

APPENDIX A



United States v. Verduzco-Rangel

United States Court of Appeals for the Ninth Circuit

January 8, 2018, Argued and Submitted, Pasadena, California; March 9, 2018, Filed

No. 15-50559

Reporter

884 F.3d 918 *; 2018 U.S. App. LEXIS 5936 **

UNITED STATES OF AMERICA, Plaintiff-Appellee, v.
ALEJANDRO VERDUZCO-RANGEL, Defendant-
Appellant.

Subsequent History: Rehearing denied by, Rehearing, en banc, denied by *United States v. Verduzco-Rangel*, 2018 U.S. App. LEXIS 13057 (9th Cir. Cal., May 18, 2018)

Prior History: [**1] Appeal from the United States District Court for the Southern District of California. D.C. No.3:15-cr-00129-GPC. Gonzalo P. Curiel, District Judge, Presiding.

Core Terms

aggravated felony, trafficking, drug trafficking, federal law, controlled substance, removal, route, illicit, felony, culpable, state of mind, criminalized, categorical

Case Summary

Overview

HOLDINGS: [1]-Defendant's 2004 indictment and plea agreement established that he was convicted of trafficking methamphetamine, which was a controlled substance under both California and federal law; [2]-Because Cal. Health & Safety Code § 11378 had a trafficking element and required a sufficiently culpable state of mind, it was a drug trafficking aggravated felony under 8 U.S.C.S. § 1101(a)(43)(B), because the substance involved was federally controlled; [3]-Removal under 8 U.S.C.S. § 1227 based on such a conviction under § 11378 was proper.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > Appeals > Appellate
Jurisdiction > Collateral Order Doctrine

Immigration Law > ... > Grounds for Deportation &
Removal > Criminal Activity > Aggravated Felonies

HN1 [📌] Appellate Jurisdiction, Collateral Order Doctrine

The appellate court reviews de novo a defendant's collateral attack on his 2004 removal. To prevail on this collateral attack, a defendant must demonstrate that (1) he exhausted all available administrative remedies, (2) his removal proceeding deprived him of an opportunity for judicial review, and (3) the entry of his removal order was fundamentally unfair, 8 U.S.C.S. § 1326(d). A removal order is fundamentally unfair if the relevant immigration laws did not in fact authorize deportation.

Immigration Law > ... > Grounds for Deportation &
Removal > Criminal Activity > Aggravated Felonies

HN2 [📌] Criminal Activity, Aggravated Felonies

The Supreme Court has decreed that courts should initially employ a "categorical approach" to determine whether a state offense is an aggravated felony under the INA. Under this approach, a defendant's actual conduct is irrelevant; rather, the adjudicator must presume that the conviction rested upon nothing more than the least of the acts criminalized under the state statute. Where, however, statutes contain several different crimes, each described separately—a situation commonly referred to as divisibility—courts may determine which particular offense the noncitizen was convicted of by examining a limited set of documents underlying the conviction. The court then must determine whether the defendant's specific conviction can be categorized as an aggravated felony.

Criminal Law & Procedure > ... > Controlled
Substances > Delivery, Distribution & Sale > Elements

Immigration Law > ... > Grounds for Deportation &
Removal > Criminal Activity > Aggravated Felonies

HN3 [📄] **Delivery, Distribution & Sale, Elements**

The INA defines "aggravated felony" to include a host of offenses, conviction for any one of which subjects certain aliens to removal from the United States, 8 U.S.C.S. § 1101(a)(43). Among these offenses is the "drug trafficking aggravated felony," which is defined as illicit trafficking in a controlled substance (as defined in *section 802* of Title 21), including a drug trafficking crime (as defined in *section 924(c)* of Title 18), § 1101(a)(43)(B). This definition creates two possible routes for a state drug felony to qualify as a drug trafficking aggravated felony: First, under the phrase "illicit trafficking in a controlled substance," a state drug crime is an aggravated felony if it contains a trafficking element. Second, under the phrase including a drug trafficking crime (as defined in *section 924(c)* of Title 18), a state drug crime is an aggravated felony if it would be punishable as a felony under the federal drug laws.

Criminal Law & Procedure > ... > Controlled
Substances > Delivery, Distribution & Sale > Elements

Immigration Law > ... > Grounds for Deportation &
Removal > Criminal Activity > Aggravated Felonies

HN4 [📄] **Delivery, Distribution & Sale, Elements**

Cal. Health & Safety Code § 11378 is divisible as to which substance the defendant was convicted of actually trafficking, so courts can look to underlying records to determine whether a conviction was for a federally banned substance and thus qualifies as an aggravated felony for purposes of federal law.

Criminal Law & Procedure > ... > Controlled
Substances > Delivery, Distribution & Sale > Elements

HN5 [📄] **Delivery, Distribution & Sale, Elements**

Under federal law, a person actually selling cocaine who thought he was selling baking soda does not possess the required mens rea to be guilty of drug trafficking. Under Cal. Health & Safety Code § 11378, defendants can be found

guilty even if they were mistaken about what specific substance was being trafficked, as long as the substance in which they intended to traffic is in fact controlled under California law.

Criminal Law & Procedure > ... > Controlled
Substances > Delivery, Distribution & Sale > Elements

Immigration Law > ... > Grounds for Deportation &
Removal > Criminal Activity > Aggravated Felonies

HN6 [📄] **Delivery, Distribution & Sale, Elements**

There is no good reason to suppose that, when Congress defined "aggravated felony" in the INA to include "illicit trafficking in a controlled substance," it meant to implicitly incorporate such a requirement. Indeed, the plain meaning of the statutory language is to the contrary. If the first route were to require (1) a trafficking element, (2) the actual involvement of a drug that is banned federally, and (3) that federal law control the substance in which the defendant intended to traffic, then it would cover only drug trafficking crimes punishable as felonies under federal law—exactly what the second route already encompasses.

Criminal Law & Procedure > ... > Controlled
Substances > Delivery, Distribution & Sale > Elements

Immigration Law > ... > Grounds for Deportation &
Removal > Criminal Activity > Aggravated Felonies

HN7 [📄] **Delivery, Distribution & Sale, Elements**

It is sufficient that the state statute contains an "illicit trafficking" element, which Cal. Health & Safety Code § 11378 clearly does. To the extent "illicit trafficking" in route one incorporates a mens rea requirement, section 11378 suffices because it requires that the defendant intend to possess for sale a controlled substance and actually possess for sale a controlled substance, and that both the intended substance and the actual substance be controlled. This is, in fact, the same mens rea required under federal law. That Congress would impose consistent deportation consequences for those who engage in equally culpable activity is hardly surprising and is consistent with a generic understanding of "drug trafficking."

Summary:

SUMMARY****Criminal Law**

The panel affirmed a conviction under 8 U.S.C. § 1326 for attempting to reenter the United States after a prior removal, in a case in which the defendant was removed in 2004 under 8 U.S.C. § 1227(a)(2)(A)(iii), a provision of the Immigration and Nationality Act that authorized removal if an alien had committed an "aggravated felony," as defined by 8 U.S.C. § 1101(a)(43)(B).

