Effective: June 1, 2009

United States Code Annotated Currentness
Title 8. Aliens and Nationality (Refs & Annos)
Chapter 12. Immigration and Nationality (Refs & Annos)
Subchapter II. Immigration
Part IV. Inspection, Apprehension, Examination, Exclusion, and Removal (Refs & Annos)

➞ § 1225. Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing

(a) Inspection

(1) Aliens treated as applicants for admission

An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

(2) Stowaways

An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer. Upon such inspection if the alien indicates an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview under subsection (b)(1)(B) of this section. A stowaway may apply for asylum only if the stowaway is found to have a credible fear of persecution under subsection (b)(1)(B) of this section. In no case may a stowaway be considered an applicant for admission or eligible for a hearing under section 1229a of this title.

(3) Inspection

All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.

(4) Withdrawal of application for admission

An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.

(5) Statements

An applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States, including the applicant's intended length of stay and whether the applicant intends to remain permanently or become a United States citizen, and whether the applicant is inadmissible.

(b) Inspection of applicants for admission

(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled

(A) Screening

(i) In general

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.

(ii) Claims for asylum

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

(iii) Application to certain other aliens

(I) In general

The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(II) Aliens described

An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

(B) Asylum interviews

(i) Conduct by asylum officers

An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Attorney General.

(ii) Referral of certain aliens

If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.

(iii) Removal without further review if no credible fear of persecution

(I) In general

Subject to subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.

(II) Record of determination

The officer shall prepare a written record of a determination under subclause (I). Such record shall include a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in the light of such facts, the alien has not established a credible fear of persecution. A copy of the officer's interview notes shall be attached to the written summary.

(III) Review of determination

The Attorney General shall provide by regulation and upon the alien's request for prompt review by an immigration judge of a determination under subclause (I) that the alien does not have a credible fear of persecution. Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I).

(IV) Mandatory detention

Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.

(iv) Information about interviews

The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process.

(v) “Credible fear of persecution” defined

For purposes of this subparagraph, the term “credible fear of persecution” means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title.

(C) Limitation on administrative review

Except as provided in subparagraph (B)(iii)(III), a removal order entered in accordance with subparagraph (A)(i) or (B)(iii)(I) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order under subparagraph (A)(i) against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of Title 28, after having been warned of the penalties for falsely making such claim under such conditions, to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section 1157 of this title, or to have been granted asylum under section 1158 of this title.

(D) Limit on collateral attacks

In any action brought against an alien under section 1325(a) of this title or section 1326 of this title, the court shall not have jurisdiction to hear any claim attacking the validity of an order of removal entered under subparagraph (A)(i) or (B)(iii).

(E) "Asylum officer" defined

As used in this paragraph, the term "asylum officer" means an immigration officer who--

(i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 1158 of this title, and

(ii) is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications.

(F) Exception

Subparagraph (A) shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.

(G) Commonwealth of the Northern Mariana Islands

Nothing in this subsection shall be construed to authorize or require any person described in section 1158(e) of this title to be permitted to apply for asylum under section 1158 of this title at any time before January 1, 2014.

(2) Inspection of other aliens

(A) In general

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

(B) Exception

Subparagraph (A) shall not apply to an alien--

(i) who is a crewman,

(ii) to whom paragraph (1) applies, or

(iii) who is a stowaway.

(C) Treatment of aliens arriving from contiguous territory

In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 1229a of this title.

(3) Challenge of decision

The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 1229a of this title.

(c) Removal of aliens inadmissible on security and related grounds

(1) Removal without further hearing

If an immigration officer or an immigration judge suspects that an arriving alien may be inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, the officer or judge shall--

(A) order the alien removed, subject to review under paragraph (2);

(B) report the order of removal to the Attorney General; and

(C) not conduct any further inquiry or hearing until ordered by the Attorney General.

(2) Review of order

(A) The Attorney General shall review orders issued under paragraph (1).

(B) If the Attorney General--

(i) is satisfied on the basis of confidential information that the alien is inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, and

(ii) after consulting with appropriate security agencies of the United States Government, concludes that disclosure of the information would be prejudicial to the public interest, safety, or security,

the Attorney General may order the alien removed without further inquiry or hearing by an immigration judge.

(C) If the Attorney General does not order the removal of the alien under subparagraph (B), the Attorney General shall specify the further inquiry or hearing that shall be conducted in the case.

(3) Submission of statement and information

The alien or the alien's representative may submit a written statement and additional information for consideration by the Attorney General.

(d) Authority relating to inspections

(1) Authority to search conveyances

Immigration officers are authorized to board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States.

(2) Authority to order detention and delivery of arriving aliens

Immigration officers are authorized to order an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States--

(A) to detain the alien on the vessel or at the airport of arrival, and

(B) to deliver the alien to an immigration officer for inspection or to a medical officer for examination.

(3) Administration of oath and consideration of evidence

The Attorney General and any immigration officer shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service.

(4) Subpoena authority

(A) The Attorney General and any immigration officer shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service, and to that end may invoke the aid of any court of the United States.

(B) Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer may, in the event of neglect or refusal to respond to a subpoena issued under this paragraph or refusal to testify before an immigration officer, issue an order requiring such persons to appear before an immigration officer, produce books, papers, and documents if demanded, and testify, and any failure to

obey such order of the court may be punished by the court as a contempt thereof.

CREDIT(S)

(June 27, 1952, c. 477, Title II, ch. 4, § 235, 66 Stat. 198; Nov. 29, 1990, Pub.L. 101-649, Title VI, § 603(a)(11), 104 Stat. 5083; Apr. 24, 1996, Pub.L. 104-132, Title IV, §§ 422(a), 423(b), 110 Stat. 1270, 1272; Sept. 30, 1996, Pub.L. 104-208, Div. C, Title III, §§ 302(a), 308(d)(5), 371(b)(4), 110 Stat. 3009-579, 3009-619, 3009-645; May 8, 2008, Pub.L. 110-229, Title VII, § 702(j)(5), 122 Stat. 867.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1952 Acts. House Report No. 1365 and Conference Report No. 2096, see 1952 U.S. Code Cong. and Adm. News, p. 1653.

1990 Acts. House Report No. 101-723(Parts I and II), House Conference Report No. 101-955, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 6710.

1996 Acts. Senate Report No. 104-179 and House Conference Report No. 104-518, see 1996 U.S. Code Cong. and Adm. News, p. 924.

Amendments

2008 Amendments. Subsec. (b)(1)(G). Pub.L. 110-229, § 702(j)(5), added subpar. (G).

1996 Amendments. Pub.L. 104-208, § 302(a), amended section generally, substituting provisions relating to inspection of aliens, expedited removal of inadmissible arriving aliens, and referral for hearing, including general inspection provisions and inspection of applicants for admission, removal of aliens inadmissible on security and related grounds, and authority relating to inspections, for provisions relating to inspection by immigration officials, including powers of officers, detention for further inquiry, challenge of favorable decision, temporary exclusion, permanent exclusion by Attorney General, and collateral attacks on orders of exclusion, special exclusion, or deportation.

Pub.L. 104-208, § 371(b)(4), substituted “immigration judges” for “special inquiry officers” and “immigration judge” for “special inquiry officer” wherever appearing.

Subsec. (b). Pub.L. 104-132, § 422(a), which amended subsec. (b) generally, was repealed by section 308(d)(5) of Div. C of Pub.L. 104-208, which provided in part that this chapter was to be applied as if section 422 of Pub.L. 104-132 had never been enacted.

Subsec. (d). Pub.L. 104-132, § 423(b), added subsec. (d).

1990 Amendments. Pub.L. 101-649, § 603(a)(11), substituted “subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title” for “paragraph (27), (28), or (29) of section 1182(a) of this title”.

Effective and Applicability Provisions

2008 Acts. Pub.L. 110-229, Title VII, Subtitle A, § 705(a) provides that, except as specifically provided in that section, or as otherwise provided in Subtitle A, amendments by Subtitle A (§§ 701 to 705) of Title VII of Pub.L. 110-229, are effective on May 8, 2008, section 705(b), provides that, unless specifically provided otherwise in Subtitle A, amendments to the Immigration and Nationality Act by Subtitle A and other provisions of that subtitle applying the immigration laws as defined in 8 U.S.C.A. § 1101(a)(17) to the Commonwealth, are effective on the transition program effective date described in 48 U.S.C.A. § 1806, which is the first day of the first full month commencing 1 year after May 8, 2008, and pursuant to section 705(c), except as otherwise provided, provisions of Subtitle A are not to be construed to make any residence or presence in the Commonwealth before the transition program effective date described in 48 U.S.C.A. § 1806, residence or presence in the United States, see Pub.L. 110-229, Title VII, § 705, May 8, 2008, 122 Stat. 867, set out as a 2008 Effective and Applicability Provisions note under 48 U.S.C.A. § 1806.

1996 Acts. Amendment by section 302(a) of Pub.L. 104-208 effective, with certain exceptions and subject to certain transitional rules, 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.

Section 308(d)(5) of Div. C of Pub.L. 104-208 provided in part that amendment by that section to section 422 of Pub.L. 104-132 is effective as of the date of enactment of Pub.L. 104-132, which was approved Apr. 24, 1996, with this chapter to apply as if section 422 of Pub.L. 104-132 had never been enacted.

Amendment by section 371(b)(4) of Div. C of Pub.L. 104-208 effective Sept. 30, 1996, see section 371(d)(1) of Div. C of Pub.L. 104-208, set out as a note under section 1101 of this title.

Section 422(c) of Pub.L. 104-132, which provided that the amendments made by section 422 of Pub.L. 104-132 to this section and section 1227 of this title were to take effect on the first day of the first month that began more than 180 days after Apr. 24, 1996, was repealed, to apply as if section 422 of Pub.L. 104-208 had never been enacted, by Pub.L. 104-208, Div. C, Title III, § 308(d)(5), Sept. 30, 1996, 110 Stat. 3009-619, set out in part as a note under this section.

1990 Acts. Amendment by section 603(a)(11) of Pub.L. 101-649 applicable to individuals entering the United States on or after June 1, 1991, see section 601(e)(1) of Pub.L. 101-649, set out as a note under section 1101 of this title.

Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under 8 U.S.C.A. § 1551.

Severability of Provisions

If any provision of Division C of Pub.L. 104-208 or the application of such provision to any person or circumstances is held to be unconstitutional, the remainder of Division C of Pub.L. 104-208 and the application of the provisions of Division C of Pub.L. 104-208 to any person or circumstance not to be affected thereby, see section 1(e) of Pub.L. 104-208, set out as a note under section 1101 of this title.

