondesignation of any country.

(7) Visa waiver information

(A) In general

In refusing the application of nationals of a program country for United States visas, or the applications of nationals of a country seeking entry into the visa waiver program, a consular officer shall not knowingly or intentionally classify the refusal of the visa under a category that is not included in the calculation of the visa refusal rate only so that the percentage of that country's visa refusals is less than the percentage limitation applicable to qualification for participation in the visa waiver program.

(B) Reporting requirement

On May 1 of each year, for each country under consideration for inclusion in the visa waiver program, the Secretary of State shall provide to the appropriate congressional committees--

(i) the total number of nationals of that country that applied for United States visas in that country during the previous calendar year;

(ii) the total number of such nationals who received United States visas during the previous calendar year;

(iii) the total number of such nationals who were refused United States visas during the previous calendar year;

(iv) the total number of such nationals who were refused United States visas during the previous calendar year under each provision of this Act under which the visas were refused; and

(v) the number of such nationals that were refused under section 1184(b) of the title as a percentage of the visas that were issued to such nationals.

(C) Certification

Not later than May 1 of each year, the United States chief of mission, acting or permanent, to each country under consideration for inclusion in the visa waiver program shall certify to the appropriate congressional committees that the information described in subparagraph (B) is accurate and provide a copy of that certification to those committees.

(D) Consideration of countries in the visa waiver program

Upon notification to the Attorney General that a country is under consideration for inclusion in the visa waiver program, the Secretary of State shall provide all of the information described in subparagraph (B) to the Attorney General.

(E) Definition

In this paragraph, the term "appropriate congressional committees" means the Committee on the Judiciary and the Committee on Foreign Relations of the Senate and the Committee on the Judiciary and the Committee on International Relations of the House of Representatives.

(d) Authority

Notwithstanding any other provision of this section, the Attorney General, in consultation with the Secretary of State, may for any reason (including national security) refrain from waiving the visa requirement in respect to nationals of any country which may otherwise qualify for designation or may, at any time, rescind any waiver or designation previously granted under this section.

(e) Carrier agreements

(1) In general

The agreement referred to in subsection (a)(4) of this section is an agreement between a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the program-

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

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

(C) to be subject to the imposition of fines resulting from the transporting into the United States of a national of a designated country without a passport pursuant to regulations promulgated by the Attorney General, and

(D) to collect, provide, and share passenger data as required under subsection (h)(1)(B).

(2) Termination of agreements

The Attorney General may terminate an agreement under paragraph (1) with five days' notice to the carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title for the failure by a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title to meet the terms of such agreement.

(3) Business aircraft requirements

(A) In general

For purposes of this section, a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations that owns or operates a noncommercial aircraft is a corporation that is organized under the laws of any of the States of the United States or the District of Columbia and is accredited by or a member of a national organization that sets business aviation standards. The Attorney General shall prescribe by regulation the provision of such information as the Attorney General deems necessary to identify the domestic corporation, its officers, employees, shareholders, its place of business, and its business activities.

(B) Collections

In addition to any other fee authorized by law, the Attorney General is authorized to charge and collect, on a periodic basis, an amount from each domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, for nonimmigrant visa waiver admissions on noncommercial aircraft owned or operated by such domestic corporation equal to the total amount of fees assessed for issuance of nonimmigrant visa waiver arrival/departure forms at land border ports of entry. All fees collected under this paragraph shall be deposited into the Immigration User Fee Account established under section 286(h).

(f) Duration and termination of designation

(1) In general

(A) Determination and notification of disqualification rate

Upon determination by the Attorney General that a program country's disqualification rate is 2 percent or more, the Attorney General shall notify the Secretary of State.

(B) Probationary status

If the program country's disqualification rate is greater than 2 percent but less than 3.5 percent, the Attorney General shall place the program country in probationary status for a period not to exceed 2 full fiscal years following the year in which the determination under subparagraph (A) is made.

(C) Termination of designation

Subject to paragraph (3), if the program country's disqualification rate is 3.5 percent or more, the Attorney General shall terminate the country's designation as a program country effective at the beginning of the second fiscal year following the fiscal year in which the determination under subparagraph (A) is made.

(2) Termination of probationary status

(A) In general

If the Attorney General determines at the end of the probationary period described in paragraph (1)(B) that the program country placed in probationary status under such paragraph has failed to develop a machine-readable passport program as required by section (c)(2)(C) of this section, or has a disqualification rate of 2 percent or more, the Attorney General shall terminate the designation of the country as a program country. If the Attorney General determines that the program country has developed a machine-readable passport program and has a disqualification rate of less than 2 percent, the Attorney General shall redesignate the country as a program country.

(B) Effective date

A termination of the designation of a country under subparagraph (A) shall take effect on the first day of the first fiscal year following the fiscal year in which the determination under such subparagraph is made. Until such date, nationals of the country shall remain eligible for a waiver under subsection (a) of this section.

(3) Nonapplicability of certain provisions

Paragraph (1)(C) shall not apply unless the total number of nationals of a program country described in paragraph (4)(A) exceeds 100.

(4) Definition of disqualification rate

For purposes of this subsection, the term "disqualification rate" means the percentage which--

(A) the total number of nationals of the program country who were--

(i) denied admission at the time of arrival or withdrew their application for admission during the most recent fiscal year for which data are available; and

(ii) admitted as nonimmigrant visitors during such fiscal year and who violated the terms of such admission; bears to

(B) the total number of nationals of such country who applied for admission as nonimmigrant visitors during such fiscal year.

(g) Visa application sole method to dispute denial of waiver based on a ground of inadmissibility

In the case of an alien denied a waiver under the program by reason of a ground of inadmissibility described in section 1182(a) of this title that is discovered at the time of the alien's application for the waiver or through the use of an automated electronic database required under subsection (a)(9), the alien may apply for a visa at an appropriate consular office outside the United States. There shall be no other means of administrative or judicial review of such a denial, and no court or person otherwise shall have jurisdiction to consider any claim attacking the validity of such a denial.

(h) Use of information technology systems

(1) Automated entry-exit control system

(A) System

Not later than October 1, 2001, the Attorney General shall develop and implement a fully automated entry and exit control system that will collect a record of arrival and departure for every alien who arrives and departs by sea or air at a port of entry into the United States and is provided a waiver under the program.

(B) Requirements

The system under subparagraph (A) shall satisfy the following requirements:

(i) Data collection by carriers

Not later than October 1, 2001, the records of arrival and departure described in subparagraph (A) shall be based, to the maximum extent practicable, on passenger data

collected and electronically transmitted to the automated entry and exit control system by each carrier that has an agreement under subsection (a)(4).

(ii) Data provision by carriers

Not later than October 1, 2002, no waiver may be provided under this section to an alien arriving by sea or air at a port of entry into the United States on a carrier unless the carrier is electronically transmitting to the automated entry and exit control system passenger data determined by the Attorney General to be sufficient to permit the Attorney General to carry out this paragraph.

(iii) Calculation

The system shall contain sufficient data to permit the Attorney General to calculate, for each program country and each fiscal year, the portion of nationals of that country who are described in subparagraph (A) and for whom no record of departure exists, expressed as a percentage of the total number of such nationals who are so described.

(C) Reporting

(i) Percentage of nationals lacking departure record

As part of the annual report required to be submitted under section 110(e)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the Attorney General shall include a section containing the calculation described in subparagraph (B)(iii) for each program country for the previous fiscal year, together with an analysis of that information.

