

ABOLITION OF IMMIGRATION AND NATURALIZATION
SERVICE AND TRANSFER OF FUNCTIONS

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

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY
RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

NO EFFECT ON EEOC AUTHORITY

Pub. L. 99-603, title I, §102(b), Nov. 6, 1986, 100 Stat. 3379, provided that: "Except as may be specifically provided in this section, nothing in this section shall be construed to restrict the authority of the Equal Employment Opportunity Commission to investigate allegations, in writing and under oath or affirmation, of unlawful employment practices, as provided in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5), or any other authority provided therein."

§ 1324c. Penalties for document fraud

(a) Activities prohibited

It is unlawful for any person or entity knowingly—

(1) to forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of this chapter or to obtain a benefit under this chapter,

(2) to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this chapter or to obtain a benefit under this chapter,

(3) to use or attempt to use or to provide or attempt to provide any document lawfully issued to or with respect to a person other than the possessor (including a deceased individual) for the purpose of satisfying a requirement of this chapter or obtaining a benefit under this chapter,

(4) to accept or receive or to provide any document lawfully issued to or with respect to a person other than the possessor (including a deceased individual) for the purpose of complying with section 1324a(b) of this title or obtaining a benefit under this chapter, or

(5) to prepare, file, or assist another in preparing or filing, any application for benefits under this chapter, or any document required under this chapter, or any document submitted in connection with such application or document, with knowledge or in reckless disregard of the fact that such application or document was falsely made or, in whole or in part, does not relate to the person on whose behalf it was or is being submitted, or

(6)(A) to present before boarding a common carrier for the purpose of coming to the United States a document which relates to the alien's eligibility to enter the United States, and (B) to fail to present such document to an immigration officer upon arrival at a United States port of entry.

(b) Exception

This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of title 18.

(c) Construction

Nothing in this section shall be construed to diminish or qualify any of the penalties available for activities prohibited by this section but proscribed as well in title 18.

(d) Enforcement

(1) Authority in investigations

In conducting investigations and hearings under this subsection—

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated,

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing, and

(C) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(2) Hearing

(A) In general

Before imposing an order described in paragraph (3) against a person or entity under this subsection for a violation of subsection (a) of this section, the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) Conduct of hearing

Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

(C) Issuance of orders

If the administrative law judge determines, upon the preponderance of the evi-

dence received, that a person or entity has violated subsection (a) of this section, the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (3).

(3) Cease and desist order with civil money penalty

With respect to a violation of subsection (a) of this section, the order under this subsection shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of—

(A) not less than \$250 and not more than \$2,000 for each document that is the subject of a violation under subsection (a) of this section, or

(B) in the case of a person or entity previously subject to an order under this paragraph, not less than \$2,000 and not more than \$5,000 for each document that is the subject of a violation under subsection (a) of this section.

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(4) Administrative appellate review

The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations, in which case the decision and order of the Attorney General shall become the final agency decision and order under this subsection.

(5) Judicial review

A person or entity adversely affected by a final order under this section may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(6) Enforcement of orders

If a person or entity fails to comply with a final order issued under this section against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(7) Waiver by Attorney General

The Attorney General may waive the penalties imposed by this section with respect to

an alien who knowingly violates subsection (a)(6) of this section if the alien is granted asylum under section 1158 of this title or withholding of removal under section 1231(b)(3) of this title.

(e) Criminal penalties for failure to disclose role as document preparer

(1) Whoever, in any matter within the jurisdiction of the Service, knowingly and willfully fails to disclose, conceals, or covers up the fact that they have, on behalf of any person and for a fee or other remuneration, prepared or assisted in preparing an application which was falsely made (as defined in subsection (f) of this section) for immigration benefits, shall be fined in accordance with title 18, imprisoned for not more than 5 years, or both, and prohibited from preparing or assisting in preparing, whether or not for a fee or other remuneration, any other such application.

(2) Whoever, having been convicted of a violation of paragraph (1), knowingly and willfully prepares or assists in preparing an application for immigration benefits pursuant to this chapter, or the regulations promulgated thereunder, whether or not for a fee or other remuneration and regardless of whether in any matter within the jurisdiction of the Service, shall be fined in accordance with title 18, imprisoned for not more than 15 years, or both, and prohibited from preparing or assisting in preparing any other such application.

(f) Falsely make

For purposes of this section, the term “falsely make” means to prepare or provide an application or document, with knowledge or in reckless disregard of the fact that the application or document contains a false, fictitious, or fraudulent statement or material representation, or has no basis in law or fact, or otherwise fails to state a fact which is material to the purpose for which it was submitted.

