

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 121(b)(3) of Pub. L. 101-649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101-649, set out as a note under section 1101 of this title.

Amendment by section 543(b)(2) of Pub. L. 101-649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101-649, set out as a note under section 1221 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 section 1551 of this title.

§ 1326. Reentry of removed aliens**(a) In general**

Subject to subsection (b), any alien who—

(1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter

(2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act,

shall be fined under title 18, or imprisoned not more than 2 years, or both.

(b) Criminal penalties for reentry of certain removed aliens

Notwithstanding subsection (a), in the case of any alien described in such subsection—

(1) whose removal was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under title 18, imprisoned not more than 10 years, or both;

(2) whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both;

(3) who has been excluded from the United States pursuant to section 1225(c) of this title because the alien was excludable under section 1182(a)(3)(B) of this title or who has been removed from the United States pursuant to the provisions of subchapter V, and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under title 18 and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence.¹ or

(4) who was removed from the United States pursuant to section 1231(a)(4)(B) of this title who thereafter, without the permission of the

Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under title 18, imprisoned for not more than 10 years, or both.

For the purposes of this subsection, the term "removal" includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law.

(c) Reentry of alien deported prior to completion of term of imprisonment

Any alien deported pursuant to section 1252(h)(2)² of this title who enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.

(d) Limitation on collateral attack on underlying deportation order

In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that—

(1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;

(2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

(3) the entry of the order was fundamentally unfair.

(June 27, 1952, ch. 477, title II, ch. 8, § 276, 66 Stat. 229; Pub. L. 100-690, title VII, § 7345(a), Nov. 18, 1988, 102 Stat. 4471; Pub. L. 101-649, title V, § 543(b)(3), Nov. 29, 1990, 104 Stat. 5059; Pub. L. 103-322, title XIII, § 130001(b), Sept. 13, 1994, 108 Stat. 2023; Pub. L. 104-132, title IV, §§ 401(c), 438(b), 441(a), Apr. 24, 1996, 110 Stat. 1267, 1276, 1279; Pub. L. 104-208, div. C, title III, §§ 305(b), 308(d)(4)(J), (e)(1)(K), (14)(A), 324(a), (b), Sept. 30, 1996, 110 Stat. 3009-606, 3009-618 to 3009-620, 3009-629.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), was in the original a reference to this Act, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Section 1252 of this title, referred to in subsec. (c), was amended generally by Pub. L. 104-208, div. C, title III, § 306(a)(2), Sept. 30, 1996, 110 Stat. 3009-607, and, as so amended, does not contain a subsec. (h). For provisions similar to those formerly contained in section 1252(h)(2) of this title, see section 1231(a)(4) of this title.

¹ So in original. The period probably should be a semicolon.

² See References in Text note below.

AMENDMENTS

1996—Pub. L. 104-208, § 308(e)(14)(A), amended section catchline.

Subsec. (a)(1). Pub. L. 104-208, § 308(d)(4)(J)(i), substituted “denied admission, excluded, deported, or removed” for “arrested and deported, has been excluded and deported,” and “exclusion, deportation, or removal” for “exclusion or deportation”.

Pub. L. 104-208, § 324(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “has been arrested and deported or excluded and deported, and thereafter”.

Subsec. (a)(2)(B). Pub. L. 104-208, § 308(d)(4)(J)(ii), substituted “denied admission and removed” for “excluded and deported”.

Subsec. (b). Pub. L. 104-208, § 324(b), inserted “(or not during)” after “during” in concluding provisions.

Pub. L. 104-208, § 308(e)(1)(K), substituted “removal” for “deportation” wherever appearing in pars. (1) and (2) and in concluding provisions.

Subsec. (b)(2). Pub. L. 104-208, § 305(b)(1), struck out “or” at end.

Subsec. (b)(3). Pub. L. 104-208, § 305(b)(2), inserted “or” at end.

Pub. L. 104-132, § 401(c), added par. (3).

Subsec. (b)(4). Pub. L. 104-208, § 305(b)(3), added par. (4).

Subsec. (c). Pub. L. 104-132, § 438(b), added subsec. (c).

Subsec. (d). Pub. L. 104-132, § 441(a), added subsec. (d).