GAO Study on Operation of Expedited Removal Procedures

Pub.L. 104-208, Div. C, Title III, § 302(b), Sept. 30, 1996, 110 Stat. 3009-584, provided that:

"(1) Study.--The Comptroller General shall conduct a study on the implementation of the expedited removal procedures under section 235(b)(1) of the Immigration and Nationality Act, as amended by subsection (a) [subsec. (b)(1) of this section]. The study shall examine--

"(A) the effectiveness of such procedures in deterring illegal entry,

"(B) the detention and adjudication resources saved as a result of the procedures,

"(C) the administrative and other costs expended to comply with the provision,

"(D) the effectiveness of such procedures in processing asylum claims by undocumented aliens who assert a fear of persecution, including the accuracy of credible fear determinations, and

"(E) the cooperation of other countries and air carriers in accepting and returning aliens removed under such procedures.

"(2) Report.--By not later than 18 months after the date of the enactment of this Act [Sept. 30, 1996], the Comptroller General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on the study conducted under paragraph (1)."

References to Order of Removal Deemed to Include Order of Exclusion and Deportation

For purposes of this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub.L. 104-208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

CROSS REFERENCES

Contempts, see 18 USCA § 401 et seq.
Criminal contempt, see Fed.Rules Cr.Proc. Rule 42, 18 USCA.
Definition of the term--
Alien, see 8 USCA § 1101(a)(1).
Attorney General, see 8 USCA § 1101(a)(5).
Crewman, see 8 USCA § 1101(a)(10).
Entry, see 8 USCA § 1101(a)(13).
Immigration officer, see 8 USCA § 1101(a)(18).
National of the United States, see 8 USCA § 1101(a)(22).
Service, see 8 USCA § 1101(a)(34).
Special inquiry officer, see 8 USCA § 1101(b)(4).
United States, see 8 USCA § 1101(a)(38).

CODE OF FEDERAL REGULATIONS

Exclusion proceedings, see 8 CFR § 236.1 et seq.

Manifests, lists, etc., relating to arrivals and departures, see 8 CFR §§ 231.1 et seq., 251.1 et seq.

Physical and mental examination and inspection of arriving aliens, see 8 CFR §§ 232.1, 233.1 et seq., 234.1 et seq., 235.1 et seq.; 42 CFR § 34.1 et seq.

Powers and duties of field officers, see 8 CFR § 287.1 et seq.

Requirements for admission, etc., of nonimmigrant classes, see 8 CFR § 214.1 et seq.

Visas, passports, and other documentation--

Immigrants, see 8 CFR § 211.1 et seq.; 22 CFR § 42.1 et seq.

Nonimmigrants, see 8 CFR § 212.1 et seq.; 22 CFR § 41.1 et seq.

LAW REVIEW COMMENTARIES

Asylum adjudications: Do State Department advisory opinions violate refugee's rights and U.S. international obligations? Richard K. Preston, 45 Md.L.Rev. 91 (1986).

Bearing the cost of freedom for asylum-seeking stowaways. 9 Admin.L.J.Am.U. 403 (1995).

Cuban refugees at sea: A legal twilight zone. 24 Cap.U.L.Rev. 789 (1995).

Detention of aliens. Paul Wickham Schmidt, 24 San Diego L.Rev. 305 (1987).

A “hard look” at the executive branch's asylum decisions. Kevin R. Johnson, 1991 Utah L.Rev. 320(2).

Expedited removal and discrimination in the asylum process: The use of humanitarian aid as a political tool. Erin M. O'Callaghan, 43 Wm. & Mary L.Rev. 1747 (March 2002).

Human rights tragedy: Cuban and Haitian refugee crises revisited. Thomas David Jones, 9 Geo.Immigr.L.J. 479 (1995).

Immigration and naturalization: Expansion of the “entry doctrine” fiction. 15 Sw.U.L.Rev. 576 (1985).

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Refuge in the United States: The sanctuary movement should use the legal system. Paul Wickham Schmidt, 55 Hofstra L.Rev. 79 (Fall, 1986).

Resistance to military conscription or forced recruitment by insurgents as a basis for refugee protection: A

comparative perspective. Arthur C. Helton, 29 San Diego L.Rev. 581 (1992).

Retooling the "refugee" definition: The new immigration reform law's impact on United States domestic asylum policy. Katherine L. Vaughns, 1 Rutgers Race & L.Rev. 41 (1998).

Seeking asylum in the U.S. Carl Shusterman and Michael Straus, 14 L.A.Law. 34 (March 1991).

Swords into ploughshares: Why the United States should provide refuge to young men who refuse to bear arms for reasons of conscience. Karen Musalo, 26 San Diego L.Rev. 849 (1989).

Taming the asylum adjudication process: An agenda for the twenty-first century. Katherine L. Vaughns, 30 San Diego L.Rev. 1 (1993).

The foreign amici dilemma. Stephen A. Plass, 1995 B.Y.U.L.Rev. 1189.

U.S. asylum policy and population control in the People's Republic of China. 8 Hous.J.Int'l L. 557 (1996).

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Well-founded fear of persecution--The standard of proof in political asylum resolved, or is it? *INS v. Cardoza-Fonseca.* 22 U.S.F.L.Rev. 385 (1988).

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CJS Aliens § 239, Scope of Authority.
CJS Aliens § 241, Taking Evidence; Search Powers.
CJS Aliens § 242, Scope of Authority.
CJS Aliens § 246, Enforcement of Subpoena.
CJS Aliens § 282, Search of Vessels, Conveyances, and Vehicles.
CJS Aliens § 544, Impact of IIRIRA.
CJS Aliens § 573, Admission of Aliens a Privilege, Not a Right.
CJS Aliens § 575, Individuals Regarded as Not Arriving for Immigration Purposes.
CJS Aliens § 582, Detention and Referral for Further Inquiry by Immigration Judge.
CJS Aliens § 588, Withdrawal of Application for Admission.
CJS Aliens § 589, Required Statements.
CJS Aliens § 590, Removal of Aliens Found Inadmissible on Certain Grounds.
CJS Aliens § 592, Asylum Seekers.
CJS Aliens § 593, Asylum Seekers--Removal Without Further Review Absent Credible Fear of Persecution.
CJS Aliens § 597, Application of Screening Provisions to Certain Other Aliens.

CJS Aliens § 598, Limitation on Administrative Review.
CJS Aliens § 600, Limit on Collateral Attacks.
CJS Aliens § 601, Alien Not Clearly Entitled to Admission Detained for Removal Proceeding.
CJS Aliens § 602, Challenge of Decision.
CJS Aliens § 603, Removal Ordered Without Further Hearing.
CJS Aliens § 604, Review of Order.
CJS Aliens § 607, Examiner; Application.
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CJS Aliens § 613, Interrogation of Alien.
CJS Aliens § 614, Search of Alien or Conveyance.
CJS Aliens § 630, Withdrawal of Application for Admission.
CJS Aliens § 654, Basic Rule.
CJS Aliens § 663, Termination of Parole Upon Notice to Alien.
CJS Aliens § 931, Grounds for Revocation.
CJS Aliens § 1090, Jurisdiction.
CJS Aliens § 1093, Review of Denial; Removal.
CJS Aliens § 1190, Certain Aliens Previously Removed.
CJS Aliens § 1191, Aliens Unlawfully Present.
CJS Aliens § 1192, Aliens Unlawfully Present After Previous Immigration Violations.
CJS Aliens § 1393, Vessels and Aircraft.
CJS Aliens § 1399, Costs of Removal at Time of Arrival.
CJS Aliens § 1405, General Orders of Removal.
CJS Aliens § 1406, Matters Not Subject To--Decisions on Arriving Aliens and Certain Other Aliens.
CJS Aliens § 1426, Limitations on Relief.
CJS Aliens § 1427, Habeas Corpus Proceedings.
CJS Aliens § 1428, Challenges to Validity of System.
CJS Aliens § 1429, Decision.
CJS Aliens § 1430, Scope of Inquiry.
CJS Aliens § 1519, Who is Subject to Adjustment of Status.
CJS Aliens § 1562, Limits on Jurisdiction.
CJS Aliens § 1722, Removal of Aliens Arriving at Port of Entry.
CJS Habeas Corpus § 189, Exclusion Proceedings.

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32 ALR, Fed. 2nd Series 509, Validity, Construction, and Application of 8 U.S.C.A. § 1228 Governing Expedited Removal of Aliens Convicted of Committing Aggravated Felonies.

177 ALR, Fed. 459, Illegal Reentry Under § 276 of Immigration and Nationality Act (8 U.S.C.A. § 1326) of Alien Who Has Been Denied Admission, Excluded, Deported, or Removed or Has Departed United States While Order of Exclusion...

86 ALR, Fed. 135, Alien's Entitlement, as Spouse of United States Citizen, to “Immediate Relative” Status Under §§

201, 204, and 205 of Immigration and Nationality Act of 1952 (8 U.S.C.A. §§ 1151, 1154, 1155).

82 ALR, Fed. 624, Eligibility for Discretionary Parole Status Under § 212(D)(5) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1182(D)(5)), Providing for Temporary Admission of Aliens.

77 ALR, Fed. 828, Excludability of Alien Under § 212(A)(1-7) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1182(A)(1-7)), Excluding Aliens for Mental or Physical Defect, Disease, or Disability.

4 ALR, Fed. 557, Construction and Application of § 245 of the Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1255) Authorizing Adjustment of Status of Alien to that of Permanent Resident.

22 ALR 3rd 749, What Absence from United States Constitutes Interruption of Permanent Residence So as to Subject Alien to Exclusion or Deportation on Re-Entry.

143 ALR 1354, Supersedeas, Stay, or Bail, Upon Appeal in Habeas Corpus.

141 ALR 1037, Presumption that Public Officers Have Properly Performed Their Duty, as Evidence.

132 ALR 738, Assumption of Jurisdiction by Court Before Completion of Administrative Procedure as Ground of Prohibition.

68 ALR 1503, Constitutional Provision Against Self-Incrimination as Applicable to Questions Asked or Testimony Given in Proceeding Before Nonjudicial Officer or Body.

12 ALR 197, Exclusion or Deportation of Alien Because of Political Views or Opinions.

5 ALR 263, Entry and Search of Premises for Purpose of Arresting One Without Search Warrant.

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13 Am. Jur. Proof of Facts 3d 665, Political Asylum--Well-Founded Fear of Persecution.

