

SENSE OF CONGRESS RESPECTING CONSULTATION WITH
MEXICO

Pub. L. 99-603, title III, § 301(f), Nov. 6, 1986, 100 Stat. 3416, as amended by Pub. L. 100-525, § 2(l)(4), Oct. 24, 1988, 102 Stat. 2612, provided that: "It is the sense of Congress that the President should establish an advisory commission which shall consult with the Governments of Mexico and of other appropriate countries and advise the Attorney General regarding the operation of the alien temporary worker program established under section 218 of the Immigration and Nationality Act [8 U.S.C. 1188]."

REPORTS ON H-2A PROGRAM

Pub. L. 99-603, title IV, § 403, Nov. 6, 1986, 100 Stat. 3441, provided that:

"(a) PRESIDENTIAL REPORTS.—The President shall transmit to the Committees on the Judiciary of the Senate and of the House of Representatives reports on the implementation of the temporary agricultural worker (H-2A) program, which shall include—

"(1) the number of foreign workers permitted to be employed under the program in each year;

"(2) the compliance of employers and foreign workers with the terms and conditions of the program;

"(3) the impact of the program on the labor needs of the United States agricultural employers and on the wages and working conditions of United States agricultural workers; and

"(4) recommendations for modifications of the program, including—

"(A) improving the timeliness of decisions regarding admission of temporary foreign workers under the program,

"(B) removing any economic disincentives to hiring United States citizens or permanent resident aliens for jobs for which temporary foreign workers have been requested,

"(C) improving cooperation among government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary foreign workers, and

"(D) the relative benefits to domestic workers and burdens upon employers of a policy which requires employers, as a condition for certification under the program, to continue to accept qualified United States workers for employment after the date the H-2A workers depart for work with the employer.

The recommendations under subparagraph (D) shall be made in furtherance of the Congressional policy that aliens not be admitted under the H-2A program unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or services needed and that the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

"(b) DEADLINES.—A report on the H-2A temporary worker program under subsection (a) shall be submitted not later than two years after the date of the enactment of this Act [Nov. 6, 1986], and every two years thereafter."

[Functions of President under section 403 of Pub. L. 99-603 delegated to Secretary of Labor by section 2(b) of Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, set out as a note under section 1364 of this title.]

§ 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;

(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)¹; 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, 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 an organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor.

(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 infor-

¹ So in original. The closing parenthesis probably should follow "section 1182(a)(3)(B) of this title".

mation may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c).

(4) Period of designation

(A) In general

A designation under this subsection shall be effective for all purposes until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c).

(B) Review of designation upon petition

(i) In general

The Secretary shall review the designation of a foreign terrorist organization under the procedures set forth in clauses (iii) and (iv) if the designated organization files a petition for revocation within the petition period described in clause (ii).

(ii) Petition period

For purposes of clause (i)—

(I) if the designated organization has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date on which the designation was made; or

(II) if the designated organization has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.

(iii) Procedures

Any foreign terrorist organization that submits a petition for revocation under this subparagraph must provide evidence in that petition that the relevant circumstances described in paragraph (1) are sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to the organization is warranted.

(iv) Determination

(I) In general

Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Secretary shall make a determination as to such revocation.

(II) Classified information

The Secretary may consider classified information in making a determination in response to a petition for revocation. 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 (c).

(III) Publication of determination

A determination made by the Secretary under this clause shall be published in the Federal Register.

(IV) Procedures

Any revocation by the Secretary shall be made in accordance with paragraph (6).

(C) Other review of designation

(i) In general

If in a 5-year period no review has taken place under subparagraph (B), the Secretary shall review the designation of the foreign terrorist organization in order to determine whether such designation should be revoked pursuant to paragraph (6).

(ii) Procedures

If a review does not take place pursuant to subparagraph (B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the review shall be conducted pursuant to procedures established by the Secretary. The results of such review and the applicable procedures shall not be reviewable in any court.

(iii) Publication of results of review

The Secretary shall publish any determination made pursuant to this subparagraph in the Federal Register.

(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) at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4) if the Secretary finds that—

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

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

(B) Procedure

The procedural requirements of paragraphs (2) 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) 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 (2)(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 as a defense or an objection at any trial or hearing.

(b) Amendments to a designation

(1) In general

The Secretary may amend a designation under this subsection if the Secretary finds

that the organization has changed its name, adopted a new alias, dissolved and then reconstituted itself under a different name or names, or merged with another organization.