The aggravated felony on which the Government relied was the defendant's prior conviction of felony possession of methamphetamine in violation of *California Health & Safety Code section 11378*. Recognizing that *section 11378* is divisible as to which substance the defendant was convicted of actually trafficking, and that courts can therefore look to underlying records to determine whether a conviction was for a federally banned substance, the panel noted that the defendant's 2004 indictment and plea agreement establish that he was convicted of trafficking methamphetamine, which is a controlled substance under both California and federal law.

The panel rejected as irrelevant the defendant's argument that his California conviction is not categorically an aggravated felony [**2] because *section 11378* is broader than federal law as to defendants' beliefs about the kind of substance in which they were trafficking. The panel explained that a *section 11378* conviction is an aggravated felony under the first route laid out in *Rendon v. Mukasey*, 520 F.3d 967 (9th Cir. 2008), at least where, as here, the defendant was trafficking a substance that is also controlled by federal law; and that the panel thus need not consider whether the defendant's conviction would also qualify as an aggravated felony under the second route identified in *Rendon*. The panel wrote that because *section 11378* has a trafficking element and requires a sufficiently culpable state of mind, *section 11378* is a drug trafficking aggravated felony under § 1101(a)(43)(B) where the record of conviction establishes that the substance involved is federally controlled. The panel thus concluded that removal under § 1227(a)(2)(A)(iii) based on such a conviction under *section 11378* is not fundamentally unfair.

Counsel: Ellis M. Johnston III (argued), Clarke Johnston Thorp & Rice APPC, San Diego, California, for Defendant-Appellant.

Mark R. Rehe (argued), Assistant United States Attorney;

Laura E. Duffy, United States Attorney; Helen H. Hong, Assistant United States Attorney, Chief, Appellate Section, Criminal Division; United States Attorney's Office, San Diego, [**3] California; for Plaintiff-Appellee.

Judges: Before: Milan D. Smith, Jr. and Michelle T. Friedland, Circuit Judges, and Jed S. Rakoff,* Senior District Judge. Opinion by Judge Rakoff.

Opinion by: Jed S. Rakoff

Opinion

[*920] RAKOFF, Senior District Court Judge:

Defendant-Appellant Alejandro Verduzco-Rangel, an alien, appeals his conviction under 8 U.S.C. § 1326 for attempting to reenter the United States after a prior removal. Verduzco was removed in 2004 under 8 U.S.C. § 1227(a)(2)(A)(iii), a provision of the Immigration and Nationality Act ("INA") that authorized removal if an alien had committed an "aggravated felony," as defined by § 1101(a)(43)(B). The aggravated felony on which the Government relied was Verduzco's prior conviction of felony possession for sale of methamphetamine in violation of *California Health & Safety Code section 11378*. Verduzco now argues that this conviction was not in fact an aggravated felony, rendering his removal invalid and requiring reversal of his recent conviction. For the reasons that follow, we disagree, reaffirm that a conviction under *section 11378* is an aggravated felony for purposes of § 1227(a)(2)(A)(iii) where, as here, the record of conviction establishes that the substance involved was federally controlled, and affirm Verduzco's conviction.

HNI [†] We review *de novo* Verduzco's collateral attack on his 2004 removal. *United States v. Aguilera-Rios*, 769 F.3d 626, 629 (9th Cir. 2014). To [**4] prevail on this collateral attack, Verduzco must demonstrate that (1) he exhausted all available administrative remedies, (2) his removal proceeding deprived him of an opportunity for judicial review, and (3) the entry of his removal order was "fundamentally unfair." 8 U.S.C. § 1326(d). For purposes of this appeal, the Government concedes the first two prongs, so the only question is whether the removal was fundamentally unfair. A removal order is fundamentally unfair if the relevant immigration laws did not in fact authorize deportation. *See Aguilera-Rios*, 769 F.3d at 630.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

* The Honorable Jed S. Rakoff, Senior United States District Judge for the Southern District of New York, sitting by designation.

[*921] HN2 [↑] The Supreme Court has decreed that courts should initially employ a "categorical approach" to determine whether a state offense is an aggravated felony under the INA. See Mellouli v. Lynch, 135 S. Ct. 1980, 1986, 192 L. Ed. 2d 60 (2015). Under this approach, a defendant's actual conduct is irrelevant; rather, "the adjudicator must 'presume that the conviction rested upon nothing more than the least of the acts criminalized' under the state statute." *Id.* (quoting Moncrieffe v. Holder, 569 U.S. 184, 190-91, 133 S. Ct. 1678, 185 L. Ed. 2d 727 (2013)). Where, however, statutes "contain several different crimes, each described separately"—a situation commonly referred to as "divisibility"—courts may "determine which particular offense the noncitizen was convicted of" by examining a limited set of documents underlying [*5] the conviction. Moncrieffe, 569 U.S. at 191; see also Shepard v. United States, 544 U.S. 13, 26, 125 S. Ct. 1254, 161 L. Ed. 2d 205 (2005) (listing permissible documents). The court then must determine whether the defendant's specific conviction can be categorized as an aggravated felony. Moncrieffe, 569 U.S. at 191.

HN3 [↑] The INA defines "aggravated felony" to include a host of offenses, conviction for any one of which subjects certain aliens to removal from the United States. 8 U.S.C. § 1101(a)(43). Among these offenses is the "drug trafficking aggravated felony," which is defined as "illicit trafficking in a controlled substance (as defined in section 802 of Title 21), including a drug trafficking crime (as defined in section 924(c) of Title 18)." *Id.* § 1101(a)(43)(B). This definition creates two possible routes for a state drug felony to qualify as a drug trafficking aggravated felony:

First, under the phrase "illicit trafficking in a controlled substance," a state drug crime is an aggravated felony "if it contains a trafficking element." Second, under the phrase "including a drug trafficking crime (as defined in section 924(c) of Title 18)," a state drug crime is an aggravated felony if it would be punishable as a felony under the federal drug laws.

Rendon v. Mukasey, 520 F.3d 967, 974 (9th Cir. 2008) (quoting Salvijejo-Fernandez v. Gonzales, 455 F.3d 1063, 1066 (9th Cir. 2006)); see also Lopez v. Gonzales, 549 U.S. 47, 57, 127 S. Ct. 625, 166 L. Ed. 2d 462 (2006) ("[I]f [a defendant's] state crime actually fell within the general term 'illicit trafficking,' the state felony conviction would [*6] count as an 'aggravated felony,' regardless of the existence of a federal felony counterpart . . .").