26 Am. Jur. Trials 327, Representation of an Alien in Exclusion, Rescission and Deportation Hearings.

Am. Jur. 2d Aliens and Citizens § 23, Antiterrorism and Effective Death Penalty Act of 1996.

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Am. Jur. 2d Aliens and Citizens § 54, Enforcement of Subpoena.

Am. Jur. 2d Aliens and Citizens § 92, Search of Vessels, Conveyances, and Vehicles.

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NOTES OF DECISIONS

1. Constitutionality

Government proffered reasonably conceivable state of facts that provided rational basis for disparate treatment of returning and non-returning lawful permanent residents, with respect to detention without bond during pendency of removal proceedings, and thus, the classification did not deprive alien of his Fifth Amendment right to equal protection; statute mandating detention of returning lawful permanent residents was rationally related to government's legitimate interest in deterring return of departed aliens who had committed an offense for which they were removable. Mejia v. Ashcroft, D.N.J.2005, 360 F.Supp.2d 647. Aliens, Immigration, And Citizenship 465; Constitutional Law 3113(1)

Under U.S.C.A.Const. Art. 1, § 8, cl. 4, vesting in Congress the right to pass naturalization laws and statutes enacted in pursuance thereof, Federal District Court could constitutionally be vested with jurisdiction, when a desired witness had refused to obey a subpoena issued by the Immigration Authorities, to compel witness to testify with respect to right of alien to remain in United States and to produce documents as therein set out and there was no illegal search or seizure nor any other constitutional defect. In re Estes, N.D.Tex.1949, 86 F.Supp. 769.

2. Construction

The phrase “concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service,” set out in subsec. (a), refers not to title or section but to entire chapter. U.S. v. Minker, U.S.N.Y.1956, 76 S.Ct. 281, 350 U.S. 179, 100 L.Ed. 185.

Provision of this section governing inspection by immigration officers applies to interrogation of aliens under investigation as to their right to be in or remain in United States. Laqui v. Immigration and Naturalization Service, C.A.7 (Ill.) 1970, 422 F.2d 807.

3. Other laws

Under provision of the Administrative Procedure Act, former § 1001 et seq. [now covered by §§ 551 et seq. and 701 et seq.] of Title 5, respecting conduct of hearings, immigration inspectors empowered by former § 152 of this title [now covered by this section] to conduct examination of aliens and to consider evidence touching their right to enter or reside in the United States were not exempt, and deportation proceedings had to conform to procedural requirements of the Administrative Procedure Act if resulting orders were to have validity. Wong Yang Sung v. McGrath,

U.S.Dist.Col.1950, 70 S.Ct. 445, 339 U.S. 33, 94 L.Ed. 616, modified 70 S.Ct. 564, 339 U.S. 908, 94 L.Ed. 1336.

Provisions of Administrative Procedure Act, §§ 551 et seq. and 701 et seq. of Title 5, apply to persons within United States borders, even though such persons are aliens, but an alien who has not yet been admitted to the United States can be excluded if Director of Immigration and Attorney General comply with subsection (c) of this section, even though such alien has not been informed of the reasons for exclusion. U. S. ex rel. Kasel De Pagliera v. Savoretti, S.D.Fla.1956, 139 F.Supp. 143.

The Administrative Procedure Act, §§ 551 et seq. and 701 et seq. of Title 5, did not apply to immigration procedures, including preliminary examinations. Ex parte Wong So Wan, N.D.Cal.1948, 82 F.Supp. 60.

4. Law governing

Federal law, rather than state law, applied to determine whether Immigration and Naturalization Service (INS) agents were liable in Federal Tort Claims Act action for false imprisonment; court was required to determine whether agents complied with applicable federal standards when they detained lawful permanent resident returning from trip abroad. Rhoden v. U.S., C.A.9 (Cal.) 1995, 55 F.3d 428. False Imprisonment 2

5. Rules and regulations

Immigration and Naturalization Service (INS) regulation, which rendered aliens who had been paroled into the United States but placed in removal proceedings ineligible for adjustment of status, was invalid; regulation was contrary to provision of Immigration and Nationality Act (INA) provision, allowing paroled aliens to apply for adjustment of status. Bona v. Gonzales, C.A.9 2005, 425 F.3d 663. Aliens, Immigration, And Citizenship 154

Regulation that rendered most aliens paroled into United States ineligible to apply for adjustment of status was impermissible and unreasonable construction of somewhat ambiguous governing statute, and was invalid, since Congress' intent indicating otherwise was apparent both from language of underlying statute, which allowed aliens “paroled into the United States” to apply for adjustment, and from its structure, which allowed such applications as general matter and excluded only few narrow classes from eligibility. Zheng v. Gonzales, C.A.3 2005, 422 F.3d 98. Aliens, Immigration, And Citizenship 154

Alien, not complying with regulation in connection with law as to issuance of subpoena, was not entitled to complain that particularly desired witness had not been subpoenaed. Chun Shee v. Nagle, C.C.A.9 (Cal.) 1925, 9 F.2d 342.

Commissioner had authority to promulgate rule for re-examination of aliens who came to mainland after sojourn in Phillipines. Healy v. Backus, C.C.A.9 (Cal.) 1915, 221 F. 358, 137 C.C.A. 166, certiorari granted 36 S.Ct. 726, 241 U.S. 655, 60 L.Ed. 1224, reversed 37 S.Ct. 400, 243 U.S. 657, 61 L.Ed. 949.

Alien detention and parole regulations promulgated by Immigration and Naturalization Service were not invalid as “arbitrary or capricious”; regulations were promulgated in conformity with and in furtherance of Immigration and Naturalization Service's obligation to enforce federal immigration law so as to deter and prevent unlawful entry by detaining aliens who may not appear to be clearly and beyond a doubt entitled to land, and Immigration and Naturalization Service met its obligation of providing concise and general statement of basis and purpose of regulations and revealed major policy issues raised during comment period and reasons why Service chose to follow one course rather than another. Ishtyaq v. Nelson, E.D.N.Y.1983, 627 F.Supp. 13.

6. Entry

Old Seven Mile Bridge in the Florida Keys was United States territory for the purposes of the Immigration and Nationality Act (INA), and thus, 15 Cuban migrants who landed on bridge pier had "dry feet" and were entitled to stay in United States and apply for political asylum, although portion of the bridge on which they landed was unconnected to land at either end. Movimiento Democracia, Inc. v. Chertoff, S.D.Fla.2006, 417 F.Supp.2d 1343. Aliens, Immigration, And Citizenship 507

Entry into the territorial waters of the United States did not constitute "entry" into the United States for immigration purposes. Rodriguez v. Ridge, S.D.Fla.2004, 310 F.Supp.2d 1242. Aliens, Immigration, And Citizenship 220

Alien who overstayed in the U.S. after entry on a tourist visa, and who then left U.S. soil by flying to Canada, was a removable alien even though he was denied entry into Canada and turned over to U.S. immigration officials; trip to Canada constituted a leaving of the U.S. Yoon v. Ashcroft, C.A.9 2003, 58 Fed.Appx. 702, 2003 WL 462935, Unreported. Aliens, Immigration, And Citizenship 220

7. Detention

Threat by Bureau of Customs and Border Protection (CBP) agents to detain United States citizens at border until they cooperated did not turn CBP's otherwise routine searches of citizens into searches requiring reasonable suspicion under Fourth Amendment. Tabbaa v. Chertoff, C.A.2 (N.Y.) 2007, 509 F.3d 89. Customs Duties 126(9.1)

Statute authorizing border detention of aliens who do not appear to be clearly entitled to land extends to every alien, including lawful permanent resident returning from brief vacation. Rhoden v. U.S., C.A.9 (Cal.) 1995, 55 F.3d 428. Aliens, Immigration, And Citizenship 463

Immigration and Naturalization Service (INS) had authority to detain alien seeking entry into United States during course of appeal by INS from decision of immigration judge denying asylum but withholding deportation. Clark v. Smith, C.A.9 (Wash.) 1992, 967 F.2d 1329.

In action challenging implementation of policy change whereby undocumented aliens were detained at point of entry pending determination of their admissibility, departure from normal procedural sequence of exclusion adjudication to which plaintiff class members were subject permitted inference of discriminatory intent, although fact that Executive Branch dealt in unique way with immigration problem which gave rise to litigation at issue would not, alone, suggest discriminatory intent toward plaintiffs. Jean v. Nelson, C.A.11 (Fla.) 1983, 711 F.2d 1455, rehearing granted 714 F.2d 96, on rehearing 727 F.2d 957, rehearing denied 733 F.2d 908, certiorari granted 105 S.Ct. 563, 469 U.S. 1071, 83 L.Ed.2d 504, affirmed 105 S.Ct. 2992, 472 U.S. 846, 86 L.Ed.2d 664.

Indefinite detention of a permanently excluded alien who is deemed to be a security risk and who is refused entry to other countries is not unlawful. Palma v. Verdeyen, C.A.4 (Va.) 1982, 676 F.2d 100.

Fact that suspected alien's claim to United States citizenship was recognized by American consul at Hong Kong, who was agent of Secretary of State having power to hear, examine and determine claims for citizenship, and that § 1104 of this title provides that Secretary of State shall be charged with administration and enforcement of immigration and nationality laws relating to determination of nationality of person not in United States, did not preclude officials of Immigration Service from detaining person of such suspected alien, upon his arrival at United States port, or

from determining that he was in fact an alien. Ng Yip Yee v. Barber, C.A.9 (Cal.) 1954, 210 F.2d 613, certiorari denied 74 S.Ct. 850, 347 U.S. 988, 98 L.Ed. 1122.

Original jurisdiction to hold and exclude was based on custody of alien's person acquired at time of his landing and continued by his detention, and once alien had been formally discharged, and discharge had become practically effective, alien could not be retaken and deported except upon warrant proceedings, since jurisdiction under original proceeding was regarded as having expired. Ex parte Chin Shue Wee, D.C.Mass.1921, 272 F. 480.

