

“(1) The amendment made by subsection (a)(1) [amending this section] shall apply to convictions entered before, on, or after the date of the enactment of this Act [Nov. 29, 1990] and to applications for asylum made on or after such date.

“(2) The amendment made by subsection (a)(2) [amending section 1253 of this title] shall apply to convictions entered before, on, or after the date of the enactment of this Act [Nov. 29, 1990] and to applications for withholding of deportation made on or after such date.”

EFFECTIVE DATE

Section effective Mar. 17, 1980, and applicable to fiscal years beginning with the fiscal year beginning Oct. 1, 1979, see section 204 of Pub. L. 96-212, set out as an Effective Date of 1980 Amendment note under section 1101 of this title.

REGULATIONS

Pub. L. 110-340, §2(d), Oct. 3, 2008, 122 Stat. 3736, provided that:

“(1) ISSUANCE OF REGULATIONS.—Not later than 60 days after the date of enactment of this Act [Oct. 3, 2008], the Attorney General and the Secretary of Homeland Security shall promulgate final regulations establishing that, for purposes of sections 241(b)(3)(B)(iii) and 208(b)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)(B)(iii); 8 U.S.C. 1158(b)(2)(A)(iii)), an alien who is deportable under section 237(a)(4)(F) of such Act (8 U.S.C. 1227(a)(4)(F)) or inadmissible under section 212(a)(3)(G) of such Act (8 U.S.C. 1182(a)(3)(G)) shall be considered an alien with respect to whom there are serious reasons to believe that the alien committed a serious nonpolitical crime.

“(2) AUTHORITY TO WAIVE CERTAIN REGULATORY REQUIREMENTS.—The requirements of chapter 5 of title 5, United States Code (commonly referred to as the ‘Administrative Procedure Act’), chapter 35 of title 44, United States Code (commonly referred to as the ‘Paperwork Reduction Act’), or any other law relating to rulemaking, information collection, or publication in the Federal Register, shall not apply to any action to implement paragraph (1) to the extent the Attorney General or the Secretary of Homeland Security determines that compliance with any such requirement would impede the expeditious implementation of such paragraph.”

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.

EXPEDITIOUS REMOVAL FOR DENIED ASYLUM APPLICANTS

Pub. L. 103-322, title XIII, §130005, Sept. 13, 1994, 108 Stat. 2028, as amended by Pub. L. 104-208, div. C, title III, §308(e)(1)(P), (17), Sept. 30, 1996, 110 Stat. 3009-620, 3009-621, provided:

“(a) IN GENERAL.—The Attorney General may provide for the expeditious adjudication of asylum claims and the expeditious removal of asylum applicants whose applications have been finally denied, unless the applicant remains in an otherwise valid nonimmigrant status.

“(b) EMPLOYMENT AUTHORIZATION.—[Amended this section.]

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

- “(1) \$64,000,000 for fiscal year 1995;
- “(2) \$90,000,000 for fiscal year 1996;
- “(3) \$93,000,000 for fiscal year 1997; and
- “(4) \$91,000,000 for fiscal year 1998.”

TIME FOR ESTABLISHMENT OF ASYLUM PROCEDURE BY ATTORNEY GENERAL

Pub. L. 96-212, title II, §204(d)(2), Mar. 17, 1980, 94 Stat. 109, provided that: “The Attorney General shall establish the asylum procedure referred to in section 208(a) of the Immigration and Nationality Act (as added by section 201(b) of this title) [former subsec. (a) of this section] not later than June 1, 1980.”

§ 1159. Adjustment of status of refugees

(a) Inspection and examination by Department of Homeland Security

(1) Any alien who has been admitted to the United States under section 1157 of this title—

(A) whose admission has not been terminated by the Secretary of Homeland Security or the Attorney General pursuant to such regulations as the Secretary of Homeland Security or the Attorney General may prescribe,

(B) who has been physically present in the United States for at least one year, and

(C) who has not acquired permanent resident status,

shall, at the end of such year period, return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 1225, 1229a, and 1231 of this title.