California's statute is not a perfect categorical match under either route because, although California's list of controlled substances is nearly identical to those contained in the federal

statutes and schedules that the INA references,¹ California law also criminalizes trafficking in a few obscure substances that federal law does not, such as chorionic gonadotropin (a performance enhancing drug also banned in many sports). See Coronado v. Holder, 759 F.3d 977, 983 n.1 (9th Cir. 2014). However, HN4 [↑] section 11378 is divisible as to which substance the defendant was convicted of actually trafficking, see, e.g., United States v. Vega-Ortiz, 822 F.3d 1031, 1035 (9th Cir. 2016), so courts can look to underlying [*922] records to determine whether a conviction was for a federally banned substance and thus qualifies as an aggravated felony for purposes of federal law. Verdusco's 2004 indictment and plea agreement establish that he was convicted of trafficking methamphetamine, which is a controlled substance under both California and federal law.

Verdusco nonetheless argues that his California conviction is not categorically an aggravated felony because section 11378 remains broader than federal law as to defendants' beliefs about the kind [*7] of substance in which they were trafficking. HN5 [↑] Under federal law, a person actually selling cocaine who thought he was selling baking soda does not possess the required mens rea to be guilty of drug trafficking. See McFadden v. United States, 135 S. Ct. 2298, 2304, 192 L. Ed. 2d 260 (2015). Under section 11378, defendants can be found guilty even if they were mistaken about what specific substance was being trafficked, as long as the substance in which they intended to traffic is in fact controlled under California law. See People v. Romero, 55 Cal. App. 4th 147, 64 Cal. Rptr. 2d 16, 23 (Ct. App. 1997) (affirming conviction of defendant who sold cocaine that he thought was marijuana). This means that a person who believed she was trafficking in chorionic gonadotropin but was in fact trafficking in methamphetamine would violate California law but not federal law. Verdusco argues that section 11378 is thus not categorically a drug trafficking crime under the second route laid out in Rendon.

Rather than contesting this point, the Government argues that it is irrelevant because a conviction under section 11378 is an aggravated felony under the first route, at least where, as here, the defendant was trafficking a substance (methamphetamine) that is also controlled by federal law. We agree, and thus need not consider whether Verdusco's conviction would also qualify as an aggravated [*8] felony under the second route

¹ 21 U.S.C. § 802 defines "controlled substance" as "a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter." *Id.* § 802(6). 18 U.S.C. § 924 defines a "drug trafficking crime" as "any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46." *Id.* § 924(c)(2).

identified in *Rendon*. Indeed, *Rendon* itself held that "possession of a controlled substance with the intent to sell" under Kansas law "contains a trafficking element and is an aggravated felony on that basis." 520 F.3d at 976 & n.7.

Verduzco counters that (1) *Rendon* did not address what state of mind federal law requires a state statute to have for a conviction under that statute to be an aggravated felony under the first route,² and (2) that the phrase "illicit trafficking" in § 1101(a)(43)(B) incorporates the federal law's scienter requirement that the substance in which the defendant intends to traffic be a substance controlled by federal law. But *HN6* [¶] there is no good reason to suppose that, when Congress defined "aggravated felony" in the INA to include "illicit trafficking in a controlled substance," it meant to implicitly incorporate such a requirement. Indeed, the plain meaning of the statutory language is to the contrary. If the first route were to require (1) a trafficking element, (2) the actual involvement of a drug that is banned federally, and (3) that federal law control the substance in which the defendant intended to traffic, then it would cover only drug trafficking crimes *HN9* [¶] punishable as felonies under federal law—exactly what the second route already encompasses. In addition to rendering the statute redundant, Verduzco's proposed reading ignores the word "including," *HN23* [¶] which suggests that what follows is a subset of what preceded, and not that the two are coextensive. See *Herb's Welding, Inc. v. Gray*, 470 U.S. 414, 423 n.9, 105 S. Ct. 1421, 84 L. Ed. 2d 406 (1985).

Under *Rendon*'s first route, we need not consider whether a state drug crime would also be punishable under federal law. See 520 F.3d at 974. Rather, *HN7* [¶] it is sufficient that the state statute contains an "illicit trafficking" element, which *section 11378* clearly does. See *id.* at 976 & n.7. To the extent "illicit trafficking" in route one incorporates a mens rea requirement, *section 11378* suffices because it requires that the defendant intend to possess for sale a controlled substance and actually possess for sale a controlled substance, and that both the intended substance and the actual substance be controlled. This is, in fact, the same mens rea required under federal law. See *McFadden*, 135 S. Ct. at 2304. That Congress would impose consistent deportation consequences for those who engage in equally culpable activity is hardly surprising and is consistent with a generic understanding of "drug trafficking."³

² As a general matter, all federal criminal statutes are presumed to incorporate a requirement that the defendant act with a culpable state of mind unless the statute expressly indicates otherwise. See *Morissette v. United States*, 342 U.S. 246, 250, 72 S. Ct. 240, 96 L. Ed. 288 (1952); *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 72, 115 S. Ct. 464, 130 L. Ed. 2d 372 (1994).

Because *section 11378* has a trafficking element *HN10* [¶] and requires a sufficiently culpable state of mind, *section 11378* is a drug trafficking aggravated felony under § 1101(a)(43)(B) where the record of conviction establishes that the substance involved is federally controlled. Thus, removal under § 1227(a)(2)(A)(iii) based on such a conviction under *section 11378* is not fundamentally unfair. Verduzco's conviction is therefore **AFFIRMED**.

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³ Our recent decision in *United States v. Valdivia-Flores*, 876 F.3d 1201 (9th Cir. 2017), is not to the contrary. There, we held that Washington State's possession with intent to distribute statute was not a drug trafficking aggravated felony. The Washington statute criminalized more conduct than its federal analogs because one could be convicted under Washington law as an aider and abettor by either knowingly or intentionally assisting a principal, whereas federal law only criminalized intentionally assisting a principal. *Id.* at 1207-08. Intentionally abetting the commission of a crime involves a more culpable state of mind than knowingly doing so, and it is unlikely that Congress intended the generic "drug trafficking" listed in the INA to reach the less culpable conduct that the Washington statute criminalized. Here, by comparison, knowingly possessing for sale a substance controlled only by state law involves an equally culpable state of mind as knowingly possessing for sale a substance controlled by federal law.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 18 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ALEJANDRO VERDUZCO-RANGEL,

Defendant-Appellant.

No. 15-50559

D.C. No.

3:15-cr-00129-GPC-1

Southern District of California,
San Diego

ORDER

Before: M. SMITH and FRIEDLAND, Circuit Judges, and RAKOFF,* Senior District Judge.

The panel has unanimously voted to deny Appellant's petition for rehearing. Judges Smith and Friedland have voted to deny the petition for rehearing en banc. Judge Rakoff recommends denial of the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petitions for rehearing and rehearing en banc are DENIED.

* The Honorable Jed S. Rakoff, Senior United States District Judge for the Southern District of New York, sitting by designation.

APPENDIX C

USCS Const. Amend. 5

Current through PL 115-230, approved 8/2/18 05100104393

United States Code Service - Constitution of the United States > **CONSTITUTION OF THE UNITED STATES OF AMERICA** > **AMENDMENTS** > **AMENDMENT 5**

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8 USCS § 1101

Current through PL 115-230, approved 8/2/18

United States Code Service - Titles 1 through 54 > TITLE 8. ALIENS AND NATIONALITY > CHAPTER 12. IMMIGRATION AND NATIONALITY > GENERAL PROVISIONS

Notice

Part 1 of 2. You are viewing a very large document that has been divided into parts.