Detention during pendency of removal proceeding was mandatory for former lawful permanent resident who was reclassified as an "alien seeking admission." Mejia v. Ashcroft, D.N.J.2005, 360 F.Supp.2d 647. Aliens, Immigration, And Citizenship 465

A detained inadmissible alien, a Mariel boat lift Cuban who was ordered excluded and deported but who was then paroled into the United States and had his parole revoked following string of criminal offenses, did not have same due process rights as removable aliens, and thus was not entitled to presumption, under statute governing post-removal period, that six months was reasonable amount of time in which to effect removal, and was not entitled to release even though he had been detained for over three years, absent showing that repatriation was likely within the foreseeable future. Herrero-Rodriguez v. Bailey, D.N.J.2002, 237 F.Supp.2d 543. Aliens, Immigration, And Citizenship 469; Constitutional Law 4439

Statute providing that an alien who is an applicant for admission must be detained if applicant had previously committed a crime of moral turpitude, rather than statute that subjects an alien to detention, pending a removal decision, governed the detention of permanent resident, where permanent resident had pled guilty to sexual abuse in the first degree and later sought to reenter the United States after visiting the Dominican Republic. Ferreras v. Ashcroft, S.D.N.Y.2001, 160 F.Supp.2d 617. Aliens, Immigration, And Citizenship 465

Arriving alien who does not appear to be clearly and beyond doubt entitled to land may be detained for further inquiry; likewise, alien who arrives without documents may also be detained. Kumar v. Ilchert, N.D.Cal.1992, 783 F.Supp. 1258.

Indefinite detention of excludable aliens by Attorney General did not constitute punishment by imprisonment without benefit of trial in violation of Sixth Amendment, where, as excludable aliens, aliens were not entitled to liberty in United States. Tartabull v. Thornburgh, E.D.La.1990, 755 F.Supp. 145.

Continued detention of excludable alien pending exclusion proceedings did not violate Constitution. Ordaz-Machado v. Rivkind, S.D.Fla.1987, 669 F.Supp. 1068.

Government can meet its burden of demonstrating that detention is temporary, so as to permit continued detention of excludable alien under Immigration and Nationality Act, by showing that it is actively negotiating for alien's return to his country of origin, or to some other country; alternatively, government can show that it has procedure for periodic review of alien's suitability for parole. Gallego v. I.N.S., W.D.Wis.1987, 663 F.Supp. 517.

In face of record of arrival of juvenile aliens, Cuban refugees, and their travel throughout country while in confinement over period of 14 to 16 months, they could be considered admitted to the United States for purposes of applying doctrine of estoppel against defendant federal officials, who were equitably estopped from claiming exclusive jurisdiction over the custody of five juveniles. Diaz v. Haig, D.C.Wyo.1981, 594 F.Supp. 1.

Detention of defendant at border point with attendant questioning by immigration officer without apprising defendant of his rights was not improper where immigration officer was charged with responsibility to examine all aliens who sought admission to United States and acted reasonably in treating every person who presented himself at border point and sought admission into United States as an alien until the opposite, namely, citizenship, was determined. U. S. v. Fields, W.D.N.Y.1978, 459 F.Supp. 315, affirmed 594 F.2d 853.

Though defendant was not the individual whose admissibility was being determined at time he was detained at border point by immigration officer, where defendant's situation was the same as if admissibility was being determined in that he was the spokesman for individual whose right to enter and reside in the United States was being resolved, defendant's detention by immigration officer for purpose of determining whether individual whom he represented was entitled to entry was not improper. U. S. v. Fields, W.D.N.Y.1978, 459 F.Supp. 315, affirmed 594 F.2d 853.

Alien's enlargement on bail in criminal proceeding and his detention by Immigration and Naturalization Service pending hearing to determine whether he should be excluded from United States were not inconsistent and release on bail did not deprive Service of its authority to hold exclusion hearing. Application of Bruno, D.C.Puerto Rico 1963, 224 F.Supp. 152.

Although alien was detained by Immigration and Naturalization Service in connection with exclusion hearing, court could at any time require Service to bring alien before it in connection with criminal proceeding against him, but Service was not entitled to remove petitioner from jurisdiction of court while criminal proceeding was pending. Application of Bruno, D.C.Puerto Rico 1963, 224 F.Supp. 152.

That examining inspector failed to give alien, on board arriving vessel, form notice that he was being detained for hearing, did not constitute an admission of the alien. Klapholz v. Esperdy, S.D.N.Y.1961, 201 F.Supp. 294, affirmed 302 F.2d 928, certiorari denied 83 S.Ct. 183, 371 U.S. 891, 9 L.Ed.2d 124.

8. Protection of defectors

Under subsec. (b) of this section, the Immigration and Naturalization Service has authority to detain and protect a defector who is deportable or excludable, until such time as he is granted political asylum. 1980 (Counsel-Inf.Op.) 4B Op.O.L.C. 348.

9. Stowaways

Provisions of INA governing detention of aliens for examination before special inquiry officers and right of appeal do not apply to aliens who arrive as stowaways. Argenbright Sec. v. Ceskoslovenske Aeroline, S.D.N.Y.1994, 849 F.Supp. 276. Aliens, Immigration, And Citizenship 465

10. Deportation

Deportation proceedings are within the ambit of this section giving Attorney General and any immigration officer power to require by subpoena the attendance and testimony of witnesses. U.S. v. Vivian, C.A.7 (Ill.) 1955, 224 F.2d 53, certiorari denied 76 S.Ct. 340, 350 U.S. 953, 100 L.Ed. 830.

Former § 152 of this title [now covered by this section] conferred jurisdiction on District Court to require alien in deportation proceeding to answer questions affecting his right to remain in United States as against contention that said former § 152 was restricted to exclusion cases. Loufakis v. U S, C.C.A.3 (Pa.) 1936, 81 F.2d 966.

Former § 152 of this title [now covered by this section] authorizing Commissioner of Immigration or inspector in charge to subpoena witnesses and require production of books, papers, and documents touching right of alien to enter, re-enter, "reside in," or pass through United States, and to invoke aid of Federal courts, applied to deportation proceedings, notwithstanding that this provision was preceded by provisions relating to right of inspectors to examine persons seeking admission, and followed by provisions penalizing those seeking to interfere with performance of such duties. U.S. v. Parson, S.D.Cal.1938, 22 F.Supp. 149. See, also, Graham v. U.S., C.C.A.Cal.1938, 99 F.2d 746. Aliens, Immigration, And Citizenship 345

11. Persons subject to summary exclusion

Statute providing for summary exclusion of alien seeking to enter country was not applicable to case of resident alien who lived in country for many years and had his family here, and who went to Syria to attend conference of Palestine youth. Rafeedie v. I.N.S., C.A.D.C.1989, 880 F.2d 506, 279 U.S.App.D.C. 183, on remand 795 F.Supp. 13.

Application of summary exclusion provisions to permanent resident alien who allegedly attended meeting of terrorist group while on trip abroad violated due process; alien had significant legal and personal ties to community, had numerous family members in United States, was provided only single opportunity to present written statement and was subjected to nonfinal determination of his eligibility for readmission based on confidential information. Rafeedie v. I.N.S., C.A.D.C.1989, 880 F.2d 506, 279 U.S.App.D.C. 183, on remand 795 F.Supp. 13.

12. Hearing

The continued exclusion of alien as a bad security risk, without hearing, does not deprive alien of any statutory or constitutional right, even though refusal of other countries to accept alien results in his continued detention at Ellis Island. Shaughnessy v. United States ex rel. Mezei, U.S.N.Y.1953, 73 S.Ct. 625, 345 U.S. 206, 97 L.Ed. 956.

Where native of Germany, who was employed by United States Army, obtained temporary leave from her employment in Germany to enter United States to apply for naturalization as American citizen, and, after her arrival, she was temporarily excluded by an immigration inspector, and exclusion order was made permanent by action of Attorney General on basis of undisclosed information of a confidential nature, she could be deported without a hearing before a Board of Special Inquiry in view of fact that United States was still at war with Germany, though hostilities had ceased. U.S. ex rel. Knauff v. Watkins, C.A.2 (N.Y.) 1949, 173 F.2d 599, certiorari granted 69 S.Ct. 941, 336 U.S. 966, 93 L.Ed. 1117, affirmed 70 S.Ct. 309, 338 U.S. 537, 94 L.Ed. 317.

Applicant for admission was not entitled to judicial trial of the validity of claim of American citizenship, but had only the right to a fair hearing by administrative agency intrusted with enforcement of former chapter 6 of this title [now covered by this chapter]. U.S. ex rel. Medeiros v. Watkins, C.C.A.2 (N.Y.) 1948, 166 F.2d 897.

In exclusion, as distinguished from deportation proceedings, there is no absolute right to judicial determination of claim to citizenship. Tsutako Murakami v. Burnett, C.C.A.9 (Cal.) 1933, 63 F.2d 641.

Person of Chinese descent claiming right to enter United States as citizen was not entitled to judicial hearing on issue of citizenship. U.S. ex rel. Fong On v. Day, C.C.A.2 (N.Y.) 1932, 54 F.2d 990.

Alien effecting entrance by express consent of Department of Labor, upon establishing citizenship claim to court's satisfaction, was entitled to judicial trial. U.S. ex rel. Gonzalez v. Kirk, S.D.Tex.1930, 39 F.2d 246. Aliens, Immigra-

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Alien seaman, detained by commissioner of immigration, was not entitled to hearing before board of inquiry or appeal to Secretary of Labor. U S ex rel D'Istria v. Day, C.C.A.2 (N.Y.) 1927, 20 F.2d 302.

Chinese immigrant, not claiming citizenship, was not entitled as matter of right to hearing before board of special inquiry. Jung Sir Kwai v. Nagle, C.C.A.9 (Cal.) 1925, 5 F.2d 228.

Chinese person seeking to enter United States occupies different position from one who has already entered, and former is not entitled to judicial hearing as to his right to enter, even where he claims citizenship, unless he has been given judicial hearing on his claim of citizenship. U.S. v. Tod, C.C.A.2 (N.Y.) 1923, 290 F. 689, certiorari stricken 44 S.Ct. 635, 265 U.S. 590, 68 L.Ed. 1195. See, also, U.S. v. Tod, C.C.A.N.Y.1923, 289 F. 761, reversed on other grounds 45 S.Ct. 85, 266 U.S. 113, 69 L.Ed. 195, modified on rehearing 45 S.Ct. 193, 266 U.S. 547, 69 L.Ed. 195.

Mandatory detention of former lawful permanent resident who was reclassified as an "alien seeking admission," without opportunity for a bond hearing before a neutral adjudicator, did not violate alien's due process rights under the Fifth Amendment; government was not required to employ least burdensome means to accomplish its goal of ensuring removal if so ordered. Mejia v. Ashcroft, D.N.J.2005, 360 F.Supp.2d 647. Aliens, Immigration, And Citizenship 465; Constitutional Law 4439

A temporarily excluded alien was not entitled to a hearing or to know the basis for his exclusion, but before final exclusion decision on basis that he would prejudice public interest or endanger national welfare or safety or security he was entitled to submit within a fixed time a written statement accompanied by information, and within such time his final exclusion was improper, and the impropriety was not cured by reopening proceedings without notice to him. U S ex rel Nicoloff v. Shaughnessy, S.D.N.Y.1956, 139 F.Supp. 465.

