

§ 543(a)(3), Nov. 29, 1990, 104 Stat. 5058; Pub. L. 102-232, title III, § 306(c)(2), Dec. 12, 1991, 105 Stat. 1752; renumbered § 234, Pub. L. 104-208, div. C, title III, § 304(a)(1), Sept. 30, 1996, 110 Stat. 3009-587.)

REFERENCES IN TEXT

This chapter, referred to in text, 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.

CODIFICATION

Section was formerly classified to section 1229 of this title prior to renumbering by Pub. L. 104-208.

PRIOR PROVISIONS

A prior section 1224, act June 27, 1952, ch. 477, title II, ch. 4, § 234, 66 Stat. 198, as amended, which related to physical and mental examinations, was renumbered section 232(b) of act June 27, 1952, by Pub. L. 104-208, div. C, title III, § 308(b)(3), Sept. 30, 1996, 110 Stat. 3009-615, and was transferred to section 1222(b) of this title.

AMENDMENTS

1991—Pub. L. 102-232 made technical correction to directory language of Pub. L. 101-649. See 1990 Amendment note below.

1990—Pub. L. 101-649, as amended by Pub. L. 102-232, substituted “\$2,000” for “\$500” in two places.

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 OF 1990 AMENDMENT

Amendment by Pub. L. 101-649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101-649, set out as a note under section 1221 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.

§ 1225. Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing

(a) Inspection

(1) Aliens treated as applicants for admission

An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

(2) Stowaways

An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer. Upon such inspection if the alien indicates an intention to apply for asylum under section 1158 of this

title or a fear of persecution, the officer shall refer the alien for an interview under subsection (b)(1)(B) of this section. A stowaway may apply for asylum only if the stowaway is found to have a credible fear of persecution under subsection (b)(1)(B) of this section. In no case may a stowaway be considered an applicant for admission or eligible for a hearing under section 1229a of this title.

(3) Inspection

All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.

(4) Withdrawal of application for admission

An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.

(5) Statements

An applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States, including the applicant's intended length of stay and whether the applicant intends to remain permanently or become a United States citizen, and whether the applicant is inadmissible.

(b) Inspection of applicants for admission

(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled

(A) Screening

(i) In general

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.

(ii) Claims for asylum

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

(iii) Application to certain other aliens

(I) In general

The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in sub-

clause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(II) Aliens described

An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

(B) Asylum interviews

(i) Conduct by asylum officers

An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Attorney General.

(ii) Referral of certain aliens

If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.

(iii) Removal without further review if no credible fear of persecution

(I) In general

Subject to subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.

(II) Record of determination

The officer shall prepare a written record of a determination under subclause (I). Such record shall include a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in the light of such facts, the alien has not established a credible fear of persecution. A copy of the officer's interview notes shall be attached to the written summary.

(III) Review of determination

The Attorney General shall provide by regulation and upon the alien's request for prompt review by an immigration judge of a determination under subclause (I) that the alien does not have a credible fear of persecution. Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. Review shall be concluded as expeditiously as possible, to the maximum extent prac-

ticable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I).

(IV) Mandatory detention

Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.

(iv) Information about interviews

The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process.

(v) "Credible fear of persecution" defined

For purposes of this subparagraph, the term "credible fear of persecution" means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title.

(C) Limitation on administrative review

Except as provided in subparagraph (B)(iii)(III), a removal order entered in accordance with subparagraph (A)(i) or (B)(iii)(I) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order under subparagraph (A)(i) against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, after having been warned of the penalties for falsely making such claim under such conditions, to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section 1157 of this title, or to have been granted asylum under section 1158 of this title.

(D) Limit on collateral attacks

In any action brought against an alien under section 1325(a) of this title or section 1326 of this title, the court shall not have jurisdiction to hear any claim attacking the validity of an order of removal entered under subparagraph (A)(i) or (B)(iii).

(E) "Asylum officer" defined

As used in this paragraph, the term "asylum officer" means an immigration officer who—

(i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 1158 of this title, and

(ii) is supervised by an officer who meets the condition described in clause (i) and

has had substantial experience adjudicating asylum applications.