§ 1101. Definitions

(a)As used in this Act--

(1)The term "administrator" means the official designated by the Secretary of State pursuant to section 104(b) of this Act [8 USCS § 1104(b)].

(2)The term "advocates" includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.

(3)The term "alien" means any person not a citizen or national of the United States.

(4)The term "application for admission" has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.

(5)The term "Attorney General" means the Attorney General of the United States.

(6)The term "border crossing identification card" means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations. Such regulations shall provide that (A) each such document include a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable and (B) an alien presenting a border crossing identification card is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(7)The term "clerk of court" means a clerk of a naturalization court.

(8)The terms "Commissioner" and "Deputy Commissioner" mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

(9)The term "consular officer" means any consular, diplomatic, or other officer or employee of the United States designated under regulations prescribed under authority contained in this Act, for the purpose of issuing immigrant or nonimmigrant visas or, when used in title III [8 USCS §§ 1401 et seq.], for the purpose of adjudicating nationality.

(10)The term "crewman" means a person serving in any capacity on board a vessel or aircraft.

(11)The term "diplomatic visa" means a nonimmigrant visa bearing that title and issued to a nonimmigrant in accordance with such regulations as the Secretary of State may prescribe.

(12)The term "doctrine" includes, but is not limited to, policies, practices, purposes, aims, or procedures.

8 USCS § 1101

(13)(A) The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

(B) An alien who is paroled under section 212(d)(5) [8 USCS § 1182(d)(5)] or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.

(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien--

- (i) has abandoned or relinquished that status,
- (ii) has been absent from the United States for a continuous period in excess of 180 days,
- (iii) has engaged in illegal activity after having departed the United States,
- (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this Act and extradition proceedings,
- (v) has committed an offense identified in section 212(a)(2) [8 USCS § 1182(a)(2)], unless since such offense the alien has been granted relief under section 212(h) or 240A(a) [8 USCS § 1182(h) or 1229b(a)], or
- (vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

(14) The term "foreign state" includes outlying possessions of a foreign state, but self-governing dominions or territories under mandate or trusteeship shall be regarded as separate foreign states.

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens--

(A)

- (i) an ambassador, public minister, or career diplomatic or an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government recognized de jure by the United States and who is accepted by the President or by the Secretary of State, and the members of the alien's immediate family;
- (ii) upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and the members of their immediate families; and
- (iii) upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status under (i) and (ii) above;

(B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;

(C) an alien in immediate and continuous transit through the United States, or an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Headquarters Agreement with the United Nations (61 Stat. 758) [22 USCS § 287 note];

(D)

- (i) an alien crewman serving in good faith as such in a capacity required for normal operation and service on board a vessel, as defined in section 258(a) [8 USCS § 1288(a)] (other than a fishing vessel having its home port or an operating base in the United States), or aircraft, who intends to land temporarily and

8 USCS § 1101

solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

(ii) an alien crewman serving in good faith as such in any capacity required for normal operations and service aboard a fishing vessel having its home port or an operating base in the United States who intends to land temporarily in Guam or the Commonwealth of the Northern Mariana Islands and solely in pursuit of his calling as a crewman and to depart from Guam or the Commonwealth of the Northern Mariana Island with the vessel on which he arrived;

(E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him: (i) solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of which he is a national; (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital; or (iii) solely to perform services in a specialty occupation in the United States if the alien is a national of the Commonwealth of Australia and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1) [*8 USCS § 1182(t)(1)*];

(F) (i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(l) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(G)

(i) a designated principal resident representative of a foreign government recognized de jure by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669), accredited resident members of the staff of such representatives, and members of his or their immediate family;

(ii) other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;

(iii) an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized de jure by the United States, or that the government of which he is an accredited representative is not a member of such international organization, and the members of his immediate family;

(iv) officers, or employees of such international organizations, and the members of their immediate families;

(v) attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees;

(H) [Caution: For expiration of amendments made to this subparagraph by Act Nov. 12, 1999, P.L. 106-95, see § 2(e) of such Act, which appears as *8 USCS § 1182 note*.] an alien (i)(a) [Deleted] (b) subject

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to section 212(j)(2) [8 USCS § 1182(j)(2)] who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 214(i)(1) [8 USCS § 1184(i)(1)] or as a fashion model, who meets the requirements for the occupation specified in section 214(i)(2) [8 USCS § 1184(i)(2)] or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1) [8 USCS § 1182(n)(1)], or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section 214(g)(8)(A) [8 USCS § 1184(g)(8)(A)], who is engaged in a specialty occupation described in section 214(i)(3) [8 USCS § 1184(i)(3)], and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1) [8 USCS § 1182(t)(1)], or (c) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1) [8 USCS § 1182(m)(1)], and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) [8 USCS § 1182(m)(2)] for the facility (as defined in section 212(m)(6)) [8 USCS § 1182(m)(6))] for which the alien will perform the services; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1986 [26 USCS § 3121(g)], agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), and the pressing of apples for cider on a farm, of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him, in a training program that is not designed primarily to provide productive employment;

(I) upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative, if accompanying or following to join him;

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j) [8 USCS § 1182(j)], and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(K) subject to subsections (d) and (p) of section 214 [8 USCS § 1184], an alien who--

(i) is the fiancée or fiancé of a citizen of the United States (other than a citizen described in section 204(a)(1)(A)(viii)(I) [8 USCS § 1154(a)(1)(A)(viii)(I)]) and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission;

(ii) has concluded a valid marriage with a citizen of the United States (other than a citizen described in section 204(a)(1)(A)(viii)(I) [8 USCS § 1154(a)(1)(A)(viii)(I)]) who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) [8 USCS § 1151(b)(2)(A)(i)] that was filed

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under section 204 [8 USCS § 1154] by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or

(iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(L) subject to section 214(c)(2) [8 USCS § 1184(c)(2)], an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(N)

(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i) (or under analogous authority under paragraph (27)(L)), but only if and while the alien is a child, or

(ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I) (or under analogous authority under paragraph (27)(L));

(O) an alien who--

(i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability;

(ii)

(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,

(II) is an integral part of such actual performance,

(III)(a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or (b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing longstanding working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and

(IV) has a foreign residence which the alien has no intention of abandoning; or

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(iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(P) an alien having a foreign residence which the alien has no intention of abandoning who--

(i) (a) is described in section 214(c)(4)(A) [8 USCS § 1184(c)(4)(A)] (relating to athletes), or (b) is described in section 214(c)(4)(B) [8 USCS § 1184(c)(4)(B)] (relating to entertainment groups);

(ii)

(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers;

(iii)

(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely to perform, teach, or coach as such an artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique; or

(iv) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien;

(Q) an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program approved by the Secretary of Homeland Security for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers;

(R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who--

(i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

(ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii);