Alien, who returned to the United States with a valid re-entry permit as permanent resident of the United States, was entitled to notice of charges and hearing before his liberty or residence in the United States could be restricted or challenged, and restrictions of his liberty and his confinement to state of Florida without notice of charges or hearing without assigning basis therefore constituted a violation of due process and an abuse of discretion and was arbitrary and illegal. U. S. ex rel. Kasel De Pagliera v. Savoretti, S.D.Fla.1956, 139 F.Supp. 143.

Immigration authorities have jurisdiction to determine whether party seeking admission to United States is a citizen, that is, whether they have jurisdiction to exclude him. U.S. ex rel. Chu Leung v. Shaughnessy, S.D.N.Y.1950, 88 F.Supp. 91.

13. Venue

Refusal of district director of Immigration and Naturalization Service to grant change of venue of exclusion proceedings from Atlanta to Chicago was not abuse of discretion where administrative convenience of Service in handling matters expeditiously and correctly in Atlanta was more important than aliens' reasons for requesting hearings to be held in Chicago. Calderon v. Moyers, N.D.Ill.1982, 558 F.Supp. 19.

14. Examination of aliens--Generally

This section providing that inspection, other than physical or mental examination, of aliens seeking admission or or readmission to or privilege of passing through United States shall be conducted by immigration officers, except as

otherwise provided in regard to special inquiry officers, means that immigration officers are not to perform physical and mental examinations by obtaining admissions; doctors are to perform mental and physical examinations. Hill v. U.S.I.N.S., C.A.9 (Cal.) 1983, 714 F.2d 1470.

Under former § 152 of this title, [now covered by this section], it was within discretion of Secretary of Labor to determine whether examination should be by two inspectors or only one. Ngim Ah Oy v. Haff, C.C.A.9 (Cal.) 1940, 112 F.2d 607, certiorari denied 61 S.Ct. 63, 311 U.S. 686, 85 L.Ed. 443.

Where government claimed to have grounds for suspecting that an individual was an alien, and wished to inquire into that subject by talking to him and learning from him about his own background and that of his brothers to determine whether they had a right to be and remain in the United States, the Attorney General properly invoked the statutory power and was entitled to the aid of the court in requiring examination. In re Lee Tin Mew, D.C.Hawai'i 1958, 162 F.Supp. 812, reversed 268 F.2d 376.

With respect to duty placed upon immigration officers of examining all aliens arriving at ports of United States, each return to United States of resident alien is an entry. People v. Mendoza, Cal.App. 4 Dist.1967, 60 Cal.Rptr. 5, 251 Cal.App.2d 835.

15. ---- Necessity, examination of aliens

A temporary visitor's permit, issued to immigrant without immigration visa on false representations that he was going to visit relative in United States, was invalid and did not affect necessity of inspection when he again applied for entrance after leaving country. Del Castillo v. Carr, C.C.A.9 (Cal.) 1938, 100 F.2d 338.

16. ---- Oath, examination of aliens

Examination by immigration inspector of aliens seeking admission, under oath was not necessary within former § 152 of this title [now covered by this section]. Ex parte Gouthro, E.D.Mich.1924, 296 F. 506.

Immigration officers, though authorized by former § 152 of this title [now covered by this section] to examine aliens under oath to determine right to enter or remain in United States, had to conform to established concepts of due process of law in interrogation of alien. Ex parte Woo Wah Ning, W.D.Wash.1946, 67 F.Supp. 56.

17. ---- Scope, examination of aliens

Alien who was escorted by Customs and Border Patrol (CBP) inspectors to a secondary inspection area, an interview office to which alien went voluntarily and without being in handcuffs, was not entitled at that time to *Miranda* warnings, despite fact that agents had earlier uncovered alien smuggling schemes whose characteristics matched scenario presented by alien and Chinese nationals who were on the same international flight; until questioning turned from matters of administrative admissibility, inspectors were merely engaged in border immigration practice to which *Miranda* was not applicable. U.S. v. Kiam, C.A.3 (Pa.) 2006, 432 F.3d 524, certiorari denied 126 S.Ct. 1453, 546 U.S. 1223, 164 L.Ed.2d 149. Criminal Law 412.1(4)

Establishment of checkpoints in Puerto Rican airport to determine citizenship of passengers destined for mainland United States did not violate Fourth Amendment; passengers were subject to single question concerning citizenship as they continued to walk toward gate area, and secondary examinations, based on articulable suspicion emanating from original questioning, were conducted in discreet fashion. Lopez Lopez v. Aran, C.A.1 (Puerto Rico) 1988, 844

F.2d 898, rehearing denied, on remand 699 F.Supp. 365.

Court would not hold that offense, once committed in presence of representative of one agency, precludes other agency from pursing its statutory duty, and although probable cause existed to arrest alien for falsely stating her citizenship to Immigration Service, same did not preclude Customs Service from interrogation to ascertain whether she had further items to declare, and Miranda warnings given after currency had been removed from her purse and counted, furnishing probable cause to arrest for customs violations, were timely. U.S. v. Silva, C.A.2 (N.Y.) 1983, 715 F.2d 43.

Border patrol officers, as such, do not have authority under the immigration laws to search bags, containers, or compartments too small to conceal persons. U. S. v. Thompson, C.A.5 (Tex.) 1973, 475 F.2d 1359.

Requiring an alien to communicate with immigration officials concerning nonincriminatory aspects of his immigration status is not unfair or violative of due process. Laqui v. Immigration and Naturalization Service, C.A.7 (Ill.) 1970, 422 F.2d 807.

Although provision of this section governing inspection by immigration officers is relevant as part of total statutory scheme for inspection, investigation and enforcement of immigration laws, authority to question aliens in deportation proceedings is delineated in further provision providing in effect that special inquiry officer may conduct proceedings to determine deportability of any alien and may administer oath, present and receive evidence, interrogate, examine, and cross-examine alien or witnesses. Laqui v. Immigration and Naturalization Service, C.A.7 (Ill.) 1970, 422 F.2d 807.

A person claiming to be a citizen cannot be required by the District Director of Immigration to answer questions as to the nature of his occupation and whether he registered for the draft, though warned that his answers may be used against him in any civil or criminal proceedings, simply because the officer believes or suspects him of being an alien. Lee Tin Mew v. Jones, C.A.9 (Hawai'i) 1959, 268 F.2d 376.

Scope of inquiry by immigration authorities under former § 152 of this title [now covered by this section] was matter within their sound administrative discretion, and it was not for the courts to prescribe rules of evidence for such an investigation, so that if questions asked appear to be fair and reasonable for the purpose of enabling the officials to perform their duty, they cannot be held in violation of statute. Kaneda v. U.S., C.C.A.9 (Hawai'i) 1922, 278 F. 694, certiorari denied 42 S.Ct. 586, 259 U.S. 583, 66 L.Ed. 1075.

18. Check list

Individual claim of citizen who sought declaratory and injunctive relief with respect to check list which was maintained by the Immigration and Naturalization Service and allegedly contained information pertaining to activities of citizens under U.S.C.A. Const. Amend. 1 was moot where it appeared that plaintiff citizen was the innocent victim of misidentification and the government affirmed that his name had been removed from the list and that he would not be inconvenienced in the future. Becket v. Marks, S.D.N.Y.1973, 358 F.Supp. 1180.

Complaint alleging that plaintiff citizen's name appeared on check list which was maintained by the Immigration and Naturalization Service and which allegedly contained information pertaining to activities of citizen under U.S.C.A. Const. Amend. 1, but alleging no consequences of the appearance of plaintiff's name on such check list except that on one occasion he was required to fill out and sign identification card upon entering the United States, failed to state a claim upon which relief could be granted. Becket v. Marks, S.D.N.Y.1973, 358 F.Supp. 1180.

19. Subpoena

Immigration and Naturalization Service did not have authority, despite its broad subpoena powers, to issue blanket John Doe subpoenas to enforce Immigration and Nationality Act in manner similar to which Internal Revenue Service is authorized to seek issuance of John Doe summonses; Congress did not provide specifically for subpoenas to be directed at unidentified targets nor did it provide procedural safeguards. Peters v. U.S., C.A.9 (Wash.) 1988, 853 F.2d 692.

Quantum of proof necessary in deportation cases does not change subpoena or interrogative powers of Immigration Service in such cases. Laqui v. Immigration and Naturalization Service, C.A.7 (Ill.) 1970, 422 F.2d 807.

This section empowers immigration officer to subpoena as a "witness" an admitted alien even though he may be subject of investigation by immigration service looking towards his ultimate deportation. Sherman v. Hamilton, C.A.1 (Mass.) 1961, 295 F.2d 516, certiorari denied 82 S.Ct. 827, 369 U.S. 820, 7 L.Ed.2d 785.

This section conferring subpoena power upon any commissioner of immigration or inspector in charge is geared to the examination of qualifications of a person arriving at the border to enter the country and reside therein, and was not intended to require a person resident in the country to give evidence as to his citizenship. Lee Tin Mew v. Jones, C.A.9 (Hawai'i) 1959, 268 F.2d 376.

The citizenship status of person regarding whom a naturalized citizen is subpoenaed by District Director of Immigration and Naturalization Service as witness to give testimony before Service investigator is not a matter of defense to such subpoena and such person subpenaed by the Director, was a "witness" within meaning of this section and, as such, liable to be subpenaed in absence of evidence supporting such citizen's argument that he himself might be subject of denaturalization inquiry by Service. U.S. v. Zuskar, C.A.7 (Ill.) 1956, 237 F.2d 528, certiorari denied 77 S.Ct. 564, 352 U.S. 1004, 1 L.Ed.2d 549.

The word "witnesses" in provision of this section authorizing immigration officers to subpoena witnesses to testify relating to privilege of any person to enter or reside in United States does not mean not-citizens only and this provision does not require District Director of Immigration and Naturalization Service to state causes of action in subpoenas issued by him, but it strictly defines purposes for which officers can subpoena witnesses U.S. v. Zuskar, C.A.7 (Ill.) 1956, 237 F.2d 528, certiorari denied 77 S.Ct. 564, 352 U.S. 1004, 1 L.Ed.2d 549.