(F) Exception

Subparagraph (A) shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.

(G) Commonwealth of the Northern Mariana Islands

Nothing in this subsection shall be construed to authorize or require any person described in section 1158(e) of this title to be permitted to apply for asylum under section 1158 of this title at any time before January 1, 2014.

(2) Inspection of other aliens

(A) In general

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

(B) Exception

Subparagraph (A) shall not apply to an alien—

- (i) who is a crewman,
- (ii) to whom paragraph (1) applies, or
- (iii) who is a stowaway.

(C) Treatment of aliens arriving from contiguous territory

In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 1229a of this title.

(3) Challenge of decision

The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 1229a of this title.

(c) Removal of aliens inadmissible on security and related grounds

(1) Removal without further hearing

If an immigration officer or an immigration judge suspects that an arriving alien may be inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, the officer or judge shall—

- (A) order the alien removed, subject to review under paragraph (2);
- (B) report the order of removal to the Attorney General; and
- (C) not conduct any further inquiry or hearing until ordered by the Attorney General.

(2) Review of order

(A) The Attorney General shall review orders issued under paragraph (1).

(B) If the Attorney General—

(i) is satisfied on the basis of confidential information that the alien is inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, and

(ii) after consulting with appropriate security agencies of the United States Government, concludes that disclosure of the information would be prejudicial to the public interest, safety, or security,

the Attorney General may order the alien removed without further inquiry or hearing by an immigration judge.

(C) If the Attorney General does not order the removal of the alien under subparagraph (B), the Attorney General shall specify the further inquiry or hearing that shall be conducted in the case.

(3) Submission of statement and information

The alien or the alien's representative may submit a written statement and additional information for consideration by the Attorney General.

(d) Authority relating to inspections

(1) Authority to search conveyances

Immigration officers are authorized to board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States.

(2) Authority to order detention and delivery of arriving aliens

Immigration officers are authorized to order an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States—

- (A) to detain the alien on the vessel or at the airport of arrival, and
- (B) to deliver the alien to an immigration officer for inspection or to a medical officer for examination.

(3) Administration of oath and consideration of evidence

The Attorney General and any immigration officer shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service.

(4) Subpoena authority

(A) The Attorney General and any immigration officer shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which

is material and relevant to the enforcement of this chapter and the administration of the Service, and to that end may invoke the aid of any court of the United States.

(B) Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer may, in the event of neglect or refusal to respond to a subpoena issued under this paragraph or refusal to testify before an immigration officer, issue an order requiring such persons to appear before an immigration officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(June 27, 1952, ch. 477, title II, ch. 4, § 235, 66 Stat. 198; Pub. L. 101-649, title VI, § 603(a)(11), Nov. 29, 1990, 104 Stat. 5083; Pub. L. 104-132, title IV, §§ 422(a), 423(b), Apr. 24, 1996, 110 Stat. 1270, 1272; Pub. L. 104-208, div. C, title III, §§ 302(a), 308(d)(5), 371(b)(4), Sept. 30, 1996, 110 Stat. 3009-579, 3009-619, 3009-645; Pub. L. 110-229, title VII, § 702(j)(5), May 8, 2008, 122 Stat. 867.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (d)(3), (4)(A), 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

2008—Subsec. (b)(1)(G). Pub. L. 110-229 added subpar. (G).

1996—Pub. L. 104-208, § 302(a), amended section generally, revising and restating former subsecs. (a) to (d) relating to inspection of aliens arriving in the United States, powers of immigration officers, detention of aliens for further inquiry, temporary and permanent exclusion of aliens, and collateral attacks on orders of exclusion and deportation.

Pub. L. 104-208, § 371(b)(4), substituted “an immigration judge” for “a special inquiry officer”, “immigration judge” for “special inquiry officer”, and “immigration judges” for “special inquiry officers”, wherever appearing in subsecs. (a) to (c).