(S) subject to section 214(k) [8 USCS § 1184(k)], an alien--

(i) who the Attorney General determines--

(I) is in possession of critical reliable information concerning a criminal organization or enterprise;

(II) is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and

(III) whose presence in the United States the Attorney General determines is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise; or

(ii) who the Secretary of State and the Attorney General jointly determine--

(I) is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation;

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(II) is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;

(III) will be or has been placed in danger as a result of providing such information; and

(IV) is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956 [22 USCS § 2708(a)],

and, if the Attorney General (or with respect to clause (ii), the Secretary of State and the Attorney General jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i) or (ii) if accompanying, or following to join, the alien;

(T)(i) subject to section 214(o) [8 USCS § 1184(o)], an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, determines--

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000 [22 USCS § 7102];

(II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;

(III)(aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime;

(bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or

(cc) has not attained 18 years of age; and

(IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal; and

(ii) if accompanying, or following to join, the alien described in clause (i)--

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien;

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; or

(III) any parent or unmarried sibling under 18 years of age, or any adult or minor children of a derivative beneficiary of the alien, as of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement.

(iii) [Deleted]

(U)

(i) subject to section 214(p) [8 USCS § 1184(p)], an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that--

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

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(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

(ii) if accompanying, or following to join, the alien described in clause (i)--

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in *section 1351 of title 18, United States Code*); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes; or

(V) subject to section 214(q) [*8 USCS § 1184(q)*], an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 203(d) [*8 USCS § 1153(d)*]) of a petition to accord a status under section 203(a)(2)(A) [*8 USCS § 1153(a)(2)(A)*] that was filed with the Attorney General under section 204 [*8 USCS § 1154*] on or before the date of the enactment of the Legal Immigration Family Equity Act [enacted Dec. 21, 2000], if--

(i) such petition has been pending for 3 years or more; or

(ii) such petition has been approved, 3 years or more have elapsed since such filing date, and--

(I) an immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 203(a)(2)(A) [*8 USCS § 1153(a)(2)(A)*]; or

(II) the alien's application for an immigrant visa, or the alien's application for adjustment of status under section 245 [*8 USCS § 1255*], pursuant to the approval of such petition, remains pending.

(16) The term "immigrant visa" means an immigrant visa required by this Act and properly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this Act.

(17) The term "immigration laws" includes this Act and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens.

(18) The term "immigration officer" means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this Act or any section thereof.

(19) The term "ineligible to citizenship," when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time, permanently debarred from becoming a citizen of the United States under section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 4(a) of the Selective Service Act of 1948, as amended (62 Stat. 605; 65 Stat. 76) [section 4(a) of the Military Selective Service Act, *50 USCS § 3803(a)*], or

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under any section of this Act, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.

(20)The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(21)The term "national" means a person owing permanent allegiance to a state.

(22)The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(23)The term "naturalization" means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

(24)[Repealed]

(25)The term "noncombatant service" shall not include service in which the individual is not subject to military discipline, court martial, or does not wear the uniform of any branch of the armed forces.

(26)The term "nonimmigrant visa" means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this Act.

(27)The term "special immigrant" means--

(A)an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(B)an immigrant who was a citizen of the United States and may, under section 324(a) or 327 of title III [8 USCS §§ 1435(a) or 1438], apply for reacquisition of citizenship;

(C)an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who--

(i)for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii)seeks to enter the United States--

(I)solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II)before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III)before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in *section 501(c)(3) of the Internal Revenue Code of 1986* [26 USCS § 501(c)(3)]) at the request of the organization in a religious vocation or occupation; and

(iii)has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);

(D)an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: *Provided*, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status;

(E)an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3(a)(1) of the Panama Canal Act of 1979 [22 USCS § 3602(a)(1)]) enters into force, who

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was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty, and who has performed faithful service as such an employee for one year or more;

(F)an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who, before the date on which such Panama Canal Treaty of 1977 enters into force, has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or (ii) who, on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment or continues to be employed by the United States Government in an area of the former Canal Zone;

(G)an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977, who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment;

(H)an immigrant, and his accompanying spouse and children, who--

(i)has graduated from a medical school or has qualified to practice medicine in a foreign state,

(ii)was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

(iii)entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978, and

(iv)has been continuously present in the United States in the practice or study of medicine since the date of such entry;

(I)

(i)an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after the date of enactment of the Immigration Technical Corrections Act of 1988 [enacted Oct. 24, 1988], whichever is later;

(ii)an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) files a petition for status under this subparagraph no later than six months after the date of such death or six months after the date of enactment of the Immigration Technical Corrections Act of 1988 [enacted Oct. 24, 1988], whichever is later;

(iii)an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after the date of enactment of the

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Immigration and Nationality Technical Corrections Act of 1994 [enacted Oct. 25, 1994], whichever is later; or

(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family;

(J) an immigrant who is present in the United States--

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that--

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;

(K) an immigrant who has served honorably on active duty in the Armed Forces of the United States after October 15, 1978, and after original lawful enlistment outside the United States (under a treaty or agreement in effect on the date of the enactment of this subparagraph) for a period or periods aggregating--

(i) 12 years and who, if separated from such service, was never separated except under honorable conditions, or

(ii) 6 years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this subparagraph and who has reenlisted to incur a total active duty service obligation of at least 12 years,

and the spouse or child of any such immigrant if accompanying or following to join the immigrant, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the immigrant;

(L) an immigrant who would be described in clause (i), (ii), (iii), or (iv) of subparagraph (I) if any reference in such a clause--

(i) to an international organization described in paragraph (15)(G)(i) were treated as a reference to the North Atlantic Treaty Organization (NATO);

(ii) to a nonimmigrant under paragraph (15)(G)(iv) were treated as a reference to a nonimmigrant classifiable under NATO-6 (as a member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, a member of a civilian component attached to or employed by an Allied Headquarters under the "Protocol on the Status of International Military Headquarters" set up pursuant to the North Atlantic Treaty, or as a dependent); and

(iii) to the Immigration Technical Corrections Act of 1988 or to the Immigration and Nationality Technical Corrections Act of 1994 were a reference to the American Competitiveness and Workforce Improvement Act of 1998[; or]

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(M)subject to the numerical limitations of section 203(b)(4) [*8 USCS § 1153(b)(4)*], an immigrant who seeks to enter the United States to work as a broadcaster in the United States for the International Broadcasting Bureau of the Broadcasting Board of Governors, or for a grantee of the Broadcasting Board of Governors, and the immigrant's accompanying spouse and children.

(28)The term "organization" means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.

(29)The term "outlying possessions of the United States" means American Samoa and Swains Island.

(30)The term "passport" means any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the admission of the bearer into a foreign country.

(31)The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

(32)The term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

(33)The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

(34)The term "Service" means the Immigration and Naturalization Service of the Department of Justice.

(35)The term [terms] "spouse," "wife," or "husband" do not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.

(36)The term "State" includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(37)The term "totalitarian party" means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms "totalitarian dictatorship" and "totalitarianism" mean and refer to systems of government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

(38)The term "United States," except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(39)The term "unmarried," when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married.