(2) Any alien who is found upon inspection and examination by an immigration officer pursuant to paragraph (1) or after a hearing before an immigration judge to be admissible (except as otherwise provided under subsection (c)) as an immigrant under this chapter at the time of the alien’s inspection and examination shall, notwithstanding any numerical limitation specified in this chapter, be regarded as lawfully admitted to the United States for permanent residence as of the date of such alien’s arrival into the United States.

(b) Requirements for adjustment

The Secretary of Homeland Security or the Attorney General, in the Secretary’s or the Attorney General’s discretion and under such regulations as the Secretary or the Attorney General may prescribe, may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—

(1) applies for such adjustment,

(2) has been physically present in the United States for at least one year after being granted asylum,

(3) continues to be a refugee within the meaning of section 1101(a)(42)(A) of this title or a spouse or child of such a refugee,

(4) is not firmly resettled in any foreign country, and

(5) is admissible (except as otherwise provided under subsection (c)) as an immigrant under this chapter at the time of examination for adjustment of such alien.

Upon approval of an application under this subsection, the Secretary of Homeland Security or the Attorney General shall establish a record of the alien’s admission for lawful permanent residence as of the date one year before the date of the approval of the application.

(c) Coordination with section 1182

The provisions of paragraphs (4), (5), and (7)(A) of section 1182(a) of this title shall not be appli-

cable to any alien seeking adjustment of status under this section, and the Secretary of Homeland Security or the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(June 27, 1952, ch. 477, title II, ch. 1, §209, as added Pub. L. 96-212, title II, §201(b), Mar. 17, 1980, 94 Stat. 105; amended Pub. L. 101-649, title I, §104(a)(1), title VI, §603(a)(4), Nov. 29, 1990, 104 Stat. 4985, 5082; Pub. L. 102-232, title III, §307(l)(1), Dec. 12, 1991, 105 Stat. 1756; Pub. L. 104-208, div. C, title III, §§308(g)(3)(A), (4)(A), 371(b)(2), Sept. 30, 1996, 110 Stat. 3009-622, 3009-645; Pub. L. 109-13, div. B, title I, §101(g)(1), May 11, 2005, 119 Stat. 305.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2) and (b)(5), 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

2005—Subsec. (a)(1). Pub. L. 109-13, §101(g)(1)(A)(i), substituted “Department of Homeland Security” for “Service” in concluding provisions.

Subsec. (a)(1)(A). Pub. L. 109-13, §101(g)(1)(A)(ii), substituted “Secretary of Homeland Security or the Attorney General” for “Attorney General” in two places.

Subsec. (b). Pub. L. 109-13, §101(g)(1)(B)(ii), substituted “Secretary of Homeland Security or the Attorney General” for “Attorney General” in concluding provisions.

Pub. L. 109-13, §101(g)(1)(B)(i), added introductory provisions and struck out former introductory provisions which read as follows: “Not more than 10,000 of the refugee admissions authorized under section 1157(a) of this title in any fiscal year may be made available by the Attorney General, in the Attorney General’s discretion and under such regulations as the Attorney General may prescribe, to adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—”.

Subsec. (c). Pub. L. 109-13, §101(g)(1)(C), substituted “Secretary of Homeland Security or the Attorney General” for “Attorney General”.

1996—Subsec. (a)(1). Pub. L. 104-208, §308(g)(3)(A), (4)(A), substituted “1229a” for “1226” and “1231” for “1227” in concluding provisions.

Subsec. (a)(2). Pub. L. 104-208, §371(b)(2), substituted “an immigration judge” for “a special inquiry officer”.

1991—Subsec. (c). Pub. L. 102-232 substituted “subparagraph (A)” for “subparagraphs (A)”.

1990—Subsec. (b). Pub. L. 101-649, §104(a)(1), substituted “10,000” for “five thousand”.

Subsec. (c). Pub. L. 101-649, §603(a)(4), substituted “(4), (5), and (7)(A)” for “(14), (15), (20), (21), (25), and (32)” and “(other than paragraph (2)(C) or subparagraphs (A), (B), (C), or (E) of paragraph (3))” for “(other than paragraph (27), (29), or (33) and other than so much of paragraph (23) as relates to trafficking in narcotics)”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(3)(A), (4)(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.

