**8 USC Sec. 1103** 01/03/2012

(112-90)

-EXPCITE-

TITLE 8 - ALIENS AND NATIONALITY

CHAPTER 12 - IMMIGRATION AND NATIONALITY

SUBCHAPTER I - GENERAL PROVISIONS

-HEAD-

Sec. 1103. Powers and duties of the Secretary, the Under Secretary,

and the Attorney General

-STATUTE-

(a) Secretary of Homeland Security

(1) The Secretary of Homeland Security shall be charged with the

administration and enforcement of this chapter and all other laws

relating to the immigration and naturalization of aliens, except

insofar as this chapter or such laws relate to the powers,

functions, and duties conferred upon the President, Attorney

General, the Secretary of State, the officers of the Department of

State, or diplomatic or consular officers: Provided, however, That

determination and ruling by the Attorney General with respect to

all questions of law shall be controlling.

(2) He shall have control, direction, and supervision of all

employees and of all the files and records of the Service.

(3) He shall establish such regulations; prescribe such forms of

bond, reports, entries, and other papers; issue such instructions;

and perform such other acts as he deems necessary for carrying out

his authority under the provisions of this chapter.

(4) He may require or authorize any employee of the Service or

the Department of Justice to perform or exercise any of the powers,

privileges, or duties conferred or imposed by this chapter or

regulations issued thereunder upon any other employee of the

Service.

(5) He shall have the power and duty to control and guard the

boundaries and borders of the United States against the illegal

entry of aliens and shall, in his discretion, appoint for that

purpose such number of employees of the Service as to him shall

appear necessary and proper.

(6) He is authorized to confer or impose upon any employee of the

United States, with the consent of the head of the Department or

other independent establishment under whose jurisdiction the

employee is serving, any of the powers, privileges, or duties

conferred or imposed by this chapter or regulations issued

thereunder upon officers or employees of the Service.

(7) He may, with the concurrence of the Secretary of State,

establish offices of the Service in foreign countries; and, after

consultation with the Secretary of State, he may, whenever in his

judgment such action may be necessary to accomplish the purposes of

this chapter, detail employees of the Service for duty in foreign

countries.

(8) After consultation with the Secretary of State, the Attorney

General may authorize officers of a foreign country to be stationed

at preclearance facilities in the United States for the purpose of

ensuring that persons traveling from or through the United States

to that foreign country comply with that country's immigration and

related laws.

(9) Those officers may exercise such authority and perform such

duties as United States immigration officers are authorized to

exercise and perform in that foreign country under reciprocal

agreement, and they shall enjoy such reasonable privileges and

immunities necessary for the performance of their duties as the

government of their country extends to United States immigration

officers.

(10) In the event the Attorney General determines that an actual

or imminent mass influx of aliens arriving off the coast of the

United States, or near a land border, presents urgent circumstances

requiring an immediate Federal response, the Attorney General may

authorize any State or local law enforcement officer, with the

consent of the head of the department, agency, or establishment

under whose jurisdiction the individual is serving, to perform or

exercise any of the powers, privileges, or duties conferred or

imposed by this chapter or regulations issued thereunder upon

officers or employees of the Service.

(11) The Attorney General, in support of persons in

administrative detention in non-Federal institutions, is authorized

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(A) to make payments from funds appropriated for the

administration and enforcement of the laws relating to

immigration, naturalization, and alien registration for necessary

clothing, medical care, necessary guard hire, and the housing,

care, and security of persons detained by the Service pursuant to

Federal law under an agreement with a State or political

subdivision of a State; and

(B) to enter into a cooperative agreement with any State,

territory, or political subdivision thereof, for the necessary

construction, physical renovation, acquisition of equipment,

supplies or materials required to establish acceptable conditions

of confinement and detention services in any State or unit of

local government which agrees to provide guaranteed bed space for

persons detained by the Service.

(b) Land acquisition authority

(1) The Attorney General may contract for or buy any interest in

land, including temporary use rights, adjacent to or in the

vicinity of an international land border when the Attorney General

deems the land essential to control and guard the boundaries and

borders of the United States against any violation of this chapter.