(40)The term "world communism" means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.

(41)The term "graduates of a medical school" means aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine.

(42)The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act [*8 USCS § 1157(e)*]) may specify, any

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person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

(43)The term "aggravated felony" means--

(A)murder, rape, or sexual abuse of a minor;

(B)illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act [21 USCS § 802]), including a drug trafficking crime (as defined in *section 924(c) of title 18, United States Code*);

(C)illicit trafficking in firearms or destructive devices (as defined in *section 921 of title 18, United States Code*) or in explosive materials (as defined in section 841(c) of that title);

(D)an offense described in *section 1956 of title 18, United States Code* (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$ 10,000;

(E)an offense described in--

(i)section 842 (h) or (i) of title 18, United States Code, or section 844 (d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

(ii)section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924 (b) or (h) of title 18, United States Code (relating to firearms offenses); or

(iii)section 5861 of the Internal Revenue Code of 1986 [26 USCS § 5861] (relating to firearms offenses);

(F)a crime of violence (as defined in *section 16 of title 18, United States Code*, but not including a purely political offense) for which the term of imprisonment [is] at least one year;

(G)a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [is] at least one year;

(H)an offense described in section 875, 876, 877, or 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);

(I)an offense described in section 2251, 2251A, or 2252 of title 18, United States Code (relating to child pornography);

(J)an offense described in *section 1962 of title 18, United States Code* (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

(K)an offense that--

(i)relates to the owning, controlling, managing, or supervising of a prostitution business;

(ii)is described in section 2421, 2422, or 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

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(iii) is described in any of sections 1581-1585 or 1588-1591 of title 18, United States Code (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

(L) an offense described in--

(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18, United States Code;

(ii) section 601 of the National Security Act of 1947 [50 USCS § 421] (relating to protecting the identity of undercover intelligence agents);

(iii) section 601 of the National Security Act of 1947 [50 USCS § 421] (relating to protecting the identity of undercover agents);

(M) an offense that--

(i) involves fraud or deceit in which the loss to the victim or victims exceeds \$ 10,000; or

(ii) is described in section 7201 of the Internal Revenue Code of 1986 [26 USCS § 7201] (relating to tax evasion) in which the revenue loss to the Government exceeds \$ 10,000;

(N) an offense described in paragraph (1)(A) or (2) of section 274(a) [8 USCS § 1324(a)(1)(A)] or (2)] (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act[;]

(O) an offense described in section 275(a) or 276 [8 USCS § 1325(a) or 1326] committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act;

(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

(U) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph.

(44)(A) The term "managerial capacity" means an assignment within an organization in which the employee primarily--

(i) manages the organization, or a department, subdivision, function, or component of the organization;

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- (ii)supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii)if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv)exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(B)The term "executive capacity" means an assignment within an organization in which the employee primarily--

- (i)directs the management of the organization or a major component or function of the organization;
- (ii)establishes the goals and policies of the organization, component, or function;
- (iii)exercises wide latitude in discretionary decision-making; and
- (iv)receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(C)If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

(45)The term "substantial" means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.

(46)The term "extraordinary ability" means, for purposes of section 101(a)(15)(O)(i) [8 USCS § 1101(a)(15)(O)(i)], in the case of the arts, distinction.

(47)(A) The term "order of deportation" means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.

(B)The order described under subparagraph (A) shall become final upon the earlier of--

- (i)a determination by the Board of Immigration Appeals affirming such order; or
- (ii)the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where--

- (i)a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii)the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B)Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

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(49)The term "stowaway" means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway.

(50)The term "intended spouse" means any alien who meets the criteria set forth in section 204(a)(1)(A)(iii)(II)(aa)(BB), 204(a)(1)(B)(ii)(II)(aa)(BB), or 240A(b)(2)(A)(i)(III) [8 USCS § 1154(a)(1)(A)(iii)(II)(aa)(BB), 1154(a)(1)(B)(ii)(II)(aa)(BB), or 1229b(b)(2)(A)(i)(III)].

(51)The term "VAWA self-petitioner" means an alien, or a child of the alien, who qualifies for relief under--

(A)clause (iii), (iv), or (vii) of section 204(a)(1)(A) [8 USCS § 1154(a)(1)(A)];

(B)clause (ii) or (iii) of section 204(a)(1)(B) [8 USCS § 1154(a)(1)(B)];

(C)section 216(c)(4)(C) [8 USCS § 1186(c)(4)(C)];

(D)the first section of Public Law 89-732 (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act) as a child or spouse who has been battered or subjected to extreme cruelty;

(E)section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note);

(F)section 202(d)(1) of the Nicaraguan Adjustment and Central American Relief Act [8 USCS § 1255 note]; or

(G)section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [note to this section] (division C of Public Law 104-208).

(52)The term "accredited language training program" means a language training program that is accredited by an accrediting agency recognized by the Secretary of Education.

(b)As used in titles I and II [8 USCS §§ 1101 et seq., 1151 et seq.]--

(1)The term "child" means an unmarried person under twenty-one years of age who is--

(A)a child born in wedlock;

(B)a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

(C)a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D)a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E)

(i)a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(ii)subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years;

(F)

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(i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b) [8 USCS § 1151(b)], who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen who is at least 25 years of age, at least 1 of whom personally saw and observed the child before or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *Provided*, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: *Provided further*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b) [8 USCS § 1151(b)]; or

(G)(i) a child, younger than 16 years of age at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 201(b) [8 USCS § 1151(b)], who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States by a United States citizen and spouse jointly or by an unmarried United States citizen who is at least 25 years of age, *Provided*, That--

(I) the Secretary of Homeland Security is satisfied that proper care will be furnished the child if admitted to the United States;

(II) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption;

(III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child;

(IV) the Secretary of Homeland Security is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Secretary of Homeland Security may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents); and

(V) in the case of a child who has not been adopted--

(aa) the competent authority of the foreign state has approved the child's emigration to the United States for the purpose of adoption by the prospective adoptive parent or parents; and

(bb) the prospective adoptive parent or parents has or have complied with any pre-adoption requirements of the child's proposed residence; and

(ii) except that no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

(iii) subject to the same provisos as in clauses (i) and (ii), a child who--

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- (I) is a natural sibling of a child described in clause (i), subparagraph (E)(i), or subparagraph (F)(i);
- (II) was adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in clause (i), subparagraph (E)(i), or subparagraph (F)(i); and
- (III) is otherwise described in clause (i), except that the child is younger than 18 years of age at the time a petition is filed on his or her behalf for classification as an immediate relative under section 201(b) [8 USCS § 1151(h)].

(2) The terms "parent," "father," or "mother" mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in (1) above, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) and paragraph (1)(G)(i) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

(3) The term "person" means an individual or an organization.

(4) The term "immigration judge" means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 [8 USCS § 1229a]. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.