(ii) System effectiveness

Not later than December 31, 2004, the Attorney General shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the following:

(I) The conclusions of the Attorney General regarding the effectiveness of the automated entry and exit control system to be developed and implemented under this paragraph.

(II) The recommendations of the Attorney General regarding the use of the calculation described in subparagraph (B)(iii) as a basis for evaluating whether to terminate or continue the designation of a country as a program country.

The report required by this clause may be combined with the annual report required to be submitted on that date under section 110(e)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

(2) Automated data sharing system

(A) System

The Attorney General and the Secretary of State shall develop and implement an automated data sharing system that will permit them to share data in electronic form from their respective records systems regarding the admissibility of aliens who are nationals of a program country.

(B) Requirements

The system under subparagraph (A) shall satisfy the following requirements:

(i) Supplying information to immigration officers conducting inspections at ports of entry

Not later than October 1, 2002, the system shall enable immigration officers conducting inspections at ports of entry under section 1222 of this title to obtain from the system, with respect to aliens seeking a waiver under the program--

(I) any photograph of the alien that may be contained in the records of the Department of State or the Service; and

(II) information on whether the alien has ever been determined to be ineligible to receive a visa or ineligible to be admitted to the United States.

(ii) Supplying photographs of inadmissible aliens

The system shall permit the Attorney General electronically to obtain any photograph contained in the records of the Secretary of State pertaining to an alien who is a national of a program country and has been determined to be ineligible to receive a visa.

(iii) Maintaining records on applications for admission

The system shall maintain, for a minimum of 10 years, information about each application for admission made by an alien seeking a waiver under the program, including the following:

(I) The name or Service identification number of each immigration officer conducting the inspection of the alien at the port of entry.

(II) Any information described in clause (i) that is obtained from the system by any such officer.

(III) The results of the application.

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Note

Machine Readable Passports

(a) Audits.--The Secretary of State shall, each fiscal year until September 30, 2007--

(1) perform annual audits of the implementation of section 217(c)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)(B));

(2) check for the implementation of precautionary measures to prevent the counterfeiting and theft of passports; and

(3) ascertain that countries designated under the visa waiver program have established a program to develop tamper-resistant passports.

(b) Periodic reports.--Beginning one year after the date of enactment of this Act [Oct. 26, 2001], and every year thereafter until 2007, the Secretary of State shall submit a report to Congress setting forth the findings of the most recent audit conducted under subsection (a)(1).

UNITED STATES CODE ANNOTATED
TITLE 8. ALIENS AND NATIONALITY
CHAPTER 12--IMMIGRATION AND NATIONALITY
SUBCHAPTER II--IMMIGRATION
PART II--ADMISSION QUALIFICATIONS FOR ALIENS; TRAVEL CONTROL OF
CITIZENS
AND ALIENS

Current through P.L. 107-56, approved 10-26-01

§ 1189. Designation of foreign terrorist organizations

(a) Designation

(1) In general

The Secretary is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the Secretary finds that--

(A) the organization is a foreign organization;

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(B) the organization engages in terrorist activity (as defined in section 1182(a)(3)(B) of this title or terrorism (as defined in section 2656f(d)(2) of Title 22, or retains the capability and intent to engage in terrorist activity or terrorism)); and

(C) the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.

(2) Procedure

(A) Notice

(i) To Congressional leaders

Seven days before making a designation under this subsection, the Secretary shall, by classified communication,--

(i) notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate ~~a foreign~~ an organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor; ~~and~~

~~(ii) seven days after such notification,~~

(ii) Publication in Federal Register

The Secretary shall publish the designation in the Federal Register seven days after providing the notification under clause (i).

(B) Effect of designation

(i) For purposes of section 2339B of Title 18, a designation under this subsection shall take effect upon publication under subparagraph (A)(ii).

(ii) Any designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

(C) Freezing of assets

Upon notification under paragraph (2)(A)(i), the Secretary of the Treasury may require United States financial institutions possessing or controlling any assets of any foreign organization included in the notification to block all financial transactions involving those assets until further directive from either the Secretary of the Treasury, Act of Congress, or order of court.

(3) Record

(A) In general

In making a designation under this subsection, the Secretary shall create an administrative record.

(B) Classified information

The Secretary may consider classified information in making a designation under this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection ~~(e)~~(b) of this section.

(4) Period of designation

(A) In general

Subject to paragraphs (5) and (6), a designation under this subsection shall be effective for all purposes for a period of 2 years beginning on the effective date of the designation under paragraph (2)(B).

(B) Redesignation

1 The Secretary may redesignate a foreign organization as a foreign terrorist organization for an additional 2-year period at the end of the 2-year period referred to in subparagraph (A) (but not sooner than 60 days prior to the termination of such period) upon a finding that the relevant circumstances described in paragraph (1) still exist. The Secretary also may redesignate such organization at the end of any 2-year redesignation period (but not sooner than 60 days prior to the termination of such period) for an additional 2-year period upon a finding that the relevant circumstances described in paragraph (1) still exist. Any redesignation shall be effective immediately following the end of the prior 2-year designation or redesignation period unless a different effective date is provided in such redesignation. The procedural requirements of paragraphs (2) and (3) shall apply to a redesignation under this subparagraph.

(5) Revocation by Act of Congress

The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

(6) Revocation based on change in circumstances

(A) In general

The Secretary may revoke a designation made under paragraph (1) or a redesignation made under paragraph (4)(B) if the Secretary finds that--

(i) the circumstances that were the basis for the designation or redesignation have changed in such a manner as to warrant revocation ~~of the designation~~; or

(ii) the national security of the United States warrants a revocation ~~of the designation~~.

(B) Procedure

The procedural requirements of paragraphs (2) ~~through (4)~~ and (3) shall apply to a revocation under this paragraph. Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.

(7) Effect of revocation

The revocation of a designation under paragraph (5) or (6) , or the revocation of a redesignation under paragraph (6), shall not affect any action or proceeding based on conduct committed prior to the effective date of such revocation.

(8) Use of designation in trial or hearing

If a designation under this subsection has become effective under paragraph ~~(4)(B)~~(2)(B), or if a redesignation under this subsection has become effective under paragraph (4)(B), a defendant in a criminal action or an alien in a removal proceeding shall not be permitted to raise any question concerning the validity of the issuance of such designation or redesignation as a defense or an objection at any trial or hearing.

(b) Judicial review of designation

(1) In general

Not later than 30 days after publication of the designation in the Federal Register, an organization designated as a foreign terrorist organization may seek judicial review of the designation in the United States Court of Appeals for the District of Columbia Circuit.

(2) Basis of review

Review under this subsection shall be based solely upon the administrative record, except that the Government may submit, for ex parte and in camera review, classified information used in making the designation.

(3) Scope of review

The Court shall hold unlawful and set aside a designation the court finds to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(D) lacking substantial support in the administrative record taken as a whole or in classified information submitted to the court under paragraph (2), or

(E) not in accord with the procedures required by law.

(4) Judicial review invoked

The pendency of an action for judicial review of a designation shall not affect the application of this section, unless the court issues a final order setting aside the designation.

(c) Definitions

As used in this section--

(1) the term "classified information" has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

(2) the term "national security" means the national defense, foreign relations, or economic interests of the United States;

(3) the term "relevant committees" means the Committees on the Judiciary, Intelligence, and Foreign Relations of the Senate and the Committees on the Judiciary, Intelligence, and International Relations of the House of Representatives; and

(4) the term "Secretary" means the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General.