Under this section giving Attorney General and any immigration officer power to require by subpoena attendance and testimony of witnesses before immigration officers, regulation defining immigration officer as any officer or employee of service who was serving under appointment to position of investigator prior to certain date and whose appointment had not terminated or who was appointed to such position after that date, and any person designated by commissioner to perform duties of immigration officer, was not an invalid delegation of administrative subpoena powers. U.S. v. Vivian, C.A.7 (Ill.) 1955, 224 F.2d 53, certiorari denied 76 S.Ct. 340, 350 U.S. 953, 100 L.Ed. 830.

This section's provision authorizing Attorney General and immigration officers to subpoena witnesses which was contained in chapter entitled "Provisions Relating to Entry and Exclusion" and as part of a section headed "Inspection by Immigrant Officers" did not limit subpoena power to cases of entry and exclusion where language compelled conclusion that powers might be exercised with reference to denaturalization. Application of Barnes, C.A.2 (N.Y.) 1955, 219 F.2d 137, certiorari granted 75 S.Ct. 774, 349 U.S. 927, 99 L.Ed. 1258, reversed on other grounds 76 S.Ct. 281, 350 U.S. 179, 100 L.Ed. 185.

The increased administrative investigatory powers given by this section appearing in entry and exclusion provisions of this chapter authorizing Attorney General and immigration officers to subpoena witnesses were intended to relate to enforcement of the act as a whole, including provisions relating to revocation of naturalization, and authorized issuance of subpoenas against citizens preliminarily to commencement of denaturalization proceedings. Application of Barnes, C.A.2 (N.Y.) 1955, 219 F.2d 137, certiorari granted 75 S.Ct. 774, 349 U.S. 927, 99 L.Ed. 1258, reversed on other grounds 76 S.Ct. 281, 350 U.S. 179, 100 L.Ed. 185.

Administrative subpoena commanding alien to give testimony in connection with deportation proceeding relating to alien must be enforced and alien's expressed apprehension that court order might foreclose claimed constitutional rights was premature where alien made no claim of any particular constitutional rights. Hamilton v. Sherman, D.C.-Mass.1961, 194 F.Supp. 805, affirmed 295 F.2d 516, certiorari denied 82 S.Ct. 827, 369 U.S. 820, 7 L.Ed.2d 785.

Officer of corporation is appropriate person to receive subpoena requiring production of corporate records in deportation proceeding, and although it is proper to direct such subpoena to corporation, it is equally proper, and perhaps preferable, to direct it to officer having custody of records sought. Shaughnessy v. Bacolas, S.D.N.Y.1955, 135 F.Supp. 15.

Where proceeding before immigration authorities to establish alienage exceeds administrative power or, while purporting to be within power, is used for some other purpose, subpoena to compel a witness to appear in proceeding should not be enforced. In re Wing, N.D.Cal.1954, 124 F.Supp. 492.

Where father was originally admitted to the United States as a citizen after examination by immigration inspector, and three times he was granted a citizen's return certificate prior to his departure to China, and thereafter prior to his departure for the United States from China he obtained a United States passport, but when he arrived in the United States, exclusion proceedings were brought against him by immigration authorities, immigration authorities had right to serve a subpoena on his son to compel son to appear and testify in exclusion proceedings relating to right of father to enter the United States, and federal district court would grant motion for order to compel son to appear and testify. In re Wing, N.D.Cal.1954, 124 F.Supp. 492.

This section authorizing Attorney General and immigration officers to subpoena witnesses did not authorize immigration service officials to issue subpoena against a citizen preliminary to commencement of denaturalization proceedings. In re Oddo, S.D.N.Y.1953, 117 F.Supp. 323, reversed 219 F.2d 137, certiorari granted 75 S.Ct. 774, 349 U.S. 927, 99 L.Ed. 1258, reversed 76 S.Ct. 281, 350 U.S. 179, 100 L.Ed. 185.

The fact that subchapter III of this chapter contained provision for subpoena of witnesses in pre-naturalization procedures indicated that subpoena power in this part did not apply to entire chapter, since former provision would then serve no function. In re Oddo, S.D.N.Y.1953, 117 F.Supp. 323, reversed 219 F.2d 137, certiorari granted 75 S.Ct. 774, 349 U.S. 927, 99 L.Ed. 1258, reversed 76 S.Ct. 281, 350 U.S. 179, 100 L.Ed. 185.

Regulation promulgated by Attorney General authorizing Immigration and Naturalization Service to conduct investigations on behalf of United States Attorney did not extend subpoena power to the Immigration Service in proceedings for revocation of naturalization. In re Oddo, S.D.N.Y.1953, 117 F.Supp. 323, reversed 219 F.2d 137, certiorari granted 75 S.Ct. 774, 349 U.S. 927, 99 L.Ed. 1258, reversed 76 S.Ct. 281, 350 U.S. 179, 100 L.Ed. 185.

20. Self-incrimination

Post-*Miranda* confession to alien smuggling activities was not tainted by pre-*Miranda* inculpatory statements of alien, made during border inspector's interview with respect to alien's administrative admissibility to the United States; inspector did not deliberately use two-step interview process to sidestep *Miranda*, there was no coercion or other improper tactics, and when determination was made that warnings were required, they were given carefully and thoroughly by another agent called in for that purpose, who employed a Chinese interpreter even though alien, a Singaporean citizen, stated that he was able to communicate in English as well. U.S. v. Kiam, C.A.3 (Pa.) 2006, 432 F.3d 524, certiorari denied 126 S.Ct. 1453, 546 U.S. 1223, 164 L.Ed.2d 149. Criminal Law 517(7)

Section 1225 of this title empowers immigration officer to subpoena as a "witness" an admitted alien even though he may be subject of investigation by immigration service looking towards his ultimate deportation. Sherman v. Hamilton, C.A.1 (Mass.) 1961, 295 F.2d 516, certiorari denied 82 S.Ct. 827, 369 U.S. 820, 7 L.Ed.2d 785.

Citizen confronted with administrative proceeding which posed challenge to his right to retain citizenship was not "witness" within meaning of subsection (a) of this section, conferring subpoena power in connection with proceedings seeking revocation of naturalization, and was not required under said subsection, to appear and testify against himself. U. S. v. Minker, C.A.3 (Pa.) 1954, 217 F.2d 350, certiorari granted 75 S.Ct. 582, 349 U.S. 904, 99 L.Ed. 1240, affirmed 76 S.Ct. 281, 350 U.S. 179, 100 L.Ed. 185.

Naturalized citizens who were each the subject of denaturalization investigation were not "witnesses" within this section conferring power on immigration officers to subpoena "witnesses" where purpose of inquiry was to determine whether good cause existed to institute denaturalization proceedings against such naturalized citizens. U. S. v. Minker, C.A.3 (Pa.) 1954, 217 F.2d 350, certiorari granted 75 S.Ct. 582, 349 U.S. 904, 99 L.Ed. 1240, affirmed 76 S.Ct. 281, 350 U.S. 179, 100 L.Ed. 185.

Defendant, who was detained at border point by immigration officer whose responsibility it was to examine all aliens who sought admission to United States, was not free to leave, even by returning to whence he came, until immigration officer's reasonable interrogation had concluded and was not deprived of his freedom of action in any significant way so as to bring into play requirement for Miranda type warnings. U. S. v. Fields, W.D.N.Y.1978, 459 F.Supp. 315, affirmed 594 F.2d 853.

Statements which defendant made to an immigration inspector and to a criminal investigator of United States Immigration and Naturalization Service were not subject to being suppressed where immigration officer, who was charged with responsibility to examine all aliens who sought admission to United States, ceased his questioning immediately upon hearing that defendant was being paid to bring an unlawful alien into the United States and thereupon called in a criminal investigator who at once apprised defendant of his Miranda rights. U. S. v. Fields, W.D.N.Y.1978, 459 F.Supp. 315, affirmed 594 F.2d 853.

Statement of defendant to immigration inspector to effect that he had come from New York City by plane and for $200 was to pick up an individual from a Toronto motel or hotel and bring him into the states and to New York City raised existence of strong probability of criminality and, as long as Miranda warnings were given before any further queries were made, defendant's rights were adequately protected and he was not entitled to suppression of less than incriminatory statements made theretofore or incriminatory statements made thereafter. U. S. v. Fields, W.D.N.Y.1978, 459 F.Supp. 315, affirmed 594 F.2d 853.

Where any of respondent's personal checks or bank statements which were in fact relevant to deportation proceeding against another party might tend to establish that respondent had violated § 1324(a)(4) of this title, penalizing bringing in and harboring of certain aliens, respondent might reasonably fear that production of such documents would incriminate him, and his claim of privilege would be upheld. Shaughnessy v. Bacolas, S.D.N.Y.1955, 135 F.Supp.

15.

Where respondent, who was required by subpoena to appear as witness in deportation proceeding and to bring with him cancelled checks and bank statements of business checking accounts for designated years, disclosed in affidavit to vacate order of District Court enforcing subpoena that he was officer and employee of corporation, and that business records requested were those of corporation, he could not refuse to produce the records under his claim of privilege against self-incrimination or on ground that records belonged to corporation rather than to him. Shaughnessy v. Bacolas, S.D.N.Y.1955, 135 F.Supp. 15.

21. Rehearing

Under Act of 1907 [now covered by this chapter], on application of Chinese alien for entry, commissioner had jurisdiction to order rehearings by inspectors until facts were sufficiently developed to afford basis for his judgment. Chew Hoy Quong v. White, C.C.A.9 (Cal.) 1917, 244 F. 749, 157 C.C.A. 197.

22. Evidence

Act of 1891 [now covered by this chapter] did not require inspectors to take testimony but allowed them to decide on their own inspection and examination question of right of alien immigrant to land; they were merely empowered to administer oaths and to take and consider testimony, and Act required only testimony so taken to be entered of record. Nishimura Ekiu v. U.S., U.S.Cal.1892, 12 S.Ct. 336, 142 U.S. 651, 35 L.Ed. 1146.

Disputed issues of material fact on reasonableness of lawful permanent resident's six-day detention without hearing after returning from abroad precluded summary judgment for government on ground that detention was legally privileged. Rhoden v. U.S., C.A.9 (Cal.) 1995, 55 F.3d 428. Federal Civil Procedure 2483.5

Immigration officials may question aliens before or during proceedings concerning their right to remain in United States and use such evidence as a basis for deportation. Laqui v. Immigration and Naturalization Service, C.A.7 (Ill.) 1970, 422 F.2d 807.

In exclusion proceeding, petitioner, who was an Argentine citizen, was entitled to copy or an opportunity to make copy of her answers to the first examiner in the exclusion proceeding, and petitioner should be given the copy at once and would be allowed three days to file her statement and accompanying information, even though five days period allowed for filing of statement and accompanying information had expired before copy was given her. U. S. ex rel. Kasel De Pagliera v. Savoretti, S.D.Fla.1956, 139 F.Supp. 143.