(5) The term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(c) As used in title III [8 USCS §§ 1401 et seq.]--

(1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 320 and 321 of title III [8 USCS §§ 1431, 1432], a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

(2) The terms "parent," "father," and "mother" include in the case of a posthumous child a deceased parent, father, and mother.

(d) [Repealed]

(e) For the purposes of this Act--

(1) The giving, loaning, or promising of support or of money or any other thing of value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.

(2) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

(3) Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.

(f) For the purposes of this Act--

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was--

(1)a habitual drunkard;

(2)[Repealed]

(3)a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 212(a) of this Act [8 USCS § 1182(a)]; or subparagraphs (A) and (B) of section 212(a)(2) [8 USCS § 1182(a)(2)] and subparagraph (C) thereof [of such section] (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4)one whose income is derived principally from illegal gambling activities;

(5)one who has been convicted of two or more gambling offenses committed during such period;

(6)one who has given false testimony for the purpose of obtaining any benefits under this Act;

(7)one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8)one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43)); or

(9)one who at any time has engaged in conduct described in section 212(a)(3)(E) [8 USCS § 1182(a)(3)(E)] (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 212(a)(2)(G) [8 USCS § 1182(a)(2)(G)] (relating to severe violations of religious freedom).

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

(g)For the purposes of this Act any alien ordered deported or removed (whether before or after the enactment of this Act [enacted June 27, 1952]) who has left the United States, shall be considered to have been deported or removed in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.

(h)For purposes of section 212(a)(2)(E) [8 USCS § 1182(a)(2)(E)], the term "serious criminal offense" means--

(1)any felony;

(2)any crime of violence, as defined in *section 16 of title 18 of the United States Code*; or

(3)any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.

(i)With respect to each nonimmigrant alien described in subsection (a)(15)(T)(i)--

(1)the Secretary of Homeland Security, the Attorney General, and other Government officials, where appropriate, shall provide the alien with a referral to a nongovernmental organization that would advise the alien regarding the alien's options while in the United States and the resources available to the alien; and

(2)the Secretary of Homeland Security shall, during the period the alien is in lawful temporary resident status under that subsection, grant the alien authorization to engage in employment in the United States and provide the alien with an "employment authorized" endorsement or other appropriate work permit.

History

(June 27, 1952, ch 477, Title I, § 101, 66 Stat. 166; Sept. 11, 1957, P.L. 85-316, §§ 1, 2, 71 Stat. 639; July 7, 1958, P.L. 85-508, § 22, 72 Stat. 351; March 18, 1959, P.L. 86-3, § 20(a), 73 Stat. 13; Sept. 21, 1961, P.L. 87-256, § 109(a), (b), 75 Stat. 534; Sept. 26, 1961, P.L. 87-301, §§ 1, 2, 7, 75 Stat. 650, 653; Oct. 3, 1965, P.L. 89-236, §§ 8, 24, 79 Stat. 916, 922; Nov. 2, 1966, P.L. 89-710, 80 Stat. 1104; April 7, 1970, P.L. 91-225, § 1, 84 Stat. 116; Dec. 16, 1975, P.L. 94-155, 89 Stat. 824; Oct. 12, 1976, P.L. 94-484, Title VI, § 601(b), (e), 90 Stat. 2301, 2302; Oct. 20, 1976, P.L. 94-571, § 7(a), 90 Stat. 2706; Oct. 12, 1976, P.L. 94-484, Title VI, § 602(c), as added Aug. 1, 1977, P.L. 95-83, Title III, § 307(q)(3), 91 Stat. 395; Aug. 17, 1977, P.L. 95-105, Title I, § 109(b)(3), 91 Stat. 847; Sept. 27, 1979, P.L. 96-70, Title III, Ch 1, § 3201(a), 93 Stat. 496; March 17, 1980, P.L. 96-212, Title II, § 201(a), 94 Stat. 102; Dec. 29, 1981, P.L. 97-116, §§ 2, 5(d)(1), 18(a), 95 Stat. 1611, 1614, 1619; Oct. 30, 1984, Priv. L. 98-47, § 3, 98 Stat. 3435; Oct. 21, 1986, P.L. 99-505, § 1, 100 Stat. 1806; Nov. 6, 1986, P.L. 99-603, Title III, Part A, § 301(a), Part B, §§ 312, 315(a), 100 Stat. 3411, 3434, 3439; Nov. 14, 1986, P.L. 99-653, §§ 2, 3, 100 Stat. 3655; Oct. 1, 1988, P.L. 100-459, Title II, § 210(a), 102 Stat. 2203; Oct. 24, 1988, P.L. 100-525, §§ 2(o)(1), 8(b), 9(a), 102 Stat. 2613, 2617, 2619; Nov. 18, 1988, P.L. 100-690, Title VII, Subtitle J, § 7342, 102 Stat. 4469; Nov. 21, 1989, P.L. 101-162, Title VI, § 611(a), 103 Stat. 1038; Dec. 18, 1989, P.L. 101-238, § 3(a), 103 Stat. 2100; Feb. 16, 1990, P.L. 101-246, Title I, Part C, § 131(b), 104 Stat. 31; Nov. 29, 1990, P.L. 101-649, Title I, Subtitle B, Part 2, § 123, Subtitle D, §§ 151(a), 153(a), Subtitle E, § 161(f)(2)(A), Title II, Subtitle A, §§ 203(c), 204(a), (c), 205(c)(1), (d), (e), 206(c), 207(a), 208, 209, Title IV, § 407(a)(2), Title V, Subtitle A, §§ 501(a), 509(a), Title VI, § 603(a)(1), 104 Stat. 4995, 5004, 5005, 5012, 5018, 5019, 5020, 5023, 5026, 5027, 5040, 5048, 5051, 5082; Oct. 1, 1991, P.L. 102-110, § 2(a), 105 Stat. 555; Dec. 12, 1991, P.L. 102-232, Title II, §§ 203(a), 205(a)-(c), 206(b), (c)(1), (d), 207(b), 302(e)(8)(A), 303(a)(5)(A), (7)(A), 305(m)(1), 306(a)(1), 309(b)(1), 105 Stat. 1737, 1740, 1741, 1746, 1747, 1748, 1750, 1751, 1758; April 30, 1994, P.L. 103-236, Title I, Part C, § 162(h)(1), 108 Stat. 407; Sept. 13, 1994, P.L. 103-322, Title XIII, § 130003(a), 108 Stat. 2024; Oct. 5, 1994, P.L. 103-337, Div C, Title XXXVI, § 3605, 108 Stat. 3113; Oct. 25, 1994, P.L. 103-416, Title II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4310, 4311, 4314, 4316, 4320; Nov. 15, 1995, P.L. 104-51, § 1, 109 Stat. 467; April 24, 1996, P.L. 104-132, Title IV, Subtitle D, § 440(b), (e), 110 Stat. 1277; Sept. 30, 1996, P.L. 104-208, Div C, Title I, Subtitle A, § 104(a), Title III, Subtitle A, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), Subtitle B, §§ 321(a), (b), 322(a)(1), (2)(A), Subtitle E, § 361(a), Subtitle F, § 371(a), Title VI, Subtitle A, § 601(a), Subtitle B, § 625(a)(2), Subtitle E, § 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009-555, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627, 3009-629, 3009-644, 3009-645, 3009-689, 3009-700, 3009-721, 3009-722, 3009-723; Oct. 6, 1997, P.L. 105-54, § 1(a), 111 Stat. 1175; Nov. 26, 1997, P.L. 105-119, Title I, § 113, 111 Stat. 2460; Oct. 21, 1998, P.L. 105-277, Div C, Title IV, § 421, Div G, Title XXII, Ch 2, § 2222(e), 112 Stat. 2681-657, 2681-819; Oct. 30, 1998, P.L. 105-319, § 2(b), (d)(2), 112 Stat. 3014, 3015; Nov. 12, 1999, P.L. 106-95, § 2(a), (c), 113 Stat. 1312, 1316; Dec. 7, 1999, P.L. 106-139, § 1(a), (b)(1), 113 Stat. 1696; Oct. 6, 2000, P.L. 106-279, Title III, § 302(a), (c), 114 Stat. 838, 839; Oct. 28, 2000, P.L. 106-386, Div A, § 107(e)(1), (4), Div B, Title V, §§ 1503(a), 1513(b), 114 Stat. 1477, 1479, 1518, 1534; Oct. 30, 2000, P.L. 106-395, Title II, § 201(a)(1), 114 Stat. 1633; Nov. 1, 2000, P.L. 106-409, § 2(a), 114 Stat. 1787; Nov. 22, 2000, P.L. 106-536, § 1(a), 114 Stat. 2560; Dec. 21, 2000, P.L. 106-553, § 1(a)(2), 114 Stat. 2762; Jan. 16, 2002, P.L. 107-125, § 2(b), 115 Stat. 2403; Oct. 4, 2002, P.L. 107-234, § 1(4), 116 Stat. 1481; Nov. 2, 2002, P.L. 107-274, § 2(a), (b), 116 Stat. 1923; Sept. 3, 2003, P.L. 108-77, Title IV, § 402(a)(1), 117 Stat. 939; Oct. 15, 2003, P.L. 108-99, § 1, 117 Stat. 1176; Dec. 19, 2003, P.L. 108-193, §§ 4(b)(1), (5), 8(a)(1), 117 Stat. 2878, 2879, 2886; Dec. 10, 2004, P.L. 108-449, § 1(a)(2)(B), (3)(A), (b)(1), 118 Stat. 3469, 3470; Dec. 17, 2004, P.L. 108-458, Title V, Subtitle E, § 5504, 118 Stat. 3741; May 11, 2005, P.L. 109-13, Div B, Title V, § 501(a), 119 Stat. 321; Oct. 18, 2005, P.L. 109-90, Title V, § 536, 119 Stat. 2087; Jan. 5, 2006, P.L. 109-162, Title VIII, Subtitle A, §§ 801, 805(d), Subtitle B, § 811, Subtitle C, § 822(c)(1), 119 Stat. 3053, 3056, 3057, 3063; July 27, 2006, P.L. 109-248, Title IV, § 402(b), 120 Stat. 623; May 8, 2008, P.L. 110-229, Title VII, Subtitle A, § 702(j)(1)-(3), 122 Stat. 866.)