UNITED STATES CODE ANNOTATED
TITLE 8. ALIENS AND NATIONALITY
CHAPTER 12--IMMIGRATION AND NATIONALITY
SUBCHAPTER II--IMMIGRATION
PART III--ISSUANCE OF ENTRY DOCUMENTS

Current through P.L. 107-56, approved 10-26-01

§ 1201. Issuance of visas

(a) Immigrants; non-immigrants

Under the conditions hereinafter prescribed and subject to the limitations prescribed in this chapter or regulations issued thereunder, a consular officer may issue (1) to an immigrant who has made proper application therefor, an immigrant visa which shall

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

(b) Registration; photographs; waiver of requirement

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

(c) Period of validity; requirement of visa

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

officer to be eligible for an immigrant visa and the immigrant pays again the statutory fees for an application and an immigrant visa.

(d) Physical examination

Prior to the issuance of an immigrant visa to any alien, the consular officer shall require such alien to submit to a physical and mental examination in accordance with such regulations as may be prescribed. Prior to the issuance of a nonimmigrant visa to any alien, the consular officer may require such alien to submit to a physical or mental examination, or both, if in his opinion such examination is necessary to ascertain whether such alien is eligible to receive a visa.

(e) Surrender of visa

Each immigrant shall surrender his immigrant visa to the immigration officer at the port of entry, who shall endorse on the visa the date and the port of arrival, the identity of the vessel or other means of transportation by which the immigrant arrived, and such other endorsements as may be by regulations required.

(f) Surrender of documents

Each nonimmigrant shall present or surrender to the immigration officer at the port of entry such documents as may be by regulation required. In the case of an alien crewman not in possession of any individual documents other than a passport and until such time as it becomes practicable to issue individual documents, such alien crewman may be admitted, subject to the provisions of this part, if his name appears in the crew list of the vessel or aircraft on which he arrives and the crew list is visaed by a consular officer, but the consular officer shall have the right to deny admission to any alien crewman from the crew list visa.

(g) Non-issuance of visas or other documents

No visa or other documentation shall be issued to an alien if (1) it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other provision of law, (2) the application fails to comply with the provisions of this chapter, or the regulations issued thereunder, or (3) the consular officer knows or has reason to believe that such alien is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other provision of law: Provided, That a visa or other documentation may be issued to an alien who is within the purview of section 1182(a)(4) of this title, if such alien is otherwise entitled to receive a visa or other documentation, upon receipt of notice by the consular officer from the Attorney

General of the giving of a bond or undertaking providing indemnity as in the case of aliens admitted under section 1183 of this title: Provided further, That a visa may be issued to an alien defined in section 1101(a)(15)(B) or (F) of this title, if such alien is otherwise entitled to receive a visa, upon receipt of a notice by the consular officer from the Attorney General of the giving of a bond with sufficient surety in such sum and containing such conditions as the consular officer shall prescribe, to insure that at the expiration of the time for which such alien has been admitted by the Attorney General, as provided in section 1184(a) of this title, or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States.

(h) Non-admission upon arrival

Nothing in this chapter shall be construed to entitle any alien, to whom a visa or other documentation has been issued, to be admitted the United States, if, upon arrival at a port of entry in the United States, he is found to be inadmissible under this chapter, or any other provision of law. The substance of this subsection shall appear upon every visa application.

(i) Revocation of visas or documents

After the issuance of a visa or other documentation to any alien, the consular officer or the Secretary of State may at any time, in his discretion, revoke such visa or other documentation. Notice of such revocation shall be communicated to the Attorney General, and such revocation shall invalidate the visa or other documentation from the date of issuance: Provided, That carriers or transportation companies, and masters, commanding officers, agents, owners, charterers, or consignees, shall not be penalized under section 1323(b) of this title for action taken in reliance on such visas or other documentation, unless they received due notice of such revocation prior to the alien's embarkation.

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Note

Prevention of Consulate Shopping

(a) Review.--The Secretary of State shall review how consular officers issue visas to determine if consular shopping is a problem.

(b) Actions to be taken.--If the Secretary of State determines under subsection (a) that consular shopping is a problem, the Secretary shall take steps to address the problem and shall submit a report to Congress describing what action was taken.

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SUBCHAPTER II--IMMIGRATION
PART III--ISSUANCE OF ENTRY DOCUMENTS

Current through P.L. 107-56, approved 10-26-01

§ 1202. Application for visas

(a) Immigrant visas

Every alien applying for an immigrant visa and for alien registration shall make application therefor in such form and manner and at such place as shall be by regulations prescribed. In the application the alien shall state his full and true name, and any other name which he has used or by which he has been known; age and sex; the date and place of his birth; and such additional information necessary to the identification of the applicant and the enforcement of the immigration and nationality laws as may be by regulations prescribed.

(b) Other documentary evidence for immigrant visa

Every alien applying for an immigrant visa shall present a valid unexpired passport or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Secretary of State. The immigrant shall furnish to the consular officer with his application a copy of a certification by the appropriate police authorities stating what their records show concerning the immigrant; a certified copy of any existing prison record, military record, and record of his birth; and a certified copy of all other records or documents concerning him or his case which may be required by the consular officer. The copy of each document so furnished shall be permanently attached to the application and become a part thereof. In the event that the immigrant establishes to the satisfaction of the consular officer that any document or record required by this subsection is unobtainable, the consular officer may permit the immigrant to submit in lieu of such document or record other satisfactory evidence of the fact to which such document or record would, if obtainable, pertain.

(c) Nonimmigrant visas; nonimmigrant registration; form, manner and contents of application

Every alien applying for a nonimmigrant visa and for alien registration shall make application therefor in such form and manner as shall be by regulations prescribed. In the application the alien shall state his full and true name, the date and place of birth, his nationality, the purpose and length of his intended stay in the United States; his marital

status; and such additional information necessary to the identification of the applicant, the determination of his eligibility for a nonimmigrant visa, and the enforcement of the immigration and nationality laws as may be by regulations prescribed. At the discretion of the Secretary of State, application forms for the various classes of nonimmigrant admissions described in section 1101(a)(15) of this title may vary according to the class of visa being requested.

(d) Other documentary evidence for nonimmigrant visa

Every alien applying for a nonimmigrant visa and alien registration shall furnish to the consular officer, with his application, a certified copy of such documents pertaining to him as may be by regulations required.

(e) Signing and verification of application

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

(f) Confidential nature of records

The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that--

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(1) in the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.

(2) the Secretary of State, in the Secretary's discretion and on the basis of reciprocity, may provide to a foreign government information in the Department of State's computerized visa lookout database and, when necessary and appropriate, other records covered by this section related to information in the database--

(A) with regard to individual aliens, at any time on a case-by-case basis for the purpose of preventing, investigating, or punishing acts that would constitute a crime in the United

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States, including, but not limited to, terrorism or trafficking in controlled substances, persons, or illicit weapons; or

(B) with regard to any or all aliens in the database, pursuant to such conditions as the Secretary of State shall establish in an agreement with the foreign government in which that government agrees to use such information and records for the purposes described in subparagraph (A) or to deny visas to persons who would be inadmissible to the United States.

(g) Nonimmigrant visa void at conclusion of authorized period of stay

(1) In the case of an alien who has been admitted on the basis of a nonimmigrant visa and remained in the United States beyond the period of stay authorized by the Attorney General, such visa shall be void beginning after the conclusion of such period of stay.