In proceeding on application of Immigration and Naturalization Service to enforce administrative subpoena requiring respondent to appear and give testimony in deportation proceedings pending against another person, and to bring with him cancelled checks and bank statements of both business and personal checking accounts for designated years, wherein respondent sought vacation of District Court order enforcing the subpoena, there was sufficient showing of relevance and materiality to justify issuance of order enforcing subpoena notwithstanding invasion of respondent's privacy. Shaughnessy v. Bacolas, S.D.N.Y.1955, 135 F.Supp. 15.

Immigration authorities are not required to establish, as a fact, alienage of one claiming right to enter the United States as a citizen, before they can compel the production of evidence necessary to determine whether alienage does or does not exist. In re Wing, N.D.Cal.1954, 124 F.Supp. 492.

Alienage of one seeking to enter the United States as a citizen is not required to be proved, as a fact before federal district court can or should aid immigration authorities in compelling production of evidence necessary to determine whether alienage does or does not exist. In re Wing, N.D.Cal.1954, 124 F.Supp. 492.

23. Exhaustion of remedies

Resident alien was not required to exhaust administrative appeals prior to instituting court action seeking injunction to prevent Immigration and Naturalization Service from deporting him, as his interests were substantial and judicial review of his constitutional claims would not unduly interfere with agency's delegated authority to interpret statute it administers. Rafeedie v. I.N.S., C.A.D.C.1989, 880 F.2d 506, 279 U.S.App.D.C. 183, on remand 795 F.Supp. 13.

24. Collateral estoppel

Respondent was not collaterally estopped by the Louis decision from litigating the legality of the Nicaraguan petitioner's detention, since there was nothing before the court to indicate that the same change in immigration policy that substantially impacted the plaintiffs in Louis had similarly affected petitioner, since the challenged detention herein was thus not identical to that made in Louis, and since, furthermore, the issue was not fully litigated during the pendency of the appeal in that case, and it remained unclear that the determination of the issue was necessary and essential to the resulting judgment. Roa v. Howerton, S.D.Fla.1982, 549 F.Supp. 187.

25. Temporary exclusion

If subordinate officials were in doubt as to admissibility as to any alien under supplemental regulations made pursuant to presidential proclamation concerning enemy aliens, such officials had power to exclude temporarily and duty to report such action for attention of officials of cabinet rank who might make exclusion permanent without a formal hearing, or any hearing before a Board of Special Inquiry, provided higher official charged with duty to decide, did decide on basis of confidential information that alien was not admissible. U.S. ex rel. Knauff v. Watkins, C.A.2 (N.Y.) 1949, 173 F.2d 599, certiorari granted 69 S.Ct. 941, 336 U.S. 966, 93 L.Ed. 1117, affirmed 70 S.Ct. 309, 338 U.S. 537, 94 L.Ed. 317.

26. Final orders

Under subsection (a) of this section, providing that on a witness' refusal to respond to a subpoena, court may issue an order requiring appearance, and that disobedience to such order may be punished as contempt, an order issued was an appealable final order, in that it marked the end of original proceeding to compel recusant witness to testify, rather than an initial order in a contempt proceeding. United States v. Vivian, C.A.7 (Ill.) 1955, 217 F.2d 882.

That district court might, upon a recusant witness' failure to respond to a subpoena issued under subsection (a) of this section, and his disobedience to an order requiring such witness to appear, have adjudged witness in contempt of court, did not affect status of court's order as a final appealable order. United States v. Vivian, C.A.7 (Ill.) 1955, 217 F.2d 882.

27. Persons entitled to appeal

After reinstatement of employer's corporate status, employer's president did not have standing to appeal district court order enforcing subpoena that had been issued by Immigration and Naturalization Service (INS) to president, who had been named in subpoena that had been directed at him as being individually liable for employment of unautho-

rized aliens; at time of proceedings to enforce subpoena, corporation had been dissolved under Michigan law, so that president could be individually liable, but at time of appeal corporate existence had been reinstated and president could no longer be liable in individual capacity. U.S. v. Van, C.A.6 (Mich.) 1991, 931 F.2d 384.

28. Persons entitled to maintain action

Immigration Judge (IJ) did not err in concluding that Government met its burden of showing that alien was inadmissible and thus ineligible to adjust his status to that of lawful permanent resident, where his first ex-wife testified that his marriage to her was fraudulent, and he did not testify that marriage was genuine, present evidence refuting her testimony, or present additional evidence to support finding that marriage was not fraudulent. Aslam v. Mukasey, C.A.2 2008, 537 F.3d 110. Aliens, Immigration, And Citizenship 428

Illegal Immigration Reform and Immigrant Responsibility Act of (IIRIRA) did not grant express right of action allowing litigants who would otherwise be barred by prudential standing rules to assert rights of others with respect to summary removal procedures; Congress' choice of 60-day time limit for reviewing such procedures did not indicate that Congress repudiated prudential standing on theory that aliens themselves probably would not be able to bring actions in time, and various IIRIRA provisions suggested that Congress meant to allow actions only by aliens subjected to the procedures. American Immigration Lawyers Ass'n v. Reno, C.A.D.C.2000, 199 F.3d 1352, 339 U.S.App.D.C. 341. Aliens, Immigration, And Citizenship 387

29. Habeas corpus

Order reinstating alien's prior removal order had already been reviewed by the Court of Appeals, and therefore dismissal of her habeas case was required, based on statute requiring that habeas petitions in removal proceedings be treated as if they had been filed pursuant to a petition for review, even though alien's prior removal order was issued under provision for which limited habeas review was authorized; removal order had been reinstated under provision barring review. Ochoa-Carrillo v. Gonzales, C.A.8 2006, 446 F.3d 781. Aliens, Immigration, And Citizenship 385

Where administrative proceedings to determine applicant's citizenship and right of entry were pending, application for habeas corpus to test validity of applicant's detention by Immigration and Naturalization Service at port of entry pending exclusion hearings, was premature, and not within jurisdiction of district court. Ng Yip Yee v. Barber, C.A.9 (Cal.) 1954, 210 F.2d 613, certiorari denied 74 S.Ct. 850, 347 U.S. 988, 98 L.Ed. 1122.

If Chinese, who was refused admission to the United States as a son of a native born citizen, felt that he had been prejudiced because he had not been given a preliminary examination, as former § 152 of this title allegedly required, in addition to the usual inspection aboard ship, before examination by a board of special inquiry, he should have made his complaint during proceedings before the immigration authorities, and not in habeas corpus proceeding. Woo Foo Wong v. Wixon, C.C.A.9 (Cal.) 1941, 117 F.2d 926.

Good cause for discovery existed in habeas corpus petition by Mariel Cubans who had been detained for over ten years where law was unsettled concerning whether indefinite detention of excludable aliens was punishment which could be imposed without due process protections, whether Attorney General had authority to make such a detention, and where discovery from government was most appropriate way to obtain information to test validity of petitioners' claims. Gaitan-Campanioni v. Thornburgh, E.D.Tex.1991, 777 F.Supp. 1355.

Aliens' contention that they might be detained indefinitely in violation of their constitutional rights if their applica-

tion for political asylum was denied and they were ordered excluded, because no country would accept them, was not ripe for consideration on petition for writ of habeas corpus, where asylum had not yet been denied. Bedredin v. Sava, S.D.N.Y.1986, 627 F.Supp. 629.

That Attorney General had developed plan to deal with Cuban refugees still in custody in expeditious manner was commendable but insufficient to warrant court's denial of habeas corpus relief, in view of fact that processing had been delayed for so long, requiring detention under unsuitable conditions and by reason of likelihood of further unlawful detention. Diaz v. Haig, D.C.Wyo.1981, 594 F.Supp. 1.

Habeas corpus proceeding brought by aliens against the district director of the Immigration and Naturalization Service, challenging his decision to deny them parole with an appropriate bond or other conditions pending an exclusion hearing, was not rendered moot by the granting of temporary exclusion orders to the aliens. Gilroy v. Ferro, S.D.N.Y.1982, 534 F.Supp. 326.

The district court has jurisdiction under section 2241 of Title 28 to entertain action to review decision of district director of Immigration and Naturalization Service to deny parole with an appropriate bond or other conditions to aliens detained for investigation. Gilroy v. Ferro, S.D.N.Y.1982, 534 F.Supp. 321.

Where alien had been issued visa for purpose of entering United States temporarily as a visitor, but was detained at port of entry by district director of Immigration and Naturalization Service, and obliged to answer formal written questions, and then was permanently excluded, alien, who had not had suitable opportunity to present written statements and accompanying information to regional director pertaining to her excludability would be entitled to writ of habeas corpus unless given opportunity to do so and unless consideration was given thereto by the regional commissioner. U. S. ex rel. Kasel De Pagliera v. Savoretti, S.D.Fla.1956, 139 F.Supp. 143.

30. Injunction

Although Immigration and Naturalization Service was subject to injunction prohibiting continuation of summary deportation proceedings against resident alien, Service was free to bring deportation action against alien under another section of statute which provided for hearing. Rafeedie v. I.N.S., C.A.D.C.1989, 880 F.2d 506, 279 U.S.App.D.C. 183, on remand 795 F.Supp. 13.

31. Parole

Alien, a native of the Philippines, was an “arriving alien,” for purpose of determining her eligibility to apply for adjustment of status, where she was paroled into the United States. Bona v. Gonzales, C.A.9 2005, 425 F.3d 663. Aliens, Immigration, And Citizenship 309

Fact that aliens in removal proceedings were granted advance parole before leaving the United States and subsequently returning did not change their status as “arriving aliens” in removal proceedings, who were barred under the Immigration and Nationality Act (INA) from eligibility for adjustment of status to that of lawful permanent resident alien. Mouelle v. Gonzales, C.A.8 2005, 416 F.3d 923, rehearing and rehearing en banc denied , vacated 126 S.Ct. 2964, 548 U.S. 901, 165 L.Ed.2d 947. Aliens, Immigration, And Citizenship 309

Delay in bringing arriving alien before Immigration Court for determination of exclusion status did not justify paroling alien for emergent or humanitarian reasons strictly in public interest; exclusion proceedings had been commenced, alien appeared before Immigration Court within two months of arrival in United States, and alien requested

change of venue which contributed to delay in scheduling hearing. Kumar v. Ilchert, N.D.Cal.1992, 783 F.Supp. 1258.