Amendment by section 371(b)(2) 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.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-232, title III, §307(l), Dec. 12, 1991, 105 Stat. 1756, provided that the amendment made by section 307(l) is effective as if included in section 603(a) of the Immigration Act of 1990, Pub. L. 101-649.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-649, title I, §104(a)(2), Nov. 29, 1990, 104 Stat. 4985, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to fiscal years beginning with fiscal year 1991 and the President is authorized, without the need for appropriate consultation, to increase the refugee determination previously made under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157] for fiscal year 1991 in order to make such amendment effective for such fiscal year.”

Amendment by section 603(a)(4) of 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.

EFFECTIVE DATE

Section effective, except as otherwise provided, Mar. 17, 1980, and applicable to fiscal years beginning with the fiscal year beginning Oct. 1, 1979, see section 204 of Pub. L. 96-212, set out as an Effective Date of 1980 Amendment note under section 1101 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.

WAIVER OF NUMERICAL LIMITATION FOR CERTAIN CURRENT ASYLEES; ADJUSTMENT OF CERTAIN FORMER ASYLEES

Pub. L. 101-649, title I, §104(c), (d), Nov. 29, 1990, 104 Stat. 4985, as amended by Pub. L. 104-208, div. C, title VI, §604(b)(2), Sept. 30, 1996, 110 Stat. 3009-694, provided that:

“(c) WAIVER OF NUMERICAL LIMITATION FOR CERTAIN CURRENT ASYLEES.—The numerical limitation on the number of aliens whose status may be adjusted under section 209(b) of the Immigration and Nationality Act [8 U.S.C. 1159(b)] shall not apply to an alien described in subsection (d) or to an alien who has applied for adjustment of status under such section on or before June 1, 1990.

“(d) ADJUSTMENT OF CERTAIN FORMER ASYLEES.—

“(1) IN GENERAL.—Subject to paragraph (2), the provisions of section 209(b) of the Immigration and Nationality Act [8 U.S.C. 1159(b)] shall also apply to an alien—

“(A) who was granted asylum before the date of the enactment of this Act [Nov. 29, 1990] (regardless of whether or not such asylum has been terminated under section 208 of the Immigration and Nationality Act [8 U.S.C. 1158]),

“(B) who is no longer a refugee because of a change in circumstances in a foreign state, and

“(C) who was (or would be) qualified for adjustment of status under section 209(b) of the Immigration and Nationality Act as of the date of the enactment of this Act but for paragraphs (2) and (3) thereof and but for any numerical limitation under such section.

“(2) APPLICATION OF PER COUNTRY LIMITATIONS.—The number of aliens who are natives of any foreign state who may adjust status pursuant to paragraph (1) in any fiscal year shall not exceed the difference between the per country limitation established under section 202(a) of the Immigration and Nationality Act

[8 U.S.C. 1152(a)] and the number of aliens who are chargeable to that foreign state in the fiscal year under section 202 of such Act.”

[Section 104(c), (d) of Pub. L. 101-649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101-649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.]

§ 1160. Special agricultural workers

(a) Lawful residence

(1) In general

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

(A) Application period

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

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

The alien must establish that he has—

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

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

(C) Admissible as immigrant

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

(2) Adjustment to permanent residence

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

(A) Group 1

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

(B) Group 2

In the case of aliens to which subparagraph (A) does not apply, the adjustment

shall occur on the day after the last day of the two-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).

(C) Numerical limitation

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

(3) Termination of temporary residence

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

(B) Before any alien becomes eligible for adjustment of status under paragraph (2), the Attorney General may deny adjustment to permanent status and provide for termination of the temporary resident status granted such alien under paragraph (1) if—

- (i) the Attorney General finds by a preponderance of the evidence that the adjustment to temporary resident status was the result of fraud or willful misrepresentation as set out in section 1182(a)(6)(C)(i) of this title, or
- (ii) the alien commits an act that (I) makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (c)(2), or (II) is convicted of a felony or 3 or more misdemeanors committed in the United States.

(4) Authorized travel and employment during temporary residence

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

(5) In general

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

(b) Applications for adjustment of status

(1) To whom may be made

(A) Within the United States

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

- (i) with the Attorney General, or