(2) An alien described in paragraph (1) shall be ineligible to be readmitted to the United States as a nonimmigrant, except--

(A) on the basis of a visa (other than the visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality (or, if there is no office in such country, in such other consular office as the Secretary of State shall specify); or

(B) where extraordinary circumstances are found by the Secretary of State to exist.

THIS IS AN ENTIRELY NEW SECTION:

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PART IV--INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND
REMOVAL

Current through P.L. 107-56, approved 10-26-01

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§ 1226a. Mandatory detention of suspected terrorists; habeas corpus; judicial review

(a) Detention of terrorist aliens

(1) Custody

The Attorney General shall take into custody any alien who is certified under paragraph (3).

(2) Release

Except as provided in paragraphs (5) and (6), the Attorney General shall maintain custody of such an alien until the alien is removed from the United States. Except as provided in paragraph (6), such custody shall be maintained irrespective of any relief from removal for which the alien may be eligible, or any relief from removal granted the alien, until the Attorney General determines that the alien is no longer an alien who may be certified under paragraph (3). If the alien is finally determined not to be removable, detention pursuant to this subsection shall terminate.

(3) Certification

The Attorney General may certify an alien under this paragraph if the Attorney General has reasonable grounds to believe that the alien--

(A) is described in section 1182(a)(3)(A)(i), 1182(a)(3)(A)(iii), 1182(a)(3)(B), 1227(a)(4)(A)(i), 1227(a)(4)(A)(iii), or 1227(a)(4)(B) of this title; or

(B) is engaged in any other activity that endangers the national security of the United States.

(4) Nondelegation

The Attorney General may delegate the authority provided under paragraph (3) only to the Deputy Attorney General. The Deputy Attorney General may not delegate such authority.

(5) Commencement of proceedings

The Attorney General shall place an alien detained under paragraph (1) in removal proceedings, or shall charge the alien with a criminal offense, not later than 7 days after the commencement of such detention. If the requirement of the preceding sentence is not satisfied, the Attorney General shall release the alien.

(6) Limitation on indefinite detention

An alien detained solely under paragraph (1) who has not been removed under section 1231(a)(1)(A) of this title, and whose removal is unlikely in the reasonably foreseeable future, may be detained for additional periods of up to six months only if the release of the alien will threaten the national security of the United States or the safety of the community or any person.

(7) Review of certification

The Attorney General shall review the certification made under paragraph (3) every 6 months. If the Attorney General determines, in the Attorney General's discretion, that the certification should be revoked, the alien may be released on such conditions as the Attorney General deems appropriate, unless such release is otherwise prohibited by law. The alien may request each 6 months in writing that the Attorney General reconsider the certification and may submit documents or other evidence in support of that request.

(b) Habeas corpus and judicial review

(1) In general

Judicial review of any action or decision relating to this section (including judicial review of the merits of a determination made under subsection (a)(3) or (a)(6)) is available exclusively in habeas corpus proceedings consistent with this subsection. Except as provided in the preceding sentence, no court shall have jurisdiction to review, by habeas corpus petition or otherwise, any such action or decision.

(2) Application

(A) In general

Notwithstanding any other provision of law, including section 2241(a) of Title 28, habeas corpus proceedings described in paragraph (1) may be initiated only by an application filed with--

(i) the Supreme Court;

(ii) any justice of the Supreme Court;

(iii) any circuit judge of the United States Court of Appeals for the District of Columbia Circuit; or

(iv) any district court otherwise having jurisdiction to entertain it.

(B) Application transfer

Section 2241(b) of Title 28 shall apply to an application for a writ of habeas corpus described in subparagraph (A).

(3) Appeals

Notwithstanding any other provision of law, including section 2253 of Title 28, in habeas corpus proceedings described in paragraph (1) before a circuit or district judge, the final order shall be subject to review, on appeal, by the United States Court of Appeals for the District of Columbia Circuit. There shall be no right of appeal in such proceedings to any other circuit court of appeals.

(4) Rule of decision. The law applied by the Supreme Court and the United States Court of Appeals for the District of Columbia Circuit shall be regarded as the rule of decision in

habeas corpus proceedings described in paragraph (1).

(c) Statutory construction -- The provisions of this section shall not be applicable to any other provision of this chapter.

Note

Reports -- "Not later than 6 months after the date of the enactment of this Act [Oct. 26, 2001], and every 6 months thereafter, the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, with respect to the reporting period, on--

- (1) the number of aliens certified under section 236A(a)(3) of the Immigration and Nationality Act, as added by subsection (a) [subsec.(a)(3) of this section];
- (2) the grounds for such certifications;
- (3) the nationalities of the aliens so certified;
- (4) the length of the detention for each alien so certified; and
- (5) The number of aliens so certified who--
 - (A) were granted any form of relief from removal;
 - (B) were removed;
 - (C) the Attorney General has determined are no longer aliens who may be so certified; or
 - (D) were released from detention.

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 PART IX--MISCELLANEOUS

Current through P.L. 107-56, approved 10-26-01

§ 1365a. Integrated entry and exit data system

(a) Requirement

The Attorney General shall implement an integrated entry and exit data system.

(b) Integrated entry and exit data system defined

For purposes of this section, the term 'integrated entry and exit data system' means an

electronic system that--

(1) provides access to, and integrates, alien arrival and departure data that are--

(A) authorized or required to be created or collected under law;

(B) in an electronic format; and

(C) in a data base of the Department of Justice or the Department of State, including those created or used at ports of entry and at consular offices;

(2) uses available data described in paragraph (1) to produce a report of arriving and departing aliens by country of nationality, classification as an immigrant or nonimmigrant, and date of arrival in, and departure from, the United States;

(3) matches an alien's available arrival data with the alien's available departure data;

(4) assists the Attorney General (and the Secretary of State, to the extent necessary to carry out such Secretary's obligations under immigration law) to identify, through on-line searching procedures, lawfully admitted non-immigrants who may have remained in the United States beyond the period authorized by the Attorney General; and

(5) otherwise uses available alien arrival and departure data described in paragraph (1) to permit the Attorney General to make the reports required under subsection (e).

(c) Construction

(1) No additional authority to impose documentary or data collection requirements

Nothing in this section shall be construed to permit the Attorney General or the Secretary of State to impose any new documentary or data collection requirements on any person in order to satisfy the requirements of this section, including--

(A) requirements on any alien for whom the documentary requirements in section 212(a)(7)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(7)(B)) have been waived by the Attorney General and the Secretary of State under section 212(d)(4)(B) of such Act (8 U.S.C. 1182(d)(4)(B)); or

(B) requirements that are inconsistent with the North American Free Trade Agreement.

(2) No reduction of authority

Nothing in this section shall be construed to reduce or curtail any authority of the Attorney General or the Secretary of State under any other provision of law.

(d) Deadlines

(1) Airports and seaports

Not later than December 31, 2003, the Attorney General shall implement the integrated entry and exit data system using available alien arrival and departure data described in subsection (b)(1) pertaining to aliens arriving in, or departing from, the United States at an airport or seaport. Such implementation shall include ensuring that such data, when collected or created by an immigration officer at an airport or seaport, are entered into the system and can be accessed by immigration officers at other airports and seaports.

