

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

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

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

(1) Health-related grounds.-

(A) In general.-Any alien-

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

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

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

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

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

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

(B) Waiver authorized.-For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

(C) 1/ EXCEPTION FROM IMMUNIZATION REQUIREMENT FOR ADOPTED CHILDREN 10 YEARS OF AGE OR YOUNGER.--Clause (ii) of subparagraph (A) shall not apply to a child who--

(i) is 10 years of age or younger,

(ii) is described in section [101\(b\)\(1\)\(F\)](#), and [1c/](#)

(iii) is seeking an immigrant visa as an immediate relative under section [201\(b\)](#), if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the provisions of subparagraph (A)(ii) and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in such subparagraph.

(2) Criminal and related grounds.-

(A) Conviction of certain crimes.-

(i) In general.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense or an attempt or conspiracy to commit such a crime), or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement [2l](#) were 5 years or more is inadmissible.

(C) **2a/** CONTROLLED SUBSTANCE TRAFFICKERS- Any alien who the consular officer or the Attorney General knows or has reason to believe--

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(D) Prostitution and commercialized vice.-Any alien who-

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10- year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution, is inadmissible.

(E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution.-Any alien-

(i) who has committed in the United States at any time a serious criminal offense (as defined in section **101(h)**),

(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,

(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and

(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense, is inadmissible.

(F) Waiver authorized.-For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).

(G) **2b/ 2c/** FOREIGN GOVERNMENT OFFICIALS WHO HAVE COMMITTED

PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM- Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998 (22 U.S.C. 6402), is inadmissible.

(H) **2bb** / SIGNIFICANT TRAFFICKERS IN PERSONS-

(i) IN GENERAL- Any alien who commits or conspires to commit human trafficking offenses in the United States or outside the United States , **42l** or who the consular officer, the Secretary of Homeland Security, the Secretary of State, **42l** or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 103 of such Act, is inadmissible.

(ii) BENEFICIARIES OF TRAFFICKING- Except as provided in clause (iii), any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(iii) EXCEPTION FOR CERTAIN SONS AND DAUGHTERS- Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.

(I) **2bbb** / MONEY LAUNDERING- Any alien--

(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of title 18, United States Code (relating to laundering of monetary instruments); or

(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section; is inadmissible.

(3) Security and related grounds.-

(A) In general.-Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in-

(i) any activity (I) to violate any law of the United States relating to espionage or

sabotage or (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other unlawful activity, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means, is inadmissible.

(B) Terrorist activities-

(i) 3/ 4/ 4a/ IN GENERAL.-Any alien who-

(I) has engaged in a terrorist activity,

(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

(IV) is a representative (as defined in clause (v)) of--

(aa) a terrorist organization (as defined in clause (vi)); or

(bb) a political, social, or other group that endorses or espouses terrorist activity;

(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

(VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or

(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years, is inadmissible.

4l (ii) EXCEPTION- Subclause (IX) 4dl of clause(i) does not apply to a spouse or child--

(I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or

(II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.

4l (iii) TERRORIST ACTIVITY DEFINED.-As used in this Act, the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed (or which, if 4l it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The highjacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any-

(aa) biological agent, chemical agent, or nuclear weapon or device, or

(bb) explosive, 4l firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

(VI) A threat, attempt, or conspiracy to do any of the foregoing.

(iv) 4/ 4b/ ENGAGE IN TERRORIST ACTIVITY DEFINED- As used in this chapter, the term "engage in terrorist activity" means, in an individual capacity or as a member of an organization-

(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

(II) to prepare or plan a terrorist activity;

(III) to gather information on potential targets for terrorist activity;

(IV) to solicit funds or other things of value for--

(aa) a terrorist activity;

(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

(V) to solicit any individual--

(aa) to engage in conduct otherwise described in this subsection;

(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training--

(aa) for the commission of a terrorist activity;

(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

(cc) to a terrorist organization described in subclause (I) or (II) of clause (vi) or to any member of such an organization; or

(dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.

5/ (v) REPRESENTATIVE DEFINED.-As used in this paragraph, the term "representative" includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

(vi) **5a/ 4c** TERRORIST ORGANIZATION DEFINED- As used in this section, the term 'terrorist organization' means an organization—

(I) designated under section **219**;

(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv); or

(III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).