(2) The Attorney General may contract for or buy any interest in

land identified pursuant to paragraph (1) as soon as the lawful

owner of that interest fixes a price for it and the Attorney

General considers that price to be reasonable.

(3) When the Attorney General and the lawful owner of an interest

identified pursuant to paragraph (1) are unable to agree upon a

reasonable price, the Attorney General may commence condemnation

proceedings pursuant to section 3113 of title 40.

(4) The Attorney General may accept for the United States a gift

of any interest in land identified pursuant to paragraph (1).

(c) Commissioner; appointment

The Commissioner shall be a citizen of the United States and

shall be appointed by the President, by and with the advice and

consent of the Senate. He shall be charged with any and all

responsibilities and authority in the administration of the Service

and of this chapter which are conferred upon the Attorney General

as may be delegated to him by the Attorney General or which may be

prescribed by the Attorney General. The Commissioner may enter into

cooperative agreements with State and local law enforcement

agencies for the purpose of assisting in the enforcement of the

immigration laws.

(d) Statistical information system

(1) The Commissioner, in consultation with interested

academicians, government agencies, and other parties, shall provide

for a system for collection and dissemination, to Congress and the

public, of information (not in individually identifiable form)

useful in evaluating the social, economic, environmental, and

demographic impact of immigration laws.

(2) Such information shall include information on the alien

population in the United States, on the rates of naturalization and

emigration of resident aliens, on aliens who have been admitted,

paroled, or granted asylum, on nonimmigrants in the United States

(by occupation, basis for admission, and duration of stay), on

aliens who have not been admitted or have been removed from the

United States, on the number of applications filed and granted for

cancellation of removal, and on the number of aliens estimated to

be present unlawfully in the United States in each fiscal year.

(3) Such system shall provide for the collection and

dissemination of such information not less often than annually.

(e) Annual report

(1) The Commissioner shall submit to Congress annually a report

which contains a summary of the information collected under

subsection (d) of this section and an analysis of trends in

immigration and naturalization.

(2) Each annual report shall include information on the number,

and rate of denial administratively, of applications for

naturalization, for each district office of the Service and by

national origin group.

(f) Minimum number of agents in States

The Attorney General shall allocate to each State not fewer than

10 full-time active duty agents of the Immigration and

Naturalization Service to carry out the functions of the Service,

in order to ensure the effective enforcement of this chapter.

(g) Attorney General

(1) In general

The Attorney General shall have such authorities and functions

under this chapter and all other laws relating to the immigration

and naturalization of aliens as were exercised by the Executive

Office for Immigration Review, or by the Attorney General with

respect to the Executive Office for Immigration Review, on the

day before the effective date of the Immigration Reform,

Accountability and Security Enhancement Act of 2002.

(2) Powers

The Attorney General shall establish such regulations,

prescribe such forms of bond, reports, entries, and other papers,

issue such instructions, review such administrative

determinations in immigration proceedings, delegate such

authority, and perform such other acts as the Attorney General

determines to be necessary for carrying out this section.

-SOURCE-

(June 27, 1952, ch. 477, title I, Sec. 103, 66 Stat. 173; Pub. L.

100-525, Sec. 9(c), Oct. 24, 1988, 102 Stat. 2619; Pub. L. 101-649,

title I, Sec. 142, Nov. 29, 1990, 104 Stat. 5004; Pub. L. 104-208,

div. C, title I, Secs. 102(d), 125, 134(a), title III, Secs.

308(d)(4)(C), (e)(4), 372, 373, Sept. 30, 1996, 110 Stat. 3009-555,

3009-562, 3009-564, 3009-618, 3009-620, 3009-646, 3009-647; Pub. L.

107-296, title XI, Sec. 1102, Nov. 25, 2002, 116 Stat. 2273; Pub.