(2) High-traffic land border ports of entry

Not later than December 31, 2004, the Attorney General shall implement the integrated entry and exit data system using the data described in paragraph (1) and available alien arrival and departure data described in subsection (b)(1) pertaining to aliens arriving in, or departing from, the United States at the 50 land border ports of entry determined by the Attorney General to serve the highest numbers of arriving and departing aliens. Such implementation shall include ensuring that such data, when collected or created by an immigration officer at such a port of entry, are entered into the system and can be accessed by immigration officers at airports, seaports, and other such land border ports of entry.

(3) Remaining data

Not later than December 31, 2005, the Attorney General shall fully implement the integrated entry and exit data system using all data described in subsection (b)(1). Such implementation shall include ensuring that all such data are available to immigration officers at all ports of entry into the United States.

(e) Reports

(1) In general

Not later than December 31 of each year following the commencement of implementation of the integrated entry and exit data system, the Attorney General shall use the system to prepare an annual report to the Committees on the Judiciary of the House of Representatives and of the Senate.

(2) Information

Each report shall include the following information with respect to the preceding fiscal year, and an analysis of that information:

(A) the number of aliens for whom departure data was collected during the reporting period, with an accounting by country of nationality of the departing alien.

(B) The number of departing aliens whose departure data was successfully matched to the alien's arrival data, with an accounting by the alien's country of nationality and by the alien's classification as an immigrant or nonimmigrant.

(C) The number of aliens who arrived pursuant to a nonimmigrant visa, or as a visitor under the visa waiver program under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187), for whom no matching departure data have been obtained through the system or through other means as of the end of the alien's authorized period of stay, with an accounting by the alien's country of nationality and date of arrival in the United States.

(D) The number of lawfully admitted non-immigrants identified as having remained in the United States beyond the period authorized by the Attorney General, with an accounting by the alien's country of nationality.

(f) Authority to provide access to system

(1) In general

Subject to subsection (d), the Attorney General, in consultation with the Secretary of State, shall determine which officers and employees of the Departments of Justice and State may enter data into, and have access to the data contained in, the integrated entry and exit data system.

(2) Other law enforcement officials

The Attorney General, in the discretion of the Attorney General, may permit other Federal, State, and local law enforcement officials to have access to the data contained in the integrated entry and exit data system for law enforcement purposes.

(g) Use of task force recommendations

The Attorney General shall continuously update and improve the integrated entry and exit data system as technology improves and using the recommendations of the task force established under section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be

necessary for fiscal years 2001 through 2008.

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Note

Visa Integrity and Security

(a) Sense of Congress regarding the need to expedite implementation of integrated entry and exit data system.--

(1) Sense of Congress .--In light of the terrorist attacks perpetrated against the United States on September 11, 2001, it is the sense of the Congress that--

(A) the Attorney General, in consultation with the Secretary of State, should fully implement the integrated entry and exit data system for airports, seaports, and land border ports of entry, as specified in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a), with all deliberate speed and as expeditiously as practicable; and

(B) the Attorney General, in consultation with the Secretary of State, the Secretary of Commerce, the Secretary of the Treasury, and the Office of Homeland Security, should immediately begin establishing the Integrated Entry and Exit Data System Task Force, as described in section 3 of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106-215) [Pub.L. 106-215, § 3, June 15, 2000, 114 Stat. 337, which is set out as a note under this section].

(2) Authorization of appropriations .--There is authorized to be appropriated such sums as may be necessary to fully implement the system described in paragraph (1)(A).

(b) Development of the system.--In the development of the integrated entry and exit data system under section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a) [this section], the Attorney General and the Secretary of State shall particularly focus on--

(1) the utilization of biometric technology; and

(2) the development of tamper-resistant documents readable at ports of entry.

(c) Interface with law enforcement databases .--The entry and exit datasystem described in this section [this note] shall be able to interface with law enforcement databases for use by Federal law enforcement to identify and detain individuals who pose a threat to the national security of the United States.

(d) Report on screening information.--Not later than 12 months after the date of enactment of this Act [Oct. 26, 2001], the Office of Homeland Security shall submit a report to Congress on the information that is needed from any United States agency to effectively screen visa applicants and applicants for admission to the United States to identify those affiliated with terrorist organizations or those that pose any threat to the safety or security of the United States, including the type of information currently received by United States agencies and the regularity with which such information is transmitted to the Secretary of State and the Attorney General.

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 PART IX--MISCELLANEOUS

Current through P.L. 107-56, approved 10-26-01

§ 1372. Program to collect information relating to nonimmigrant foreign students and other exchange program participants

(a) In general

(1) Program

The Attorney General, in consultation with the Secretary of State and the Secretary of Education, shall develop and conduct a program to collect from approved institutions of higher education, other approved educational institutions, and designated exchange visitor programs in the United States the information described in subsection (c) of this section with respect to aliens who--

(A) have the status, or are applying for the status, of non-immigrants under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title; and

(B) are nationals of the countries designated under subsection (b) of this section.

(2) Deadline

The program shall commence not later than January 1, 1998.

(b) Covered countries

The Attorney General, in consultation with the Secretary of State, shall designate countries for purposes of subsection (a)(1)(B) of this section. The Attorney General shall initially designate not less than 5 countries and may designate additional countries at any time while the program is being conducted.

(c) Information to be collected

(1) In general

The information for collection under subsection (a) of this section with respect to an alien consists of--

(A) the identity and current address in the United States of the alien;

(B) the nonimmigrant classification of the alien and the date on which a visa under the classification was issued or extended or the date on which a change to such classification was approved by the Attorney General;

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(C) in the case of a student at an approved institution of higher education, or other approved educational institution, the current academic status of the alien, including whether the alien is maintaining status as a full-time student or, in the case of a participant in a designated exchange visitor program, whether the alien is satisfying the terms and conditions of such program; and

(D) in the case of a student at an approved institution of higher education, or other approved educational institution, any disciplinary action taken by the institution against the alien as a result of the alien's being convicted of a crime or, in the case of a participant in a designated exchange visitor program, any change in the alien's participation as a result of the alien's being convicted of a crime.

(2) FERPA

The Family Educational Rights and Privacy Act of 1974 [20 U.S.C.A. § 1232g] shall not apply to aliens described in subsection (a) of this section to the extent that the Attorney General determines necessary to carry out the program under subsection (a) of this section.

(3) Electronic collection

The information described in paragraph (1) shall be collected electronically, where practicable.

(4) Computer software

(A) Collecting institutions

To the extent practicable, the Attorney General shall design the program in a manner that permits approved institutions of higher education, other approved educational institutions, and designated exchange visitor programs to use existing software for the collection, storage, and data processing of information described in paragraph (1).

(B) Attorney General

To the extent practicable, the Attorney General shall use or enhance existing software for the collection, storage, and data processing of information described in paragraph (1).

(d) Participation by institutions of higher education and exchange visitor programs

(1) Condition

The information described in subsection (c) of this section shall be provided by institutions of higher education, other approved educational institutions, or exchange visitor programs as a condition of--

(A) in the case of an approved institution of higher education, or other approved educational institution, the continued approval of the institution under subparagraph (F) or (M) of section 1101(a)(15) of this title; and

(B) in the case of an approved institution of higher education or a designated exchange visitor program, the granting of authority to issue documents to an alien demonstrating the alien's eligibility for a visa under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.

(2) Effect of failure to provide information

If an approved institution of higher education, other approved educational institution, or a designated exchange visitor program fails to provide the specified information, such approvals and such issuance of visas shall be revoked or denied.

(e) Funding

(1) In general

Beginning on April 1, 1997, the Attorney General shall impose on, and collect from, each alien described in paragraph (3), with respect to whom the institution or program is required by subsection (a) of this section to collect information, a fee established by the Attorney General under paragraph (4) at a time prior to the alien being classified under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.