(2) Procedure

Amendments made to a designation in accordance with paragraph (1) shall be effective upon publication in the Federal Register. Subparagraphs (B) and (C) of subsection (a)(2) shall apply to an amended designation upon such publication. Paragraphs (2)(A)(i), (4), (5), (6), (7), and (8) of subsection (a) shall also apply to an amended designation.

(3) Administrative record

The administrative record shall be corrected to include the amendments as well as any additional relevant information that supports those amendments.

(4) Classified information

The Secretary may consider classified information in amending a designation in accordance with 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 (c).

(c) Judicial review of designation

(1) In general

Not later than 30 days after publication in the Federal Register of a designation, an amended designation, or a determination in response to a petition for revocation, the designated organization may seek judicial review 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, amended designation, or determination in response to a petition for revocation.

(3) Scope of review

The Court shall hold unlawful and set aside a designation, amended designation, or determination in response to a petition for revocation 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),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, amended designation, or

determination in response to a petition for revocation shall not affect the application of this section, unless the court issues a final order setting aside the designation, amended designation, or determination in response to a petition for revocation.

(d) 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.

(June 27, 1952, ch. 477, title II, ch. 2, §219, as added Pub. L. 104-132, title III, §302(a), Apr. 24, 1996, 110 Stat. 1248; amended Pub. L. 104-208, div. C, title III, §356, title VI, §671(c)(1), Sept. 30, 1996, 110 Stat. 3009-644, 3009-722; Pub. L. 107-56, title IV, §411(c), Oct. 26, 2001, 115 Stat. 349; Pub. L. 108-458, title VII, §7119(a)-(c), Dec. 17, 2004, 118 Stat. 3801, 3802.)

Editorial Notes

REFERENCES IN TEXT

Section 1(a) of the Classified Information Procedures Act, referred to in subsec. (d)(1), is section 1(a) of Pub. L. 96-456, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

CODIFICATION

Another section 411(c) of Pub. L. 107-56 enacted provisions set out as an Effective Date of 2001 Amendment note under section 1182 of this title.

AMENDMENTS

2004—Subsec. (a)(3)(B). Pub. L. 108-458, §7119(c)(1)(A), substituted “subsection (c)” for “subsection (b)”.

Subsec. (a)(4)(A). Pub. L. 108-458, §7119(a)(1), substituted “A designation” for “Subject to paragraphs (5) and (6), a designation” and “until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c)” for “for a period of 2 years beginning on the effective date of the designation under paragraph (2)(B)”.

Subsec. (a)(4)(B). Pub. L. 108-458, §7119(a)(2), added subpar. (B) and struck out former subpar. (B) which contained provisions authorizing Secretary to 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 subpar. (A) or at the end of any 2-year redesignation period.

Subsec. (a)(4)(C). Pub. L. 108-458, §7119(a)(3), added subpar. (C).

Subsec. (a)(6)(A). Pub. L. 108-458, §7119(c)(1)(B)(i), substituted “at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4)” for “or a redesignation made under paragraph (4)(B)” in introductory provisions.

Subsec. (a)(6)(A)(i). Pub. L. 108-458, §7119(c)(1)(B)(ii), struck out “or redesignation” after “the designation”.

² So in original. The comma probably should be a semicolon.

Subsec. (a)(7). Pub. L. 108-458, § 7119(c)(1)(C), struck out “, or the revocation of a redesignation under paragraph (6),” before “shall not affect”.

Subsec. (a)(8). Pub. L. 108-458, § 7119(c)(1)(D), struck out “, or if a redesignation under this subsection has become effective under paragraph (4)(B),” before “a defendant in a criminal action” and “or redesignation” after “such designation”.

Subsec. (b). Pub. L. 108-458, § 7119(b)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 108-458, § 7119(b)(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 108-458, § 7119(c)(2)(A), substituted “in the Federal Register of a designation, an amended designation, or a determination in response to a petition for revocation, the designated organization may seek judicial review” for “of the designation in the Federal Register, an organization designated as a foreign terrorist organization may seek judicial review of the designation”.

Subsec. (c)(2) to (4). Pub. L. 108-458, § 7119(c)(2)(B)-(D), inserted “, amended designation, or determination in response to a petition for revocation” after “designation” wherever appearing.