L. 108-7, div. L, Sec. 105(a)(1), (2), Feb. 20, 2003, 117 Stat.

531; Pub. L. 108-458, title V, Sec. 5505(a), Dec. 17, 2004, 118

Stat. 3741; Pub. L. 111-122, Sec. 2(a), Dec. 22, 2009, 123 Stat.

3480.)

-REFTEXT-

REFERENCES IN TEXT

This chapter, referred to in text, was in the original, "this

Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as

the Immigration and Nationality Act, which is classified

principally to this chapter. For complete classification of this

Act to the Code, see Short Title note set out under section 1101 of

this title and Tables.

The Immigration Reform, Accountability and Security Enhancement

Act of 2002, referred to in subsec. (g)(1), was S. 2444 of the

107th Congress, as introduced on May 2, 2002, which was not enacted

into law. Provisions relating to the Executive Office for

Immigration Review are contained in section 521 of Title 6,

Domestic Security.

-COD-

CODIFICATION

"Section 3113 of title 40" substituted in subsec. (b)(3) for "the

Act of August 1, 1888 (Chapter 728; 25 Stat. 357)" on authority of

Pub. L. 107-217, Sec. 5(c), Aug. 21, 2002, 116 Stat. 1303, the

first section of which enacted Title 40, Public Buildings,

Property, and Works.

-MISC1-

AMENDMENTS

2009 - Subsec. (h). Pub. L. 111-122 struck out subsec. (h), which

directed the Attorney General to establish within the Criminal

Division of the Department of Justice an Office of Special

Investigations and to consult with the Secretary of Homeland

Security concerning the prosecution or extradition of certain

aliens.

2004 - Subsec. (h). Pub. L. 108-458 added subsec. (h).

2003 - Subsec. (a). Pub. L. 108-7, Sec. 105(a)(1), amended Pub.

L. 107-296, Sec. 1102(2). See 2002 Amendment notes below.

Pub. L. 108-7, Sec. 105(a)(2), which directed the amendment of

Pub. L. 107-296, was executed to section 1102(2) of Pub. L. 107-

296, to reflect the probable intent of Congress. See 2002

Amendment notes below.

2002 - Pub. L. 107-296, Sec. 1102(1), amended section catchline

generally.

Subsec. (a). Pub. L. 107-296, Sec. 1102(2)(A), as added by Pub.

L. 108-7, Sec. 105(a)(1), which directed the substitution of

"Secretary of Homeland Security" for "Attorney General" in heading,

was executed by inserting "Secretary of Homeland Security" as

heading, to reflect the probable intent of Congress.

Subsec. (a)(1). Pub. L. 107-296, Sec. 1102(2)(B), as added by

Pub. L. 108-7, Sec. 105(a)(1), substituted "The Secretary of

Homeland Security" for "The Attorney General".

Pub. L. 107-296, Sec. 1102(2)(C), formerly Sec. 1102(2)(A), as

redesignated by Pub. L. 108-7, Sec. 105(a)(2), inserted "Attorney

General," after "President,". See 2003 Amendment note above.

Subsec. (a)(8) to (11). Pub. L. 107-296, Sec. 1102(2)(D),

formerly Sec. 1102(2)(B), as redesignated by Pub. L. 108-7, Sec.

105(a)(2), redesignated par. (8), relating to Attorney General

authorization of State and local law enforcement officers in event

of mass influx of aliens arriving, and par. (9), relating to

Attorney General authority to support administrative detention of

persons in non-Federal institutions, as pars. (10) and (11),

respectively. See 2003 Amendment note above.

Subsec. (g). Pub. L. 107-296, Sec. 1102(3), added subsec. (g).

1996 - Subsec. (a). Pub. L. 104-208, Sec. 372(1), (2), inserted

"(1)" before first sentence and designated each sentence after the

first sentence, which included second through ninth sentences, as a

separate par. with appropriate consecutive numbering and initial

indentation.

Pub. L. 104-208, Sec. 125, inserted at end "After consultation

with the Secretary of State, the Attorney General may authorize

officers of a foreign country to be stationed at preclearance

facilities in the United States for the purpose of ensuring that

persons traveling from or through the United States to that foreign

country comply with that country's immigration and related laws.