(2) Remittance

The fees collected under paragraph (1) shall be remitted by the alien pursuant to a schedule established by the Attorney General for immediate deposit and availability as described under section 1356(m) of this title.

(3) Aliens described

An alien referred to in paragraph (1) is an alien who seeks nonimmigrant status under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title (other than a nonimmigrant under section 1101(a)(15)(J) of this title who seeks to come to the United States as a participant in a program sponsored by the Federal Government).

(4) Amount and use of fees

(A) Establishment of amount

The Attorney General shall establish the amount of the fee to be imposed on, and collected from, an alien under paragraph (1). Except as provided in subsection (g)(2) of this section, the fee imposed on any individual may not exceed \$100, except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed \$40, except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed \$35. The amount of the fee shall be based on the Attorney General's estimate of the cost per alien of conducting the information collection program described in this section.

(B) Use

Fees collected under paragraph (1) shall be deposited as offsetting receipts into the Immigration Examinations Fee Account (established under section 1356(m) of this title) and shall remain available until expended for the Attorney General to reimburse any appropriation the amount paid out of which is for expenses in carrying out this section. Such expenses include, but are not necessarily limited to, those incurred by the Secretary of State in connection with the program under subsection (a).

(5) Proof of payment

The alien shall present proof of payment of the fee before the granting of--

(A) a visa under section 1202 of this title or, in the case of an alien who is exempt from the visa requirement described in section 1182(d)(4) of this title, admission to the United States; or

(B) change of nonimmigrant classification under section 1258 of this title to a classification described in paragraph (3).

(6) Implementation

The provisions of section 553 of Title 5, (relating to rule-making) shall not apply to the extent the Attorney General determines necessary to ensure the expeditious, initial implementation of this section.

(f) Joint report

Not later than 4 years after the commencement of the program established under subsection (a) of this section, the Attorney General, the Secretary of State, and the Secretary of Education shall jointly submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the operations of the program and the feasibility of expanding the program to cover the nationals of all countries.

(g) Worldwide applicability of the program

(1) Expansion of program

Not later than 12 months after the submission of the report required by subsection (f), the Attorney General, in consultation with the Secretary of State and the Secretary of Education, shall commence expansion of the program to cover the nationals of all countries.

(2) Revision of fee

After the program has been expanded, as provided in paragraph (1), the Attorney General may, on a periodic basis, revise the amount of the fee imposed and collected under subsection (e) of this section in order to take into account changes in the cost of carrying out the program.

(h) Definitions

As used in this section:

(1) Approved institution of higher education

The term "approved institution of higher education" means a college or university approved by the Attorney General, in consultation with the Secretary of Education, under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.

(2) Designated exchange visitor program

The term "designated exchange visitor program" means a program that has been--

(A) designated by the Secretary of State for purposes of section 1101(a)(15)(J) of this title; and

(B) selected by the Attorney General for purposes of the program under this section.

(3) Other approved educational institution

The term "other approved educational institution" includes any air flight school, language training school, or vocational school, approved by the Attorney General, in consultation with the Secretary of Education and the Secretary of State, under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.

Note

Foreign Student Monitoring Program.

(a) Full implementation and expansion of foreign student visa monitoring program required.--The Attorney General, in consultation with the Secretary of State, shall fully implement and expand the program established by section 641(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(a)).

(b) Integration with port of entry information.--For each alien with respect to whom information is collected under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), the Attorney General, in consultation with the Secretary of State, shall include information on the date of entry and port of entry.

THIS IS AN ENTIRELY NEW SECTION:

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Current through P.L. 107-56, approved 10-26-01

§ 1379. Technology standard to confirm identity

(1) In general

The Attorney General and the Secretary of State jointly, through the National Institute of Standards and Technology (NIST), and in consultation with the Secretary of the Treasury and other Federal law enforcement and intelligence agencies the Attorney General or Secretary of State deems appropriate and in consultation with Congress, shall within 2 years after October 26, 2001, develop and certify a technology standard that can be used to verify the identity of persons applying for a United States visa or such persons seeking to enter the United States pursuant to a visa for the purposes of conducting background checks, confirming identity, and ensuring that a person has not received a visa under a different name or such person seeking to enter the United States pursuant to a visa.

(2) Integrated

The technology standard developed pursuant to paragraph (1), shall be the technological basis for a cross-agency, cross-platform electronic system that is a cost-effective, efficient, fully integrated means to share law enforcement and intelligence information necessary to confirm the identity of such persons applying for a United States visa or such person seeking to enter the United States pursuant to a visa.

(3) Accessible

The electronic system described in paragraph (2), once implemented, shall be readily and easily accessible to--

(A) all consular officers responsible for the issuance of visas;

(B) all Federal inspection agents at all United States border inspection points; and

(C) all law enforcement and intelligence officers as determined by regulation to be

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responsible for investigation or identification of aliens admitted to the United States pursuant to a visa.

(4) Report

Not later than 18 months after October 26, 2001, and every 2 years thereafter, the Attorney General and the Secretary of State shall jointly, in consultation with the Secretary of Treasury, report to Congress describing the development, implementation, efficacy, and privacy implications of the technology standard and electronic database system described in this section.

(5) Funding

There is authorized to be appropriated to the Secretary of State, the Attorney General, and the Director of the National Institute of Standards and Technology such sums as may be necessary to carry out the provisions of this section.

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Note

Integrated Automated Fingerprint Identification System Report

(a) In general.--The Attorney General, in consultation with the appropriate heads of other Federal agencies, including the Secretary of State, Secretary of the Treasury, and the Secretary of Transportation, shall report to Congress on the feasibility of enhancing the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation and other identification systems in order to better identify a person who holds a foreign passport or a visa and may be wanted in connection with a criminal investigation in the United States or abroad, before the issuance of a visa to that person or the entry or exit from the United States by that person.

(b) Authorization of appropriations.--There is authorized to be appropriated not less than \$2,000,000 to carry out this section [this note].

P.L. 107-56 added the following new statutory sections that have not been codified:

SEC. 421. SPECIAL IMMIGRANT STATUS.

(a) IN GENERAL.—For purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the Attorney General may provide an alien described in subsection (b) with the status of a special immigrant under section 101(a)(27) of such Act (8 U.S.C.

1101(a)(27)), if the alien—

(1) files with the Attorney General a petition under section 204 of such Act (8 U.S.C. 1154) for classification under section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4)); and

(2) is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility, the grounds for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)) shall not apply.

(b) ALIENS DESCRIBED.—

(1) PRINCIPAL ALIENS—An alien is described in this sub-section if—

(A) the alien was the beneficiary of—

(i) a petition that was filed with the Attorney General on or before September 11, 2001—

(I) under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) to classify the alien as a family-sponsored immigrant under section 203(a) of such Act (8 U.S.C. 1153(a)) or as an employment-based immigrant under section 203(b) of such Act (8 U.S.C. 1153(b)); or

(II) under section 214(d) (8 U.S.C. 1184(d)) of such Act to authorize the issuance of a non-immigrant visa to the alien under section

101(a)(15)(K) of such Act (8 U.S.C. 1101(a)(15)(K));

or

(ii) an application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. 1182(a)(5)(A)) that was filed under regulations of the Secretary of Labor on or before such date; and

(B) such petition or application was revoked or terminated (or otherwise rendered null), either before or after its approval, due to a specified terrorist activity that directly resulted in—

(i) the death or disability of the petitioner,

applicant, or alien beneficiary; or
(ii) loss of employment due to physical damage
to, or destruction of, the business of the petitioner
or applicant.