(As amended Oct. 10, 2008, P.L. 110-391, § 2(a), 122 Stat. 4193; Dec. 23, 2008, P.L. 110-457, Title II, Subtitle A, § 201(a), Subtitle D, § 235(d)(1), 122 Stat. 5052, 5079; March 20, 2009, P.L. 111-9, § 1, 123 Stat. 989; Oct. 28, 2009, P.L. 111-83, Title V, § 568(a)(1), 123 Stat. 2186; Nov. 30, 2010, P.L. 111-287, § 3, 124 Stat. 3058; Dec. 14, 2010, P.L. 111-306, § 1(a), 124 Stat. 3280; Sept. 28, 2012, P.L. 112-176, § 3, 126 Stat. 1325; March 7, 2013, P.L. 113-4, Title VIII, § 801, Title XII, Subtitle B, Part II, §§ 1221, 1222, 127 Stat. 110, 144; Jan. 17, 2014, P.L. 113-76, Div K, Title VII, § 7083, 128 Stat. 567.)

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Current through PL 115-230, approved 8/2/18

United States Code Service - Titles 1 through 54 > TITLE 8. ALIENS AND NATIONALITY > CHAPTER 12. IMMIGRATION AND NATIONALITY > IMMIGRATION > GENERAL PENALTY PROVISIONS

Notice

Part 1 of 2. You are viewing a very large document that has been divided into parts.

§ 1326. Reentry of removed aliens

(a) In general. Subject to subsection (b), any alien who--

(1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter

(2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this or any prior Act, shall be fined under title 18, United States Code, or imprisoned not more than 2 years or both.

(b) Criminal penalties for reentry of certain removed aliens. Notwithstanding subsection (a), in the case of any alien described in such subsection--

(1) whose removal was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

(2) whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both;

(3) who has been excluded from the United States pursuant to section 235(c) [*8 USCS § 1225(c)*] because the alien was excludable under section 212(a)(3)(B) [*8 USCS § 1182(a)(3)(B)*] or who has been removed from the United States pursuant to the provisions of title V [*8 USCS §§ 1531 et seq.*], and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under title 18, United States Code, and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence.[] or

(4) who was removed from the United States pursuant to section 241(a)(4)(B) [*8 USCS § 1231(a)(4)(B)*] who thereafter, without the permission of the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both.

For the purposes of this subsection, the term "removal" includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law.

(c) Reentry of alien deported prior to completion of term of imprisonment. Any alien deported pursuant to section 242(h)(2) [*8 USCS § 1252(h)(2)*] who enters, attempts to enter, or is at any time found in, the United States (unless the

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Attorney General has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.

(d) Limitation on collateral attack on underlying deportation order. In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that--

- (1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;
- (2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and
- (3) the entry of the order was fundamentally unfair.

History

(June 27, 1952, ch 477, Title II, Ch 8, § 276, *66 Stat. 229*; Nov. 18, 1988, *P.L. 100-690*, Title VII, Subtitle J, § 7345(a), *102 Stat. 4471*; Nov. 29, 1990, *P.L. 101-649*, Title V, Subtitle D, § 543(b)(3), *104 Stat. 5059*; Sept. 13, 1994, *P.L. 103-322*, Title XIII, § 130001(b), *108 Stat. 2023*; April 24, 1996, *P.L. 104-132*, Title IV, Subtitle A, § 401(c), Subtitle C, §§ 438(b), 441(a), *110 Stat. 1267*, 1276, 1279; Sept. 30, 1996, *P.L. 104-208*, Div C, Title III, Subtitle A, §§ 305(b), 308(d)(4)(J), (e)(1)(K), (14)(A), Subtitle B, § 324(a), (b), *110 Stat. 3009-606*, 3009-618, 3009-619, 3009-620, 3009-629.)

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