(C) Foreign policy.-

(i) In general.-An alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is inadmissible.

(ii) Exception for officials.-An alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office during the period immediately preceding the election for that office, shall not be excludable or subject to restrictions or conditions on entry into the United States under

clause (i) solely because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States.

(iii) Exception for other aliens.-An alien, not described in clause (ii), shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States, unless the Secretary of State personally determines that the alien's admission would compromise a compelling United States foreign policy interest.

(iv) Notification of determinations.-If a determination is made under clause (iii) with respect to an alien, the Secretary of State must notify on a timely basis the chairmen of the Committees on the Judiciary and Foreign Affairs of the House of Representatives and of the Committees on the Judiciary and Foreign Relations of the Senate of the identity of the alien and the reasons for the determination.

(D) Immigrant membership in totalitarian party.-

(i) In general.-Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.

(ii) Exception for involuntary membership.-Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.

(iii) Exception for past membership.-Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that-

(I) the membership or affiliation terminated at least-

(aa) 2 years before the date of such application, or

(bb) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and

(II) the alien is not a threat to the security of the United States.

(iv) Exception for close family members.-The Attorney General may, in the Attorney General's discretion, waive the application of clause (i) in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son, or daughter of an alien lawfully admitted for permanent residence for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the immigrant is not a threat to the security of the United States.

(E) **5aaa/** PARTICIPANTS IN NAZI PERSECUTION, GENOCIDE, OR THE COMMISSION OF ANY ACT OF TORTURE OR EXTRAJUDICIAL KILLING

(i) Participation in nazi persecutions.-Any alien who, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with-

(I) the Nazi government of Germany,

(II) any government in any area occupied by the military forces of the Nazi government of Germany,

(III) any government established with the assistance or cooperation of the Nazi government of Germany, or

(IV) any government which was an ally of the Nazi government of Germany, ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion is inadmissible.

(ii) Participation in genocide.-Any alien who **5aaa/** ordered, incited, assisted, or otherwise participated **5ab/** in genocide, as defined in section 1091(a) of title 18, United States Code, is inadmissible.

(iii) **5aaa/** COMMISSION OF ACTS OF TORTURE OR EXTRAJUDICIAL KILLINGS- Any alien who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of--

(I) any act of torture, as defined in section 2340 of title 18, United States Code; or

(II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note), is inadmissible.

5aa/ (F) ASSOCIATION WITH TERRORIST ORGANIZATIONS- Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.

(G) **41/** RECRUITMENT OR USE OF CHILD SOLDIERS- Any alien who has engaged in

the recruitment or use of child soldiers in violation of section 2442 of title 18, United States Code, is inadmissible.

(4) Public charge.-

(A) In general.-Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible. [6/](#)

(B) Factors to be taken into account.- (i) In determining whether an alien is excludable under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's-

(I) age;

(II) health;

(III) family status;

(IV) assets, resources, and financial status; and

(V) education and skills

(ii) In addition to the factors under clause (i), the consular officer or the Attorney General may also consider any affidavit of support under section [213A](#) for purposes of exclusion under this paragraph.

(C) Family-Sponsored immigrants.-Any alien who seeks admission or adjustment of status under a visa issued under section [201\(b\)\(2\)](#) or [203\(a\)](#) is excludable under this paragraph unless-

(i) the alien has obtained-

(I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) or section [204\(a\)\(1\)\(A\)](#), or

(II) classification pursuant to clause (ii) or (iii) of section [204\(a\)\(1\)\(B\)](#); [6aa/](#)

(III) [6aa/](#) classification or status as a VAWA self-petitioner; or

(ii) the person petitioning for the alien's admission 6a (and any additional sponsor required under section 213A(f) or any alternative sponsor permitted under paragraph (5) (B) of such section) has executed an affidavit of support described in section 213A with respect to such alien.

(D) Certain employment-based immigrants.-Any alien who seeks admission or adjustment of status under a visa number issued under section 203(b) by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is excludable under this paragraph unless such relative has executed an affidavit of support described in section 213A with respect to such alien.

(5) Labor certification and qualifications for certain immigrants.-

(A) Labor certification.-

(i) In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(ii) Certain aliens subject to special rule.-For purposes of clause (i)(I), an alien described in this clause is an alien who-

(I) is a member of the teaching profession, or

(II) has exceptional ability in the sciences or the arts.

(iii) 7 PROFESSIONAL ATHLETES-

(I) In general.-A certification made under clause (i) with respect to a professional athlete shall remain valid with respect to the athlete after the athlete changes employer, if the new employer is a team in the same sport as the team which employed the athlete when the athlete first applied for certification.

(II) Definition.-For purposes of subclause (I), the term "professional athlete" means an individual who is employed as an athlete by-

(aa) a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs

the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(bb) any minor league team that is affiliated with such an association.

(iv) 7I LONG DELAYED ADJUSTMENT APPLICANTS- A certification made under clause (i) with respect to an individual whose petition is covered by section 204(j) shall remain valid with respect to a new job accepted by the individual after the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the certification was issued.

(B) Unqualified physicians.-An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien (i) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral and written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C) Uncertified foreign health-care workers 7aI Subject to subsection (r), any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is excludable unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that-

(i) the alien's education, training, license, and experience-

(I) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;

(II) are comparable with that required for an American health-care worker of the same type; and

(III) are authentic and, in the case of a license, unencumbered;

(ii) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and

(iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test, or has passed such an examination.

For purposes of clause (ii), determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review.

(D) Application of grounds.-The grounds of inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 203(b).

(6) Illegal entrants and immigration violators.-

(A) 8/ALIENS PRESENT WITHOUT admission or parole.-

(i) In general.-An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

(ii) Exception for certain battered women and children.-Clause (i) shall not apply to an alien who demonstrates that-

(I) the alien is a VAWA self-petitioner; 6aa/

(II)(a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or (b) the alien's child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and

(III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States.

(B) Failure to attend removal proceeding.-Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

(C) Misrepresentation.-

(i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) 9/ FALSELY CLAIMING CITIZENSHIP-

(I) IN GENERAL- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II) EXCEPTION- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

(iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (I).

(D) Stowaways.-Any alien who is a stowaway is inadmissible.

(E) Smugglers.-

(i) In general.-Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

(ii) Special rule in the case of family reunification.-Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d) (11).

(F) Subject of civil penalty.-

(i) In general.-An alien who is the subject of a final order for violation of section 274C is inadmissible.

(ii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d) (12). 10/

(G) Student visa abusers.-An alien who obtains the status of a nonimmigrant under

section [101\(a\)\(15\)\(F\)\(i\)](#) and who violates a term or condition of such status under section [214\(l\)](#) is excludable until the alien has been outside the United States for a continuous period of 5 years after the date of the violation. [11/](#)

(7) Documentation requirements.-

(A) Immigrants.-

(i) In general.-Except as otherwise specifically provided in this Act, any immigrant at the time of application for admission-

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section [211\(a\)](#), or

(II) whose visa has been issued without compliance with the provisions of section 203, is inadmissible.

(ii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (k).

(B) Nonimmigrants.-

(i) In general.-Any nonimmigrant who-

(I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period, or

(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission, is inadmissible.

(ii) General waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(4).

(iii) GUAM AND NORTHERN MARIANA ISLANDS VISA WAIVER- For provision authorizing waiver of clause (i) in the case of visitors to Guam or the Commonwealth of the Northern Mariana Islands, see subsection (l). [38/](#)

(iv) VISA WAIVER [11a/](#) PROGRAM.-For authority to waive the requirement of clause (i) under a [11a/](#) program, see section [217](#).

(8) Ineligible for citizenship.-

(A) In general.-Any immigrant who is permanently ineligible to citizenship is inadmissible.

(B) Draft evaders.-Any person who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency is inadmissible, except that this subparagraph shall not apply to an alien who at the time of such departure was a nonimmigrant and who is seeking to reenter the United States as a nonimmigrant.

(9) 121 ALIENS PREVIOUSLY REMOVED.-

(A) Certain aliens previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

(B) 131 ALIENS UNLAWFULLY PRESENT.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence.-For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United

States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (I).

(II) Asylees.-No period of time in which an alien has a bona fide application for asylum pending under section [208](#) shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

(III) Family unity.-No period of time in which the alien is a beneficiary of family unity protection pursuant to section [301](#) of the Immigration Act of 1990 [14](#) shall be taken into account in determining the period of unlawful presence in the United States under clause (I).

(IV) Battered women and children.-Clause (i) shall not apply to an alien who would be described in paragraph (6)(A)(ii) if "violation of the terms of the alien's nonimmigrant visa" were substituted for "unlawful entry into the United States" in subclause (III) of that paragraph.

(V) [13a](#)/ VICTIMS OF A SEVERE FORM OF TRAFFICKING IN PERSONS- Clause (i) shall not apply to an alien who demonstrates that the severe form of trafficking (as that term is defined in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102)) was at least one central reason for the alien's unlawful presence in the United States.

(iv) Tolling for good cause.-In the case of an alien who-

(I) has been lawfully admitted or paroled into the United States,

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and

(III) has not been employed without authorization in the United States before or during the pendency of such application, the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section [235\(b\)\(1\)](#), section [240](#), or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.-Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, [14a/ 6aa/](#) the Secretary of Homeland Security has consented to the alien's reapplying for admission.

(iii) [6aa/](#) WAIVER- The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between--

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

(10) [15/](#) MISCELLANEOUS.-

(A) Practicing polygamists.-Any immigrant who is coming to the United States to practice polygamy is inadmissible.

(B) Guardian required to accompany helpless alien.-Any alien-

(i) who is accompanying another alien who is inadmissible and who is certified to be helpless from sickness, mental or physical disability, or infancy pursuant to section [232\(c\)](#), and

(ii) whose protection or guardianship is determined to be required by the alien described in clause (I), is inadmissible. [16/](#)

(C) International child abduction.-

(i) In general.-Except as provided in clause (ii), any alien who, after entry of an order by

a court in the United States granting custody to a person of a United States citizen child who detains or retains the child, or withholds custody of the child, outside the United States from the person granted custody by that order, is inadmissible until the child is surrendered to the person granted custody by that order.

16a / (ii) ALIENS SUPPORTING ABDUCTORS AND RELATIVES OF ABDUCTORS. -- Any alien who--

(I) is known by the Secretary of State to have intentionally assisted an alien in the conduct described in clause (i),

(II) is known by the Secretary of State to be intentionally providing material support or safe haven to an alien described in clause (i), or

(III) is a spouse (other than the spouse who is the parent of the abducted child), child (other than the abducted child), parent, sibling, or agent of an alien described in clause (i), if such person has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion, is inadmissible until the child described in clause (i) is surrendered to the person granted custody by the order described in that clause, and such person and child are permitted to return to the United States or such person's place of residence.

(iii) EXCEPTIONS. -- Clauses (i) and (ii) shall not apply--

(I) to a government official of the United States who is acting within the scope of his or her official duties;

(II) to a government official of any foreign government if the official has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion; or

(III) so long as the child is located in a foreign state that is a party to the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.

(D) **17/** UNLAWFUL VOTERS-

(i) IN GENERAL- Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible.

(ii) EXCEPTION- In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such violation.

(E) Former citizens who renounced citizenship to avoid taxation.-Any alien who is a former citizen of the United States who officially renounces United States citizenship and who is determined by the Attorney General to have renounced United States citizenship for the purpose of avoiding taxation by the United States is excludable. [18/](#)

INA: ACT 264 - FORMS AND PROCEDURE

Sec. 264. [8 U.S.C. 1304]

(a) The Attorney General and the Secretary of State jointly are authorized and directed to prepare forms for the registration of aliens under section 261 of this title, and the Attorney General is authorized and directed to prepare forms for the registration and fingerprinting of aliens under section 262 of this title. Such forms shall contain inquiries with respect to (1) the date and place of entry of the alien into the United States; (2) activities in which he has been and intends to be engaged; (3) the length of time he expects to remain in the United States; (4) the police and criminal record, if any, of such alien; and (5) such additional matters as may be prescribed.

(b) All registration and fingerprint records made under the provisions of this title shall be confidential, and shall be made available only (1) pursuant to section 287(f)(2), and (2) to such persons or agencies as may be designated by the Attorney General.

(c) Every person required to apply for the registration of himself or another under this title shall submit under oath the information required for such registration. Any person authorized under regulations issued by the Attorney General to register aliens under this title shall be authorized to administer oaths for such purpose.

(d) Every alien in the United States who has been registered and fingerprinted under the provisions of the Alien Registration Act, 1940, or under the provisions of this Act shall be issued a certificate of alien registration or an alien registration receipt card in such form and manner and at such time as shall be prescribed under regulations issued by the Attorney General.

(e) Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d). Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed \$100 or be imprisoned not more than thirty days, or both.

(f) [1/](#) Notwithstanding any other provision of law, the Attorney General is authorized to require any alien to provide the alien's social security account number for purposes of inclusion in any record of the alien maintained by the Attorney General or the Service.

FOOTNOTES FOR SECTION 264

INA: ACT 264 FN 1

FN 1 Amended by [§ 415 of IIRIRA](#).

Code of Federal Regulations

Title 8 - Aliens and Nationality

Volume: 1 Date: 2012-01-01 Original Date: 2012-01-01 Title: Section 212.2 - Consent to reapply for admission after deportation, removal or departure at Government expense. Context: Title 8 - Aliens and Nationality. CHAPTER I - DEPARTMENT OF HOMELAND SECURITY. SUBCHAPTER B - IMMIGRATION REGULATIONS. PART 212 - DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE.

§ 212.2 Consent to reapply for admission after deportation, removal or departure at Government expense. (a) *Evidence*. Any alien who has been deported or removed from the United States is inadmissible to the United States unless the alien has remained outside of the United States for five consecutive years since the date of deportation or removal. If the alien has been convicted of an aggravated felony, he or she must remain outside of the United States for twenty consecutive years from the deportation date before he or she is eligible to re-enter the United States. Any alien who has been deported or removed from the United States and is applying for a visa, admission to the United States, or adjustment of status, must present proof that he or she has remained outside of the United States for the time period required for re-entry after deportation or removal. The examining consular or immigration officer must be satisfied that since the alien's deportation or removal, the alien has remained outside the United States for more than five consecutive years, or twenty consecutive years in the case of an alien convicted of an aggravated felony as defined in section 101(a)(43) of the Act. Any alien who does not satisfactorily present proof of absence from the United States for more than five consecutive years, or twenty consecutive years in the case of an alien convicted of an aggravated felony, to the consular or immigration officer, and any alien who is seeking to enter the United States prior to the completion of the requisite five- or twenty-year absence, must apply for permission to reapply for admission to the United States as provided under this part. A temporary stay in the United States under section 212(d)(3) of the Act does not interrupt the five or twenty consecutive year absence requirement.

(b) *Alien applying to consular officer for nonimmigrant visa or nonresident alien border crossing card*. (1) An alien who is applying to a consular officer for a nonimmigrant visa or a nonresident alien border crossing card, must request permission to reapply for admission to the United States if five years, or twenty years if the alien's deportation was based upon a conviction for an aggravated felony, have not elapsed since the date of deportation or removal. This permission shall be requested in the manner prescribed through the consular officer, and may be granted only in accordance with sections 212(a)(9)(A) and 212(d)(3)(A) of the Act and 8 CFR 212.4. However, the alien may apply for such permission by submitting an application on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1), in accordance with the form instructions, to the consular officer if that officer is willing to accept the application, and recommends to the district director that the alien be permitted to apply. (2) The consular officer shall forward the application to the district director with jurisdiction over the place where the deportation or removal proceedings were held. (c) *Special provisions for an applicant for nonimmigrant visa under section 101(a)(15)(K) of the Act*. (1) An applicant for a nonimmigrant visa under section 101(a)(15)(K) must: (i) Be the beneficiary of a valid visa petition approved by the Service; and (ii) File the application on the form designated by USCIS with the fee prescribed

in 8 CFR 103.7(b)(1), in accordance with the form instructions with the consular officer for permission to reapply for admission to the United States after deportation or removal. (2) The consular officer must forward the application to the designated USCIS office. If the alien is ineligible on grounds which, upon the applicant's marriage to the United States citizen petitioner, may be waived under section 212 (g), (h), or (i) of the Act, the consular officer must also forward a recommendation as to whether the waiver should be granted. (d) *Applicant for immigrant visa.* Except as provided in paragraph (g)(2) of this section, an applicant for an immigrant visa who is not physically present in the United States and who requires permission to reapply must file the waiver request on the form designated by USCIS. Except as provided in paragraph (g)(2) of this section, if the applicant also requires a waiver under section 212(g), (h), or (i) of the Act, he or she must file both waiver requests simultaneously on the forms designated by USCIS with the fees prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions. (e) *Applicant for adjustment of status.* An applicant for adjustment of status under section 245 of the Act and part 245 of this chapter must request permission to reapply for entry in conjunction with his or her application for adjustment of status. This request is made by filing the application on the form designated by USCIS. If the application under section 245 of the Act has been initiated, renewed, or is pending in a proceeding before an immigration judge, the district director must refer the application to the immigration judge for adjudication. (f) *Applicant for admission at port of entry.* An alien may request permission at a port of entry to reapply for admission to the United States within 5 years of the deportation or removal, or 20 years in the case of an alien deported, or removed 2 or more times, or at any time after deportation or removal in the case of an alien convicted of an aggravated felony. The alien must file the , where required, with the DHS officer having jurisdiction over the port of entry.

(g) *Other applicants.* (1) Any applicant for permission to reapply for admission under circumstances other than those described in paragraphs (b) through (f) of this section must apply on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions. (2) An alien who is an applicant for parole authorization under 8 CFR 245.15(t)(2) or 8 CFR 245.13(k)(2) and requires consent to reapply for admission after deportation, removal, or departure at Government expense, or a waiver under section 212(g), 212(h), or 212(i) of the Act, must file the requisite waiver form concurrently with the parole request. (h) *Decision.* An applicant who has submitted a request for consent to reapply for admission after deportation or removal must be notified of the decision. If the application is denied, the applicant must be notified of the reasons for the denial and of his or her right to appeal as provided in part 103 of this chapter. Except in the case of an applicant seeking to be granted advance permission to reapply for admission prior to his or her departure from the United States, the denial of the application shall be without prejudice to the renewal of the application in the course of proceedings before an immigration judge under section 242 of the Act and this chapter. (i) *Retroactive approval.* (1) If the alien filed the application when seeking admission at a port of entry, the approval of the application shall be retroactive to either: (i) The date on which the alien embarked or reembarked at a place outside the United States; or (ii) The date on which the alien attempted to be admitted from foreign contiguous territory. (2) If the alien filed Form I-212 in conjunction with an application for adjustment of status under section 245 of the Act, the approval of the application shall be retroactive to the date on which the alien embarked or reembarked at a place outside the United States. (j) *Advance approval.* An alien whose departure will execute an order of deportation shall receive a conditional approval depending upon his or her satisfactory departure. However, the grant of permission to reapply does not waive inadmissibility under section 212(a)(9)(A) of the Act resulting from exclusion, deportation, or removal proceedings which are instituted subsequent to the date permission to reapply is granted.

[56 FR 23212, May 21, 1991, as amended at 64 FR 25766, May 12, 1999; 65 FR 15854, Mar. 24, 2000; 74 FR 26937, June 5, 2009; 76 FR 53787, Aug. 29, 2011]

8 CFR 103.2(b)(9)

(9) *Request for appearance.* An applicant, a petitioner, a sponsor, a beneficiary, or other individual residing in the United States at the time of filing an benefit request may be required to appear for fingerprinting or for an interview. A petitioner shall also be notified when a fingerprinting notice or an interview notice is mailed or issued to a beneficiary, sponsor, or other individual. The applicant, petitioner, sponsor, beneficiary, or other individual may appear as requested by USCIS, or prior to the dates and times for fingerprinting or of the date and time of interview:

- (i) The individual to be fingerprinted or interviewed may, for good cause, request that the fingerprinting or interview be rescheduled; or
- (ii) The applicant or petitioner may withdraw the benefit request.

Title 8: Aliens and Nationality

PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

Subpart B—Biometric Requirements

§103.16 Collection, use and storage of biometric information.

(a) Use of biometric information. Any individual may be required to submit biometric information if the regulations or form instructions require such information or if requested in accordance with 8 CFR 103.2(b)(9). DHS may collect and store for present or future use, by electronic or other means, the biometric information submitted by an individual. DHS may use this biometric information to conduct background and security checks, adjudicate immigration and naturalization benefits, and perform other functions related to administering and enforcing the immigration and naturalization laws.

(b) Individuals residing abroad. An individual who is required to provide biometric information and who is residing outside of the United States must report to a DHS-designated location to have his or her biometric information collected, whether by electronic or non-electronic means.

[76 FR 53782, Aug. 29, 2011]