1994—Subsec. (b). Pub. L. 103-322, in par. (1), inserted “three or more misdemeanors involving drugs, crimes against the person, or both, or” after “commission of” and substituted “10” for “5”, in par. (2), substituted “20” for “15”, and added concluding sentence.

1990—Subsec. (a). Pub. L. 101-649 substituted “shall be fined under title 18, or imprisoned not more than 2 years” for “shall be guilty of a felony, and upon conviction thereof, be punished by imprisonment of not more than two years, or by a fine of not more than \$1,000”.

1988—Pub. L. 100-690 designated existing provisions as subsec. (a), substituted “Subject to subsection (b), any alien” for “Any alien”, and added subsec. (b).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by sections 305(b) and 308(d)(4)(J), (e)(1)(K), (14)(A) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

Pub. L. 104-208, div. C, title III, § 324(c), Sept. 30, 1996, 110 Stat. 3009-629, provided that: “The amendment made by subsection (a) [amending this section] shall apply to departures that occurred before, on, or after the date of the enactment of this Act [Sept. 30, 1996], but only with respect to entries (and attempted entries) occurring on or after such date.”

Pub. L. 104-132, title IV, § 401(f), Apr. 24, 1996, 110 Stat. 1268, provided that: “The amendments made by this section [enacting sections 1531 to 1537 of this title and amending this section and section 1105a of this title] shall take effect on the date of enactment of this Act [Apr. 24, 1996] and shall apply to all aliens without regard to the date of entry or attempted entry into the United States.”

Pub. L. 104-132, title IV, § 441(b), Apr. 24, 1996, 110 Stat. 1279, provided that: “The amendment made by subsection (a) [amending this section] shall apply to criminal proceedings initiated after the date of enactment of this Act [Apr. 24, 1996].”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101-649, set out as a note under section 1221 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-690, title VII, § 7345(b), Nov. 18, 1988, 102 Stat. 4471, provided that: “The amendments made by

subsection (a) [amending this section] shall apply to any alien who enters, attempts to enter, or is found in, the United States on or after the date of the enactment of this Act [Nov. 18, 1988].”

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 section 1551 of this title.

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out 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.

§ 1327. Aiding or assisting certain aliens to enter

Any person who knowingly aids or assists any alien inadmissible under section 1182(a)(2) (insofar as an alien inadmissible under such section has been convicted of an aggravated felony) or 1182(a)(3) (other than subparagraph (E) thereof) of this title to enter the United States, or who connives or conspires with any person or persons to allow, procure, or permit any such alien to enter the United States, shall be fined under title 18, or imprisoned not more than 10 years, or both.

(June 27, 1952, ch. 477, title II, ch. 8, § 277, 66 Stat. 229; Pub. L. 100-690, title VII, § 7346(a), (c)(1), Nov. 18, 1988, 102 Stat. 4471; Pub. L. 101-649, title V, § 543(b)(4), title VI, § 603(a)(16), Nov. 29, 1990, 104 Stat. 5059, 5084; Pub. L. 104-208, div. C, title III, § 308(d)(3)(A), Sept. 30, 1996, 110 Stat. 3009-617.)

Editorial Notes

AMENDMENTS

1996—Pub. L. 104-208 substituted “inadmissible” for “excludable” in two places.

1990—Pub. L. 101-649, § 603(a)(16), substituted “1182(a)(2) (insofar as an alien excludable under such section has been convicted of an aggravated felony) or 1182(a)(3) (other than subparagraph (E) thereof)” for “1182(a)(9), (10), (23) (insofar as an alien excludable under any such paragraph has in addition been convicted of an aggravated felony), (27), (28), or (29)”.

Pub. L. 101-649, § 543(b)(4), substituted “shall be fined under title 18, or imprisoned not more than 10 years” for “shall be guilty of a felony, and upon conviction thereof shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than five years”.

1988—Pub. L. 100-690 substituted “certain aliens” for “subversive alien” in section catchline and inserted “(9), (10), (23) (insofar as an alien excludable under any such paragraph has in addition been convicted of an aggravated felony),” after “1182(a)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 543(b)(4) of Pub. L. 101-649 applicable to actions taken after Nov. 29, 1990, see section