Those officers may exercise such authority and perform such duties

as United States immigration officers are authorized to exercise

and perform in that foreign country under reciprocal agreement, and

they shall enjoy such reasonable privileges and immunities

necessary for the performance of their duties as the government of

their country extends to United States immigration officers."

Subsec. (a)(8). Pub. L. 104-208, Sec. 372(3), added at end par.

(8) relating to Attorney General authorization of State and local

law enforcement officers in event of mass influx of aliens

arriving.

Subsec. (a)(9). Pub. L. 104-208, Sec. 373(1), added at end par.

(9) relating to Attorney General authority to support

administrative detention of persons in non-Federal institutions.

Subsec. (b). Pub. L. 104-208, Sec. 102(d)(1)(B), added subsec.

(b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104-208, Sec. 373(2), inserted at end "The

Commissioner may enter into cooperative agreements with State and

local law enforcement agencies for the purpose of assisting in the

enforcement of the immigration laws."

Pub. L. 104-208, Sec. 102(d)(1)(A), redesignated subsec. (b) as

(c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104-208, Sec. 102(d)(1)(A), redesignated

subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(2). Pub. L. 104-208, Sec. 308(e)(4), which directed

amendment of subsec. (c)(2) by substituting "cancellation of

removal" for "suspension of deportation", was executed by making

the substitution in subsec. (d)(2) to reflect the probable intent

of Congress and the redesignation of subsec. (c) as (d) by Pub. L.

104-208, Sec. 102(d)(1)(A). See above.

Pub. L. 104-208, Sec. 308(d)(4)(C), which directed amendment of

subsec. (c)(2) by substituting "not been admitted or have been

removed" for "been excluded or deported", was executed by making

the substitution in subsec. (d)(2) to reflect the probable intent

of Congress and the redesignation of subsec. (c) as (d) by Pub. L.

104-208, Sec. 102(d)(1)(A). See above.

Subsec. (e). Pub. L. 104-208, Sec. 102(d)(2), substituted

"subsection (d)" for "subsection (c)" in par. (1).

Pub. L. 104-208, Sec. 102(d)(1)(A), redesignated subsec. (d) as

(e).

Subsec. (f). Pub. L. 104-208, Sec. 134(a), added subsec. (f).

1990 - Subsecs. (c), (d). Pub. L. 101-649 added subsecs. (c) and

(d).

1988 - Subsec. (a). Pub. L. 100-525, Sec. 9(c)(1), substituted

"instructions" for "intructions" and amended fourth sentence

generally. Prior to amendment, fourth sentence read as follows: "He

is authorized, in accordance with the civil-service laws and

regulations and the Classification Act of 1949, to appoint such

employees of the Service as he deems necessary, and to delegate to

them or to any officer or employee of the Department of Justice in

his discretion any of the duties and powers imposed upon him in

this chapter; he may require or authorize any employee of the

Service or the Department of Justice to perform or exercise any of

the powers, privileges, or duties conferred or imposed by this

chapter or regulations issued thereunder upon any other employee of

the Service."

Subsec. (b). Pub. L. 100-525, Sec. 9(c)(2), struck out provision

that Commissioner was to receive compensation at rate of $17,500

per annum.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of the

transfer of functions from the Commissioner of Immigration and

Naturalization to officials of the Department of Homeland Security

(Mar. 1, 2003), see section 1104 of Pub. L. 107-296, as added by

Pub. L. 108-7, set out as an Effective Date note under section 521

of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 134(b) of div. C of Pub. L. 104-208 provided that: "The

amendment made by subsection (a) [amending this section] shall take

effect 90 days after the date of the enactment of this Act [Sept.

30, 1996]."

Amendment by section 308(d)(4)(C), (e)(4) of Pub. L. 104-208

effective, with certain transitional provisions, on the first day

of the first month beginning more than 180 days after Sept. 30,

1996, see section 309 of Pub. L. 104-208, set out as a note under

section 1101 of this title.