(June 27, 1952, ch. 477, title II, ch. 8, §274C, as added Pub. L. 101-649, title V, §544(a), Nov. 29, 1990, 104 Stat. 5059; amended Pub. L. 102-232, title III, §306(c)(5)(A), Dec. 12, 1991, 105 Stat. 1752; Pub. L. 103-416, title II, §219(r), Oct. 25, 1994, 108 Stat. 4317; Pub. L. 104-208, div. C, title II, §§212(a)-(d), 213, 220, title III, §§308(g)(10)(D), 379(a), Sept. 30, 1996, 110 Stat. 3009-570, 3009-571, 3009-575, 3009-625, 3009-649.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (e)(2), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-208, §212(a)(1), inserted “or to obtain a benefit under this chapter” before comma at end.

Subsec. (a)(2). Pub. L. 104-208, §212(a)(2), inserted “or to obtain a benefit under this chapter” before comma at end.

Subsec. (a)(3). Pub. L. 104-208, §212(a)(3), inserted “or with respect to” after “issued to” and “or obtaining a benefit under this chapter” after “of this chapter” and struck out “or” at end.

Subsec. (a)(4). Pub. L. 104-208, §212(a)(4), inserted “or with respect to” after “issued to” and “or obtaining a benefit under this chapter” after “section 1324a(b) of this title” and substituted “, or” for the period at end.

Subsec. (a)(5), (6). Pub. L. 104-208, §212(a)(5), added pars. (5) and (6).

Subsec. (d)(1)(C). Pub. L. 104-208, §220, added subpar. (C).

Subsec. (d)(3)(A), (B). Pub. L. 104-208, §212(c), substituted “each document that is the subject of a violation under subsection (a) of this section” for “each document used, accepted, or created and each instance of use, acceptance, or creation”.

Subsec. (d)(4). Pub. L. 104-208, §379(a)(2), substituted “the final agency decision and order under this subsection” for “a final order under this subsection”.

Pub. L. 104-208, §379(a)(1), substituted “unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations” for “unless, within 30 days, the Attorney General modifies or vacates the decision and order”.

Subsec. (d)(7). Pub. L. 104-208, §308(g)(10)(D), substituted “withholding of removal under section 1231(b)(3) of this title” for “withholding of deportation under section 1253(h) of this title”.

Pub. L. 104-208, §212(d), added par. (7).

Subsec. (e). Pub. L. 104-208, §213, added subsec. (e).

Subsec. (f). Pub. L. 104-208, §212(b), added subsec. (f). 1994—Subsec. (b). Pub. L. 103-416 substituted “chapter 224 of title 18” for “title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)”.

1991—Subsec. (a)(2) to (4). Pub. L. 102-232 inserted “or to provide” after “receive” in pars. (2) and (4) and “or to provide or attempt to provide” after “attempt to use” in par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. C, title II, §212(e), Sept. 30, 1996, 110 Stat. 3009-571, provided that: “Section 274C(f) of the Immigration and Nationality Act [8 U.S.C. 1324c(f)], as added by subsection (b), applies to the preparation of applications before, on, or after the date of the enactment of this Act [Sept. 30, 1996].”

Amendment by section 308(g)(10)(D) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

Amendment by section 379(a) of Pub. L. 104-208 applicable to orders issued on or after Sept. 30, 1996, see section 379(b) of Pub. L. 104-208, set out as a note under section 1324a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 219(dd) of Pub. L. 103-416, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 310(1) of Pub. L. 102-232, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section applicable to persons or entities that have committed violations on or after Nov. 29, 1990, see section 544(d) of Pub. L. 101-649, as amended, set out as an Effective Date of 1990 Amendment note under section 1227 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related

references, see note set out under section 1551 of this title.

§ 1324d. Civil penalties for failure to depart

(a) In general

Any alien subject to a final order of removal who—

(1) willfully fails or refuses to—

(A) depart from the United States pursuant to the order,

(B) make timely application in good faith for travel or other documents necessary for departure, or

(C) present for removal at the time and place required by the Attorney General; or

(2) conspires to or takes any action designed to prevent or hamper the alien's departure pursuant to the order,

shall pay a civil penalty of not more than \$500 to the Commissioner for each day the alien is in violation of this section.

(b) Construction

Nothing in this section shall be construed to diminish or qualify any penalties to which an alien may be subject for activities proscribed by section 1253(a) of this title or any other section of this chapter.

(June 27, 1952, ch. 477, title II, ch. 8, §274D, as added Pub. L. 104-208, div. C, title III, §380(a), Sept. 30, 1996, 110 Stat. 3009-650.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

EFFECTIVE DATE

Pub. L. 104-208, div. C, title III, §380(c), Sept. 30, 1996, 110 Stat. 3009-650, provided that: “The amendment made by subsection (a) [enacting this section] shall apply to actions occurring on or after the title III-A effective date (as defined in section 309(a) of this division [set out as a note under section 1101 of this title]).”

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104-208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1325. Improper entry by alien

(a) Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or