Subsec. (b). Pub. L. 104-132, § 422(a), which directed the general amendment of subsec. (b) by substituting pars. (1) to (3) relating to asylum interviews and hearings, detention for further inquiry, and challenges of favorable decisions, for former subsec. (b) consisting of single par., was repealed by Pub. L. 104-208, § 308(d)(5). See Construction of 1996 Amendment note below.

Subsec. (d). Pub. L. 104-132, § 423(b), added subsec. (d) which read as follows: “In any action brought for the assessment of penalties for improper entry or re-entry of an alien under section 1325 or section 1326 of this title, no court shall have jurisdiction to hear claims collaterally attacking the validity of orders of exclusion, special exclusion, or deportation entered under this section or sections 1226 and 1252 of this title.”

1990—Subsec. (c). Pub. L. 101-649 substituted “subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title” for “paragraph (27), (28), or (29) of section 1182(a) of this title”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-229 effective on the transition program effective date described in section 1806 of Title 48, Territories and Insular Possessions, see section 705(b) of Pub. L. 110-229, set out as an Effective Date note under section 1806 of Title 48.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 302(a) 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.

Pub. L. 104-208, div. C, title III, § 308(d)(5), Sept. 30, 1996, 110 Stat. 3009-619, provided that the amendment made by section 308(d)(5) is effective as of Apr. 24, 1996. See Construction of 1996 Amendment note below.

Amendment by section 371(b)(4) of Pub. L. 104-208 effective Sept. 30, 1996, see section 371(d)(1) of Pub. L. 104-208, set out as a note under section 1101 of this title.

Pub. L. 104-132, title IV, § 422(c), Apr. 24, 1996, 110 Stat. 1272, which provided that the amendments made by section 422 of Pub. L. 104-132 [amending this section and former section 1227 of this title] were to take effect on the first day of the first month that began more than 180 days after Apr. 24, 1996, was repealed by Pub. L. 104-208, div. C, title III, § 308(d)(5), Sept. 30, 1996, 110 Stat. 3009-619. See Construction of 1996 Amendment note below.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101-649, set out as a note under section 1101 of this title.

CONSTRUCTION OF 1996 AMENDMENT

Pub. L. 104-208, div. C, title III, § 308(d)(5), Sept. 30, 1996, 110 Stat. 3009-619, provided that: “Effective as of the date of the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 [Pub. L. 104-132, approved Apr. 24, 1996], section 422 of such Act [amending this section and section 1227 of this title, and enacting provisions set out as a note above] is repealed and the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall be applied as if such section had not been enacted.”

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.

GAO STUDY ON OPERATION OF EXPEDITED REMOVAL PROCEDURES

Pub. L. 104-208, div. C, title III, § 302(b), Sept. 30, 1996, 110 Stat. 3009-584, provided that:

“(1) STUDY.—The Comptroller General shall conduct a study on the implementation of the expedited removal procedures under section 235(b)(1) of the Immigration and Nationality Act [8 U.S.C. 1225(b)(1)], as amended by subsection (a). The study shall examine—

“(A) the effectiveness of such procedures in deterring illegal entry,

“(B) the detention and adjudication resources saved as a result of the procedures,

“(C) the administrative and other costs expended to comply with the provision,

“(D) the effectiveness of such procedures in processing asylum claims by undocumented aliens who assert a fear of persecution, including the accuracy of credible fear determinations, and

“(E) the cooperation of other countries and air carriers in accepting and returning aliens removed under such procedures.

“(2) REPORT.—By not later than 18 months after the date of the enactment of this Act [Sept. 30, 1996], the Comptroller General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on the study conducted under paragraph (1).”

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

For purposes of 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.

§ 1225a. Preinspection at foreign airports

(a) Establishment of preinspection stations

(1) NEW STATIONS.—Subject to paragraph (5), not later than October 31, 1998, the Attorney General, in consultation with the Secretary of State, shall establish and maintain preinspection stations in at least 5 of the foreign airports that are among the 10 foreign airports which the Attorney General identifies as serving as last points of departure for the greatest numbers of inadmissible alien passengers who arrive from abroad by air at ports of entry within the United States. Such preinspection stations shall be in addition to any preinspection stations established prior to September 30, 1996.