(2) SPOUSES AND CHILDREN.—

(A) IN GENERAL—An alien is described in this sub-section
if—

(i) the alien was, on September 10, 2001, the
spouse or child of a principal alien described in paragraph
(1); and

(ii) the alien—

(I) is accompanying such principal alien; or

(II) is following to join such principal alien
not later than September 11, 2003.

(B) CONSTRUCTION—For purposes of construing the
terms “accompanying” and “following to join” in subpara-graph
(A)(ii), any death of a principal alien that is described
in paragraph (1)(B)(i) shall be disregarded.

(3) GRANDPARENTS OF ORPHANS.—An alien is described in
this subsection if the alien is a grandparent of a child, both
of whose parents died as a direct result of a specified terrorist
activity, if either of such deceased parents was, on September
10, 2001, a citizen or national of the United States or an
alien lawfully admitted for permanent residence in the United
States.

(c) PRIORITY DATE.—Immigrant visas made available under
this section shall be issued to aliens in the order in which a
petition on behalf of each such alien is filed with the Attorney
General under subsection (a)(1), except that if an alien was assigned
a priority date with respect to a petition described in subsection
(b)(1)(A)(i), the alien may maintain that priority date.

(d) NUMERICAL LIMITATIONS.—For purposes of the application
of sections 201 through 203 of the Immigration and Nationality
Act (8 U.S.C. 1151–1153) in any fiscal year, aliens eligible to be
provided status under this section shall be treated as special
immigrants described in section 101(a)(27) of such Act (8 U.S.C.
1101(a)(27)) who are not described in subparagraph (A), (B), (C),
or (K) of such section.

SEC. 422. EXTENSION OF FILING OR REENTRY DEADLINES.

(a) AUTOMATIC EXTENSION OF NONIMMIGRANT STATUS.—

(1) IN GENERAL.—Notwithstanding section 214 of the Immigration and Nationality Act (8 U.S.C. 1184), in the case of an alien described in paragraph (2) who was lawfully present in the United States as a nonimmigrant on September 10, 2001, the alien may remain lawfully in the United States in the same nonimmigrant status until the later of—
(A) the date such lawful nonimmigrant status otherwise would have terminated if this subsection had not been enacted; or
(B) 1 year after the death or onset of disability described in paragraph (2).

(2) ALIENS DESCRIBED.—

(A) PRINCIPAL ALIENS.—An alien is described in this paragraph if the alien was disabled as a direct result of a specified terrorist activity.

(B) SPOUSES AND CHILDREN.—An alien is described in this paragraph if the alien was, on September 10, 2001, the spouse or child of—

(i) a principal alien described in subparagraph (A);
or

(ii) an alien who died as a direct result of a specified terrorist activity.

(3) AUTHORIZED EMPLOYMENT.—During the period in which a principal alien or alien spouse is in lawful nonimmigrant status under paragraph (1), the alien shall be provided an “employment authorized” endorsement or other appropriate document signifying authorization of employment not later than 30 days after the alien requests such authorization.

(b) NEW DEADLINES FOR EXTENSION OR CHANGE OF NON-IMMIGRANT STATUS.—

(1) FILING DELAYS.—In the case of an alien who was lawfully present in the United States as a nonimmigrant on September 10, 2001, if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien’s application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due.

(2) DEPARTURE DELAYS.—In the case of an alien who was lawfully present in the United States as a nonimmigrant on September 10, 2001, if the alien is unable timely to depart the United States as a direct result of a specified terrorist activity, the alien shall not be considered to have been unlawfully

present in the United States during the period beginning on September 11, 2001, and ending on the date of the alien's departure, if such departure occurs on or before November 11, 2001.

(3) SPECIAL RULE FOR ALIENS UNABLE TO RETURN FROM ABROAD.—

(A) PRINCIPAL ALIENS.—In the case of an alien who was in a lawful nonimmigrant status on September 10, 2001, but who was not present in the United States on such date, if the alien was prevented from returning to the United States in order to file a timely application for an extension of nonimmigrant status as a direct result of a specified terrorist activity—

(i) the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due; and

(ii) the alien's lawful nonimmigrant status shall be considered to continue until the later of—

(I) the date such status otherwise would have terminated if this subparagraph had not been enacted; or

(II) the date that is 60 days after the date on which the application described in clause (i) otherwise would have been due.

(B) SPOUSES AND CHILDREN.—In the case of an alien who is the spouse or child of a principal alien described in subparagraph (A), if the spouse or child was in a lawful nonimmigrant status on September 10, 2001, the spouse or child may remain lawfully in the United States in the same nonimmigrant status until the later of—

(i) the date such lawful nonimmigrant status otherwise would have terminated if this subparagraph had not been enacted; or

(ii) the date that is 60 days after the date on which the application described in subparagraph (A) otherwise would have been due.

(4) CIRCUMSTANCES PREVENTING TIMELY ACTION.—

(A) FILING DELAYS.—For purposes of paragraph (1), circumstances preventing an alien from timely acting are—

(i) office closures;

(ii) mail or courier service cessations or delays;

and

(iii) other closures, cessations, or delays affecting

case processing or travel necessary to satisfy legal requirements.

(B) DEPARTURE AND RETURN DELAYS.—For purposes of paragraphs (2) and (3), circumstances preventing an alien from timely acting are—

- (i) office closures;
- (ii) airline flight cessations or delays; and
- (iii) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

(c) DIVERSITY IMMIGRANTS.—

(1) WAIVER OF FISCAL YEAR LIMITATION.—Notwithstanding section 203(e)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(e)(2)), an immigrant visa number issued to an alien under section 203(c) of such Act for fiscal year 2001 may be used by the alien during the period beginning on October 1, 2001, and ending on April 1, 2002, if the alien establishes that the alien was prevented from using it during fiscal year 2001 as a direct result of a specified terrorist activity.

(2) WORLDWIDE LEVEL.—In the case of an alien entering the United States as a lawful permanent resident, or adjusting to that status, under paragraph (1) or (3), the alien shall be counted as a diversity immigrant for fiscal year 2001 for purposes of section 201(e) of the Immigration and Nationality Act (8 U.S.C. 1151(e)), unless the worldwide level under such section for such year has been exceeded, in which case the alien shall be counted as a diversity immigrant for fiscal year 2002.

(3) TREATMENT OF FAMILY MEMBERS OF CERTAIN ALIENS.—

In the case of a principal alien issued an immigrant visa number under section 203(c) of the Immigration and Nationality Act (8 U.S.C. 1153(c)) for fiscal year 2001, if such principal alien died as a direct result of a specified terrorist activity, the aliens who were, on September 10, 2001, the spouse and children of such principal alien shall, until June 30, 2002, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c) of section 203 of such Act, be entitled to the same status, and the same order of consideration, that would have been provided to such alien spouse or child under section 203(d) of such Act as if the principal alien were not deceased and as if the spouse or child's visa application had been adjudicated by September

30, 2001.

(4) CIRCUMSTANCES PREVENTING TIMELY ACTION.—For purposes of paragraph (1), circumstances preventing an alien from using an immigrant visa number during fiscal year 2001 are—

- (A) office closures;
- (B) mail or courier service cessations or delays;
- (C) airline flight cessations or delays; and
- (D) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

(d) EXTENSION OF EXPIRATION OF IMMIGRANT VISAS.—

(1) IN GENERAL.—Notwithstanding the limitations under section 221(c) of the Immigration and Nationality Act (8 U.S.C. 1201(c)), in the case of any immigrant visa issued to an alien that expires or expired before December 31, 2001, if the alien was unable to effect entry into the United States as a direct result of a specified terrorist activity, then the period of validity of the visa is extended until December 31, 2001, unless a longer period of validity is otherwise provided under this sub-title.

(2) CIRCUMSTANCES PREVENTING ENTRY.—For purposes of this subsection, circumstances preventing an alien from effecting entry into the United States are—

- (A) office closures;
- (B) airline flight cessations or delays; and
- (C) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

(e) GRANTS OF PAROLE EXTENDED.—

(1) IN GENERAL.—In the case of any parole granted by the Attorney General under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)) that expires on a date on or after September 11, 2001, if the alien beneficiary of the parole was unable to return to the United States prior to the expiration date as a direct result of a specified terrorist activity, the parole is deemed extended for an additional 90 days.

(2) CIRCUMSTANCES PREVENTING RETURN.—For purposes of this subsection, circumstances preventing an alien from timely returning to the United States are—

- (A) office closures;
- (B) airline flight cessations or delays; and
- (C) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

(f) VOLUNTARY DEPARTURE.—Notwithstanding section 240B of

the Immigration and Nationality Act (8 U.S.C. 1229c), if a period for voluntary departure under such section expired during the period beginning on September 11, 2001, and ending on October 11, 2001, such voluntary departure period is deemed extended for an additional 30 days.

SEC. 423. HUMANITARIAN RELIEF FOR CERTAIN SURVIVING SPOUSES AND CHILDREN.

(a) TREATMENT AS IMMEDIATE RELATIVES.—

(1) SPOUSES.—Notwithstanding the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), in the case of an alien who was the spouse of a citizen of the United States at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, if the citizen died as a direct result of a specified terrorist activity, the alien (and each child of the alien) shall be considered, for purposes of section 201(b) of such Act, to remain an immediate relative after the date of the citizen's death, but only if the alien files a petition under section 204(a)(1)(A)(ii) of such Act within 2 years after such date and only until the date the alien remarries. For purposes of such section 204(a)(1)(A)(ii), an alien granted relief under the preceding sentence shall be considered an alien spouse described in the second sentence of section 201(b)(2)(A)(i) of such Act.

(2) CHILDREN.—

(A) IN GENERAL.—In the case of an alien who was the child of a citizen of the United States at the time of the citizen's death, if the citizen died as a direct result of a specified terrorist activity, the alien shall be considered, for purposes of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)), to remain an immediate relative after the date of the citizen's death (regardless of changes in age or marital status thereafter), but only if the alien files a petition under subparagraph (B) within 2 years after such date.

(B) PETITIONS.—An alien described in subparagraph (A) may file a petition with the Attorney General for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). For purposes of such Act, such a petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

(b) SPOUSES, CHILDREN, UNMARRIED SONS AND DAUGHTERS OF

LAWFUL PERMANENT RESIDENT ALIENS.—

(1) **IN GENERAL.**—Any spouse, child, or unmarried son or daughter of an alien described in paragraph (3) who is included in a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)) that was filed by such alien before September 11, 2001, shall be considered (if the spouse, child, son, or daughter has not been admitted or approved for lawful permanent residence by such date) a valid petitioner for preference status under such section with the same priority date as that assigned prior to the death described in paragraph (3)(A). No new petition shall be required to be filed. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(2) **SELF-PETITIONS.**—Any spouse, child, or unmarried son or daughter of an alien described in paragraph (3) who is not a beneficiary of a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act may file a petition for such classification with the Attorney General, if the spouse, child, son, or daughter was present in the United States on September 11, 2001. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(3) **ALIENS DESCRIBED.**—An alien is described in this paragraph if the alien—

(A) died as a direct result of a specified terrorist activity; and

(B) on the day of such death, was lawfully admitted for permanent residence in the United States.

(c) APPLICATIONS FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES AND CHILDREN OF EMPLOYMENT-BASED IMMIGRANTS.—

(1) **IN GENERAL.**—Any alien who was, on September 10, 2001, the spouse or child of an alien described in paragraph (2), and who applied for adjustment of status prior to the death described in paragraph (2)(A), may have such application adjudicated as if such death had not occurred.

(2) **ALIENS DESCRIBED.**—An alien is described in this paragraph if the alien—

(A) died as a direct result of a specified terrorist activity; and

(B) on the day before such death, was—

(i) an alien lawfully admitted for permanent residence in the United States by reason of having been

allotted a visa under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)); or

(ii) an applicant for adjustment of status to that of an alien described in clause (i), and admissible to the United States for permanent residence.

(d) WAIVER OF PUBLIC CHARGE GROUNDS.—In determining the admissibility of any alien accorded an immigration benefit under this section, the grounds for inadmissibility specified in section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) shall not apply.

SEC. 424. “AGE-OUT” PROTECTION FOR CHILDREN.

For purposes of the administration of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), in the case of an alien—

(1) whose 21st birthday occurs in September 2001, and who is the beneficiary of a petition or application filed under such Act on or before September 11, 2001, the alien shall be considered to be a child for 90 days after the alien’s 21st birthday for purposes of adjudicating such petition or application; and

(2) whose 21st birthday occurs after September 2001, and who is the beneficiary of a petition or application filed under such Act on or before September 11, 2001, the alien shall be considered to be a child for 45 days after the alien’s 21st birthday for purposes of adjudicating such petition or application.

SEC. 425. TEMPORARY ADMINISTRATIVE RELIEF.

The Attorney General, for humanitarian purposes or to ensure family unity, may provide temporary administrative relief to any alien who—

(1) was lawfully present in the United States on September 10, 2001;

(2) was on such date the spouse, parent, or child of an individual who died or was disabled as a direct result of a specified terrorist activity; and

(3) is not otherwise entitled to relief under any other provision of this subtitle.

SEC. 426. EVIDENCE OF DEATH, DISABILITY, OR LOSS OF EMPLOYMENT.

(a) IN GENERAL.—The Attorney General shall establish appropriate standards for evidence demonstrating, for purposes of this subtitle, that any of the following occurred as a direct result of a specified terrorist activity:

- (1) Death.
- (2) Disability.
- (3) Loss of employment due to physical damage to, or destruction of, a business.

(b) WAIVER OF REGULATIONS.—The Attorney General shall carry out subsection (a) as expeditiously as possible. The Attorney General is not required to promulgate regulations prior to implementing this subtitle.

SEC. 427. NO BENEFITS TO TERRORISTS OR FAMILY MEMBERS OF TERRORISTS.

Notwithstanding any other provision of this subtitle, nothing in this subtitle shall be construed to provide any benefit or relief to—

- (1) any individual culpable for a specified terrorist activity;
- or
- (2) any family member of any individual described in paragraph (1).

SEC. 428. DEFINITIONS.

(a) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—

Except as otherwise specifically provided in this subtitle, the definitions used in the Immigration and Nationality Act (excluding the definitions applicable exclusively to title III of such Act) shall apply in the administration of this subtitle.

(b) SPECIFIED TERRORIST ACTIVITY.—For purposes of this subtitle, the term “specified terrorist activity” means any terrorist activity conducted against the Government or the people of the United States on September 11, 2001.