Subsec. (d). Pub. L. 108-458, § 7119(b)(1), redesignated subsec. (c) as (d).

2001—Subsec. (a)(1)(B). Pub. L. 107-56, § 411(c)(1), inserted “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” after “section 1182(a)(3)(B) of this title”.

Subsec. (a)(1)(C). Pub. L. 107-56, § 411(c)(2), inserted “or terrorism” after “the terrorist activity”.

Subsec. (a)(2)(A). Pub. L. 107-56, § 411(c)(3), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “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, in writing, of the intent to designate a foreign 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, publish the designation in the Federal Register.”

Subsec. (a)(2)(B)(i). Pub. L. 107-56, § 411(c)(4), substituted “subparagraph (A)(ii)” for “subparagraph (A)”.

Subsec. (a)(2)(C). Pub. L. 107-56, § 411(c)(5), substituted “paragraph (2)(A)(i)” for “paragraph (2)”.

Subsec. (a)(3)(B). Pub. L. 107-56, § 411(c)(6), substituted “subsection (b)” for “subsection (c)”.

Subsec. (a)(4)(B). Pub. L. 107-56, § 411(c)(7), inserted after first sentence “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.”

Subsec. (a)(6)(A). Pub. L. 107-56, § 411(c)(8)(A), inserted “or a redesignation made under paragraph (4)(B)” after “paragraph (1)” in introductory provisions.

Subsec. (a)(6)(A)(i). Pub. L. 107-56, § 411(c)(8)(B), inserted “or redesignation” after “basis for the designation” and struck out “of the designation” before semicolon.

Subsec. (a)(6)(A)(ii). Pub. L. 107-56, § 411(c)(8)(C), struck out “of the designation” before period at end.

Subsec. (a)(6)(B). Pub. L. 107-56, § 411(c)(9), substituted “and (3)” for “through (4)” and inserted “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.” at end.

Subsec. (a)(7). Pub. L. 107-56, § 411(c)(10), inserted “, or the revocation of a redesignation under paragraph (6),” after “paragraph (5) or (6)”.

Subsec. (a)(8). Pub. L. 107-56, § 411(c)(11), substituted “paragraph (2)(B), or if a redesignation under this subsection has become effective under paragraph (4)(B)” for “paragraph (1)(B)” and inserted “or an alien in a removal proceeding” after “criminal action” and “or redesignation” before “as a defense”.

1996—Pub. L. 104-208, § 671(c)(1), made technical amendment to section catchline.

Subsec. (b)(3)(D), (E). Pub. L. 104-208, § 356, added subpars. (D) and (E).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-56 effective Oct. 26, 2001, and applicable to actions taken by an alien before, on, or after Oct. 26, 2001, and to all aliens, regardless of date of entry or attempted entry into the United States, in removal proceedings on or after such date (except for proceedings in which there has been a final administrative decision before such date) or seeking admission to the United States on or after such date, with special rules and exceptions, see section 411(c) of Pub. L. 107-56, set out as a note under section 1182 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 356 of Pub. L. 104-208 effective as if included in the enactment of subtitle A of title IV of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, see section 358 of Pub. L. 104-208, set out as a note under section 1182 of this title.

Pub. L. 104-208, div. C, title VI, § 671(c)(7), Sept. 30, 1996, 110 Stat. 3009-723, provided that: “The amendments made by this subsection [amending this section and sections 1105a and 1252a of this title] shall take effect as if included in the enactment of subtitle A of title IV of AEPDA [AEDPA, Pub. L. 104-132].”

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.

SAVINGS PROVISION

Pub. L. 108-458, title VII, § 7119(d), Dec. 17, 2004, 118 Stat. 3803, provided that: “For purposes of applying section 219 of the Immigration and Nationality Act [8 U.S.C. 1189] on or after the date of enactment of this Act [Dec. 17, 2004], the term ‘designation’, as used in that section, includes all redesignations made pursuant to section 219(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1189(a)(4)(B)) prior to the date of enactment of this Act, and such redesignations shall continue to be effective until revoked as provided in paragraph (5) or (6) of section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).”

PART III—ISSUANCE OF ENTRY DOCUMENTS

§ 1201. Issuance of visas

(a) Immigrants; nonimmigrants

(1) Under the conditions hereinafter prescribed and subject to the limitations prescribed in this chapter or regulations issued thereunder, a consular officer may issue

(A) 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, im-