(2) REPORT.—Not later than October 31, 1998, the Attorney General shall report to the Committees on the Judiciary of the House of Representatives and of the Senate on the implementation of paragraph (1).

(3) DATA COLLECTION.—Not later than November 1, 1997, and each subsequent November 1, the Attorney General shall compile data identifying—

(A) the foreign airports which served as last points of departure for aliens who arrived by air at United States ports of entry without valid documentation during the preceding fiscal years;

(B) the number and nationality of such aliens arriving from each such foreign airport; and

(C) the primary routes such aliens followed from their country of origin to the United States.

(4) Subject to paragraph (5), not later than January 1, 2008, the Secretary of Homeland Security, in consultation with the Secretary of State, shall establish preinspection stations in at least 25 additional foreign airports, which the Secretary of Homeland Security, in consultation with the Secretary of State, determines, based on the data compiled under paragraph (3) and such other information as may be available, would most effectively facilitate the travel of admissible aliens and reduce the number of inadmissible aliens, especially aliens who are potential terrorists, who arrive from abroad by air at points of entry within the United States. Such preinspection stations shall be in addition to those established before September 30, 1996, or pursuant to paragraph (1).

(5) CONDITIONS.—Prior to the establishment of a preinspection station, the Attorney General, in consultation with the Secretary of State, shall ensure that—

(A) employees of the United States stationed at the preinspection station and their accompanying family members will receive appropriate protection;

(B) such employees and their families will not be subject to unreasonable risks to their welfare and safety; and

(C) the country in which the preinspection station is to be established maintains prac-

tices and procedures with respect to asylum seekers and refugees in accordance with the Convention Relating to the Status of Refugees (done at Geneva, July 28, 1951), or the Protocol Relating to the Status of Refugees (done at New York, January 31, 1967), or that an alien in the country otherwise has recourse to avenues of protection from return to persecution.

(b) Establishment of carrier consultant program and immigration security initiative

The Secretary of Homeland Security shall assign additional immigration officers to assist air carriers in the detection of fraudulent documents at foreign airports which, based on the records maintained pursuant to subsection (a)(3) of this section, served as a point of departure for a significant number of arrivals at United States ports of entry without valid documentation, but where no preinspection station exists. Beginning not later than December 31, 2006, the number of airports selected for an assignment under this subsection shall be at least 50.

(June 27, 1952, ch. 477, title II, ch. 4, § 235A, as added Pub. L. 104-208, div. C, title I, § 123(a), Sept. 30, 1996, 110 Stat. 3009-560; amended Pub. L. 108-458, title VII, § 7206(a), 7210(d)(1), Dec. 17, 2004, 118 Stat. 3817, 3825.)

CODIFICATION

September 30, 1996, referred to in subsec. (a)(1), was in the original “the date of the enactment of such Act”, which was translated as meaning the date of enactment of Pub. L. 104-208, which enacted this section, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (a)(4). Pub. L. 108-458, § 7210(d)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “(4) ADDITIONAL STATIONS.—Subject to paragraph (5), not later than October 31, 2000, the Attorney General, in consultation with the Secretary of State, shall establish preinspection stations in at least 5 additional foreign airports which the Attorney General, in consultation with the Secretary of State, determines, based on the data compiled under paragraph (3) and such other information as may be available, would most effectively reduce the number of aliens who arrive from abroad by air at points of entry within the United States who are inadmissible to the United States. Such preinspection stations shall be in addition to those established prior to September 30, 1996, or pursuant to paragraph (1).”

Subsec. (b). Pub. L. 108-458, § 7206(a), inserted “and immigration security initiative” after “program” in heading, substituted “Secretary of Homeland Security” for “Attorney General” in text, and inserted at end “Beginning not later than December 31, 2006, the number of airports selected for an assignment under this subsection shall be at least 50.”

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.

EXCHANGE OF TERRORIST INFORMATION AND INCREASED PREINSPECTION AT FOREIGN AIRPORTS

Pub. L. 108-458, title VII, § 7210(a), (b), Dec. 17, 2004, 118 Stat. 3824, provided that:

“(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings: