

The Whole ACT Excerpt



SEC. 101(a) [8 USC § 1101(a)]

(a) As used in this Act—

.....

(13)⁴ (A) The terms “admission” and “admitted” mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

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

[**Annotation:** Section 212(d)(5) provides that the Attorney General may parole an alien temporarily on a case-by-case basis for urgent humanitarian reasons or significant public benefit until the purpose of such parole is served.]

(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien<197>

(i) has abandoned or relinquished that status,

(ii) has been absent from the United States for a continuous period in excess of 180 days,

(iii) has engaged in illegal activity after having departed the United States,

(iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this Act and extradition proceedings,

(v) has committed an offense identified in section 212(a)(2), unless since such offense the alien has been granted relief under section 212(h) or 240A(a), or

(vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

[**Annotations:** Section 212(a)(2) refers to certain criminal grounds of inadmissibility and includes the following: (A) conviction of certain crimes involving moral turpitude and controlled substance; (B) multiple criminal convictions; (C) controlled substance traffickers; (D) prostitution and commercialized vice; (E) aliens involved in serious criminal activity and asserted immunity from prosecution; (G) foreign government officials engaged in serious violations of religious freedom; (H) significant traffickers in persons; and (I) Money laundering.

Section 212(h) provides for a waiver of certain criminal grounds of inadmissibility under certain terms, conditions, and procedures.

Section 240A(a) provides for cancellation of removal for certain permanent residents.]

⁴ Section 101(a)(13) was amended, to completely modify the concept of “entry,” by § 301(a) of IIRIRA, Pub.L. 104-208, 110 Stat. 3009, Sept. 30, 1996, effective April 1, 1997, pursuant to § 309 of such Act.

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

[**Editorial Note:** Section 306 of the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub.L. 107-173, 116 Stat. 543, at 552, May 14, 2002, provides that no nonimmigrant visa under INA § 101(a)(15) shall be issued to any alien from a country that is a state sponsor of international terrorism unless the Secretary of State determines, in consultation with the Attorney General and the heads of other appropriate U.S. agencies, that such alien does not pose a threat to the safety or national security of the United States. The term “state sponsor of international terrorism” means any country the government of which has been determined by the Secretary of State to have repeatedly provided support for acts of international terrorism.]

[**Editorial Note:** Section 606 of the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub.L. 107-173, 116 Stat. 543, at 552, May 14, 2002, provides that the Department of State shall retain, for a period of seven years from the date of application, every application for a nonimmigrant visa in a form that will be admissible in the courts of the United States or in administrative proceedings, including removal proceedings under such Act, without regard to whether the application was approved or denied.]

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

x x x x x

SEC. 106. [8 USC § 1105a]

[Repealed].¹¹⁸

¹¹⁸ Section 106 was repealed by § 306(b) of IIRIRA, Pub.L. 104-208, 110 Stat. 3009, Sept. 30, 1996. The effective date provision in § 306(c) provides that such repeal “shall not be considered to invalidate or to require the reconsideration of any judgment or order entered under section 106.” Subject to this caveat, however, such repeal “shall apply as provided under section 309” of such Act, which contains provisions for effective dates and transition. Section 309, as amended, is reproduced in Appendix XX. For reference in the future, § 106 is reproduced in Appendix XXIV, in its amended form before its repeal.

SEC. 201(a) [8 USC § 1151(a)]

(a) *In General.* –Exclusive of aliens described in subsection (b), aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to–

(1) family-sponsored immigrants described in section 203(a) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(a)) in a number not to exceed in any fiscal year the number specified in subsection (c) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year;

[**Annotation:** Section 203(a) provides for preference allocation of visas for family-sponsored immigrants: unmarried sons and daughters of US citizens; spouses and lawful permanent residents of US; married sons and daughters of US citizens; and brothers and sisters of US citizens.]

(2) employment-based immigrants described in section 203(b) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b)), in a number not to exceed in any fiscal year the number specified in subsection (d) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year; and

[**Annotation:** Section 203(b) provides for preference allocation of visas for employment-based immigrants: priority workers; members of the professions holding advanced degrees or aliens of exceptional ability; skilled workers and professionals; certain special immigrants; and employment creation aliens or entrepreneurs.]

(3) for fiscal years beginning with fiscal year 1995, diversity immigrants described in section 203(c) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(c)) in a number not to exceed in any fiscal year the number specified in subsection (e) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year.

[**Annotation:** Section 203(c) provides for allocation of visas for, and other provisions relating to, diversity immigrants.]

SEC. 201(b) [8 USC § 1151(b)]

(b) *Aliens Not Subject to Direct Numerical Limitations.*–Aliens described in this subsection who are not subject to the worldwide levels or numerical limitations of subsection (a), are as follows:

(1)(A) Special immigrants described in subparagraph (A) or (B) of section 101(a)(27).

(B) Aliens who are admitted under section 207 or whose status is adjusted under section 209.

(C) Aliens whose status is adjusted to permanent residence under section 210 or 245A.

(D) Aliens whose removal is canceled under section 240A(a).

(E) Aliens provided permanent resident status under section 249.

[**Annotations:** Section 101(a)(27)(A) and (B) define two special immigrant classes: (A) lawful permanent residents returning from a short visit abroad; and (B) former U.S. citizens seeking to reacquire citizenship. Section 207 pertains to admission of refugees; and § 209 provides for their adjustment of status. Section 210 provides for adjustment of status of special agriculture workers; and § 245A provides for lawful resident status for certain qualified aliens who entered the U.S. prior to January 1, 1982. Section 240A(a) provides for cancellation of removal and adjustment of status for certain qualified aliens who are inadmissible or deportable. Section 249 provides for the creation of a record of admission for permanent residence for certain qualified aliens who entered the U.S. prior to July 1, 1924 or January 1, 1972.]

(2)(A)(i)¹²⁰ *Immediate relatives.* For purposes of this subsection, the term “immediate relatives” means the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age. In the case of an alien who was the spouse of a citizen of the United States for at least 2 years at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under section 204(a)(1)(A)(ii) within 2 years$\\$Pursuant to § 101(c) of the Immigration Act of 1990, as added by § 302(a)(2) of Pub.L. 102-232, 105 Stat. 1733, Dec. 12, 1991, “notwithstanding the deadline specified in [this] sentence the alien spouse may file the classification petition . . . within 2 years after the date of the enactment of this Act,” i.e., within 2 years from Nov. 29, 1990.> after such date and only until the date the spouse remarries. For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) of this Act remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.$\\$To expand the definition of “immediate relatives,” this last sentence was added to 185 201(b)(2)(A)(i), by § 1507(a)(3) of the Victims of Trafficking and Violence Protection Act of 2000, Pub.L. 106-386; 114 Stat. 1464, Oct. 28, 2000.>

[**Annotations:** Section 204(a)(1)(A)(ii) provides for an alien spouse of a deceased U.S. citizen to file an immediate relative visa petition on his/her own behalf and for children within a specified time limit. Section 204(a)(1)(A)(iii) provides for an alien spouse to file an immediate relative visa petition for himself/herself and children where the alien entered in good faith but unwittingly into a bigamous marriage with a U.S. citizen, who battered or subjected the alien to extreme cruelty. Section 204(a)(1)(A)(iv) provides for an alien child to file for an immediate relative petition where he/she resides or has resided with a citizen parent and who battered or subjected the child to extreme cruelty.]

¹²⁰ Section 201(b)(2)(A)(i) was amended by § 219(b)(1) of Pub.L. 103-416, 108 Stat 4305, Oct. 25, 1994, effective, pursuant to § 219(dd), as if included in the Immigration Act of 1990, Pub.L. 101-649, 104 Stat. 4978, Nov. 29, 1990.

(ii) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative.

(B) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.

[Editorial Note: Section 1703(a) of National Defense Authorization Act for Fiscal Year 2004, Pub.L. 108-136, 117 Stat. 1392, Nov. 24, 2003, effective, pursuant to § 1705(a), “as if enacted on September 11, 2001”, extends posthumous immigration benefits to surviving spouses, children, and parents of U.S. citizens and/or residents who served honorably in an active duty status in the military, air, or naval forces of the United States and died as a result of injury or disease incurred in or aggravated by combat, by treating them as “Immediate Relatives”. *See* APPENDIX XXXXIX (B).]