

INA: ACT 212 - GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

Sec. 212. [8 U.S.C. 1182]

(a) Classes of Aliens Ineligible for Visas or Admission.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds.-

(A) In general.-Any alien-

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance; 1b/

(ii) 1/ except as provided in subparagraph (C) 1a/ who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices,

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)-

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict, is inadmissible.

INA: ACT 232 - DETENTION OF ALIENS FOR PHYSICAL AND MENTAL EXAMINATION 1/

Sec. 232 [8 U.S.C. 1252]

(a) Detention of Aliens.-For the purpose of determining whether aliens (including alien crewmen) arriving at ports of the United States belong to any of the classes inadmissible under this Act, by reason of being afflicted with any of the diseases or mental or physical defects or disabilities set forth in section 212(a), or whenever the Attorney General has received information showing that any aliens are coming from a country or have embarked at a place where any of such diseases are prevalent or epidemic, such aliens shall be detained by the Attorney General for a sufficient time to enable the immigration officers and medical officers to subject such aliens to observation and an examination sufficient to determine whether or not they belong to inadmissible classes.

(b) Physical and Mental Examination. 2/ - The physical and mental examination of arriving aliens (including alien crewmen) shall be made by medical officers of the United States Public Health Service, who shall conduct all medical examinations and shall certify, for the information of the immigration officers and the immigration judges, any physical and mental defect or disease observed by such medical officers in any such alien. If medical officers of the United States Public Health Service are not available, civil surgeons of not less than four years' professional experience may be employed for such service upon such terms as may be prescribed by the Attorney General. Aliens (including alien crewmen) arriving at ports of the United States shall be examined by at least one such medical officer or civil surgeon under such administrative regulations as the Attorney General may prescribe, and under medical regulations prepared by the Secretary of Health and Human Services. Medical officers of the United States Public Health Service who have had special training in the diagnosis of insanity and mental defects shall be detailed for duty or employed at such ports of entry as the Attorney General may designate, and such medical officers shall be provided with suitable facilities for the detention and examination of all arriving aliens who it is suspected may be inadmissible under paragraph (1) of section 212(a), and the services of interpreters shall be provided for such examination. Any alien certified under paragraph (1) of section 212(a) may appeal to a board of medical officers of the United States Public Health Service, which shall be convened by the Secretary of Health and Human Services, and any such alien may introduce before such board one expert medical witness at his own cost and expense.

(c) Certification of Certain Helpless Aliens.-If an examining medical officer determines that an alien arriving in the United States is inadmissible, is helpless from sickness, mental or physical disability, or infancy, and is accompanied by another alien whose protection or guardianship may be required, the officer may certify such fact for purposes of applying section 212(a)(10)(B) with respect to the other alien.

8 CFR 232.2 Examination in the United States of alien applicants for benefits under the immigration laws and other aliens. (Redesignated as § 232.2 effective 4/1/97; previously § 234.2; 62 FR 10312)

(a) General. When a medical examination is required of an alien who files an application for status as a permanent resident under section 245 of the Act or Part 245 of this chapter, it shall be made by a selected civil surgeon. Such examination shall be performed in accordance with 42 CFR Part 34 and any additional instructions and guidelines as may be considered necessary by the U.S. Public Health Service. In any other case in which the Service requests a medical examination of an alien, the examination shall be made by a medical officer of the U.S. Public Health Service, or by a civil surgeon if a medical officer of the U.S. Public Health Service is not located within a reasonable distance or is otherwise not available.

(b) Selection of civil surgeons. When a civil surgeon is to perform the examination, he shall be selected by the district director having jurisdiction over the area of the alien's residence. The district director shall select as many civil surgeons, including clinics and local, county and state health departments employing qualified civil surgeons, as he determines to be necessary to serve the needs of the Service in a locality under his jurisdiction. Each civil surgeon selected shall be a licensed physician with no less than 4 years' professional experience. Under usual circumstances physicians will be required to meet the 4 year professional experience criteria. However, at the district director's discretion other physicians with less experience can be designated to address unusual or unforeseen situations as the need arises. Officers of local health departments and medical societies may be consulted to obtain the names of competent surgeons and clinics willing to make the examinations. An understanding shall be reached with respect to the fee which the surgeon or clinic will charge for the examination. The alien shall pay the fee agreed upon directly to the surgeon making the examination.

(c) Civil surgeon reports -- (1) Applicants for status of permanent resident.

(i) When an applicant for status as a permanent resident is found upon examination to be free of any defect, disease, or disability listed in section 212(a) of the Act, the civil surgeon shall endorse Form I - 486A, Medical Examination and Immigration Interview, and forward it with the X-ray and other pertinent laboratory reports to the immigration office from which the alien was referred, The immigration office may return the X-ray and laboratory reports to the alien. If the applicant is found to be afflicted with a defect, disease or disability listed under section 212(a) of the Act, the civil surgeon shall complete Form OF - 157 in duplicate, and forward it with Form I - 486A, X-ray, and other pertinent laboratory reports to the immigration office from which the alien was referred.

(ii) If the applicant is found to be afflicted with active tuberculosis and a waiver is granted under section 212(g) of the Act, the immigration office will forward a copy of the completed Form I - 601 (Application for Waiver of Grounds of Excludability) and a copy

of the Form OF - 157 to the Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, Ga. 30333.

(iii) If an alien who is found to be mentally retarded or to have had one or more previous attacks of insanity, applies for a waiver of excludability under section 212(g) of the Act, the immigration office will submit to the Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, Ga. 30333, the completed Form I - 601, including a copy of the medical report specified in the instructions attached to that form, and a copy of Form OF - 157. This official shall review the medical report and advise the Service whether it is acceptable, in accordance with § 212.7(b)(4)(ii) of this chapter.

(iv) In any other case where the applicant has been found to be afflicted with active or inactive tuberculosis or an infectious or noninfectious leprosy condition, the immigration office will forward a copy of Form OF - 157 with the applicant's address endorsed on the reverse to the Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, Ga. 30333.

(2) Other aliens. The results of the examination of an alien who is not an applicant for status as a permanent resident shall be entered on Form I - 141, Medical Certificate, in duplicate. This form shall be returned to the Service office by which the alien was referred.

(d) U.S. Public Health Service hospital and outpatient clinic reports. When an applicant for a benefit under the immigration laws, other than an applicant for status as a permanent resident, is examined by a medical officer of the U.S. Public Health Service, the results of the examination shall be entered on Form I - 141, Medical Certificate, in duplicate. The form shall be returned to the Service office by which the alien was referred.