General principles of international law allegedly forbidding prolonged arbitrary detention were not applicable to detention without parole of Cuban national found excludable and deportable. Alvarez--Mendez v. Stock, C.D.Cal.1990, 746 F.Supp. 1006, affirmed 941 F.2d 956, certiorari denied 113 S.Ct. 127, 506 U.S. 842, 121 L.Ed.2d 82.

Decision of Attorney General with regard to whether to parole unadmitted aliens into United States on temporary basis may not be challenged on grounds that discretion was not exercised fairly or that too much weight was given to certain factors relevant to risk of absconding or too little to others; however, discretion may not be exercised to depart, without rational explanation, from established policies. Singh v. Nelson, S.D.N.Y.1985, 623 F.Supp. 545.

Even though aliens had been placed on probation by state court following their convictions for felony robbery, it was within discretion of Attorney General to find that aliens posed threat to national safety and thus should not be granted parole pending determinations of their excludability. Calderon v. Moyers, N.D.Ill.1982, 558 F.Supp. 19.

Although it may appear a futility to require director of Immigration and Naturalization Service to make second decision on same set of facts and utilizing set of factors which he asserted he already considered, requirement of reconsideration would preserve integrity of legal and administrative process, and, to extent that reconsideration was empty gesture, requirement imposed no burden on government, therefore, Immigration and Naturalization Service was required to reconsider alien's request for parole under newly promulgated rule regarding detention and parole of aliens who seek to enter the United States illegally. Paulis v. Sava, S.D.N.Y.1982, 544 F.Supp. 819.

A decision of district director of Immigration and Naturalization Service to deny parole with an appropriate bond or other conditions to aliens detained for investigation was arbitrary, particularly since aliens would bear all risk of result of their failure to appear for hearing and were likely to refuse to return for exclusion hearing. Gilroy v. Ferro, S.D.N.Y.1982, 534 F.Supp. 321.

32. Review

Where Second and Third Circuits divided on question whether this section empowers immigration officer to subpoena a naturalized citizen to determine if good cause exists for institution of denaturalization proceedings, Supreme Court granted certiorari. U.S. v. Minker, U.S.N.Y.1956, 76 S.Ct. 281, 350 U.S. 179, 100 L.Ed. 185.

Alien's constitutional claims and questions of law regarding prior expedited removal proceedings, pursuant to her earlier arrival in United States at which she falsely claimed United States citizenship and lacked valid travel documents, were not subject to collateral review on subsequent appeal of final order of removal for second attempted entry to United States, under statute barring jurisdiction for review of claims arising from implementation or operation of expedited removal order for aliens determined inadmissible upon inspection at arrival. Turgerel v. Mukasey, C.A.10 2008, 513 F.3d 1202. Aliens, Immigration, And Citizenship 385

Under statute limiting review of removal decisions, Court of Appeals lacked jurisdiction to review alien's claim that she was previously improperly removed in subsequent proceeding on her application for cancellation of removal following denial of her application for admission, admission being denied based on alien's previous removal within five years. Avendano-Ramirez v. Ashcroft, C.A.9 2004, 365 F.3d 813. Aliens, Immigration, And Citizenship 385

Judicial review of expedited removal order entered by the Immigration and Naturalization Service (INS), following non-resident alien's attempted reentry, upon visitor visa, into United States, was limited under Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) to whether order had in fact issued, and whether alien was same person subject to order; court could not consider whether expedited removal process was applicable to alien in first place. Brumme v. I.N.S., C.A.5 (Tex.) 2001, 275 F.3d 443. Aliens, Immigration, And Citizenship 397

Judicial review of Immigration and Naturalization Service (INS) expedited removal order denying non-resident alien entry at border into United States on ground that she attempted to enter country through fraud or misrepresentation was limited under Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) to whether order in fact issued and whether alien was subject of order. Li v. Eddy, C.A.9 (Alaska) 2001, 259 F.3d 1132, opinion vacated on rehearing 324 F.3d 1109. Aliens, Immigration, And Citizenship 397

Statute providing that, in prosecution for illegal reentry, court shall not have jurisdiction to hear any claim attacking validity of prior order of removal did not deprive court of jurisdiction to determine that illegal reentry defendant could not demonstrate that he had been prejudiced by alleged deficiencies in prior removal proceedings, as required for alien to assert *Mendoza-Lopez* claim; statute did not preclude district court or Court of Appeals from determining that requisites of *Mendoza-Lopez* claim were not met. U.S. v. Lopez-Vasquez, C.A.5 (Tex.) 2000, 227 F.3d 476. Aliens, Immigration, And Citizenship 376

Motion to quash administrative subpoena issued by Immigration and Naturalization Service (INS) was not ripe for judicial action at time it was quashed and should have been dismissed for lack of subject matter jurisdiction; INS never filed enforcement action or enforcement counterclaim in district court, and never appeared or made any filing or took any position in district court with respect to subpoena, except to file its notice of appeal. In re Ramirez, C.A.5 (Tex.) 1990, 905 F.2d 97.

Court of Appeals lacked jurisdiction to hear appeal from immigration judge's order excluding alien from admission to United States; even though exclusion proceeding was joined with deportation proceeding, immigration judge's exclusion decision was not made in any “phase” of deportation hearing, but rather at conclusion of all evidence. Ramirez-Durazo v. I.N.S., C.A.9 1986, 794 F.2d 491. Aliens, Immigration, And Citizenship 385

In proceeding to require an individual suspected to be an alien to appear and give testimony pursuant to this section, an order approving the propounding of questions asked the individual and apparently directing the individual to answer each and every one of them was appealable. Lee Tin Mew v. Jones, C.A.9 (Hawai'i) 1959, 268 F.2d 376.

In proceeding by the Immigration Director for an administrative subpoena directing an individual suspected to be an alien to appear and give testimony, an order approving the propounding of questions asked the individual and apparently directing him to answer each and every one was clearly erroneous where the warrant issued by the Director did not recite that the officer was carrying on an inspection of an alien seeking admission to the United States, did not recite that the individual was a person coming into the United States, who may be required to state under oath certain matters, nor that the purpose of subpoena was to take evidence touching the privilege of the individual to enter or reside in the United States nor whether the alien or person the Director suspected to be an alien was the individual. Lee Tin Mew v. Jones, C.A.9 (Hawai'i) 1959, 268 F.2d 376.

Determination of the United States Immigration and Customs Enforcement that detention without opportunity for bond of unparoled aliens seeking admission was mandated was not arbitrary, capricious, or manifestly contrary to statute, and was therefore entitled to *Chevron* deference. Mejia v. Ashcroft, D.N.J.2005, 360 F.Supp.2d 647. Aliens, Immigration, And Citizenship 485

By conducting a refugee applicant pre-screening interview pursuant to statute granting President the authority to admit refugees from foreign countries within certain prescribed numerical limits, State Department had not taken an action that was subject to judicial review. Rodriguez v. Ridge, S.D.Fla.2004, 310 F.Supp.2d 1242. Aliens, Immigration, And Citizenship 607; Aliens, Immigration, And Citizenship 392

District court lacked jurisdiction to review Immigration and Naturalization Service's (INS) decision that aliens, who were taken from Chinese vessel to Midway Island, were not eligible for asylum or further hearings. In re Li, D.Hawai'i 1999, 71 F.Supp.2d 1052. Aliens, Immigration, And Citizenship 600

Where alien had attempted to enter the United States under what he almost certainly knew was fraudulent visa, had no family except for one uncle, and immigration judge had rejected his claim for asylum and ordered him deported after hearing, Immigration and Naturalization Service did not abuse its discretion in finding that alien should remain in custody pending final determination of his case. Paulis v. Sava, S.D.N.Y.1982, 544 F.Supp. 819.

In reviewing a decision of district director of Immigration and Naturalization Service to deny parole with an appropriate bond or other conditions to aliens detained for investigation, standard of review to be applied is abuse of discretion. Gilroy v. Ferro, S.D.N.Y.1982, 534 F.Supp. 321.

Authority to exclude alien from country is given only to special inquiry officers and permanent resident alien who had been refused permission by Immigration Inspector in Montreal to board New York-bound flight was not subject of an “exclusion order”, hence § 1105a of this title, restricting judicial review of final orders of exclusion to habeas corpus after exhaustion of administrative remedies, was inapplicable. Itzcovitz v. Selective Service Local Bd. No. 6, New York, S.D.N.Y.1969, 301 F.Supp. 168, appeal dismissed 422 F.2d 828.

Court of Appeals lacked jurisdiction to review alien's habeas claims seeking review of an expedited removal order, including whether the expedited removal statute was lawfully applied to the alien, and whether expedited removal procedures violated his right to due process. Vaupel v. Ortiz, C.A.10 (Colo.) 2007, 244 Fed.Appx. 892, 2007 WL 2269444, Unreported. Habeas Corpus 521

Court of Appeals lacked jurisdiction to review alien's argument, that regulation which rendered aliens who had been paroled into the U.S. but placed in removal proceedings ineligible for adjustment of status was invalid as inconsistent with Immigration and Nationality Act (INA) provision allowing paroled aliens to apply for adjustment of status; alien failed to preserve the argument for appellate review inasmuch as it was not mentioned during his administrative proceedings. Shah v. U.S. Atty. Gen., C.A.11 2005, 151 Fed.Appx. 748, 2005 WL 2219063, Unreported, opinion vacated and superseded on rehearing 193 Fed.Appx. 863, 2006 WL 2356060. Aliens, Immigration, And Citizenship 385

33. Withdrawal of application

Immigration Judge's failure to inform Albanian asylum applicant of his right to request withdrawal of his application for admission did not result in prejudice to applicant, and thus applicant failed to demonstrate a violation of his due process rights; applicant was represented by counsel in proceedings before IJ, applicant did not allege that he was actually unaware of his right to withdraw his application, and applicant did not argue that his actions would have been different in any way. Bejko v. Gonzales, C.A.7 2006, 468 F.3d 482. Aliens, Immigration, And Citizenship 562; Constitutional Law 4440

Asylum applicants could not raise due process challenge to alleged failure by immigration judge (IJ) to follow rules of Department of Homeland Security (DHS) requiring IJ to inform them of their right to withdraw their application for admission for first time in petition for judicial review of order of Board of Immigration Appeals (BIA) affirming IJ's decision. Myslymi v. Gonzales, C.A.7 2007, 216 Fed.Appx. 571, 2007 WL 528818, Unreported. Aliens, Immigration, And Citizenship 603

8 U.S.C.A. § 1225, 8 USCA § 1225

Current through P.L. 111-156 (excluding P.L. 111-148 and 111-152) approved 4-7-10

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