

Chapter 2 - Entry to the USA

Introduction

To most of us, the common usage of the word "entry" would mean physical presence. Under the Immigration Act however, entry is a term of art (a legal term). Establishing entry is a prerequisite to certain forms of immigration relief. It is possible to be physically present in the United States and still not have "entered" as defined under Immigration Law. Conversely, it is also possible to have entered the United States without inspection and admission by an Immigration Officer and still have "entered" for the purposes of the Immigration Law.

Let's look at an example of an excludable alien versus a deportable alien to get ourselves started: Alien X enters the United States via the Canadian border. He is almost immediately picked up by an agent of the border patrol. Alien X has no passport and no valid visa for entry to the United States. He is therefore excludable. A list of exclusions is set forth in the INA at Section 212. An alien who fits one or more of those grounds of exclusion becomes inadmissible to the United States.

In contrast, alien Y enters the United States as an F-1 student. However, instead of proceeding to graduate school, he finds an employer who is willing to hire him. Alien Y decides his future will be better served by increasing his wealth rather than by increasing his knowledge. Accordingly, he goes to work. Alien Y is reported to the INS by a disgruntled co-employee. The INS places alien Y in deportation because he has violated the terms of his status, ie working without valid INS authorization. A list of deportable offenses or immigration violations that would result in deportation are listed in INA Section 237.

What is the difference in these two cases? In the first case, alien X had not effected entry. In the second case, alien Y, by virtue of entering the United States as an F-1 student has effected entry. Therefore, alien X was placed in exclusion proceedings while alien Y was placed in deportation proceedings. However, unless the alien is apprehended at the border or shortly thereafter, for practical purposes, all aliens who have violated the immigration law will be placed in "removal" proceedings (under IIRIRA 1996) and will be offered the same procedures as a "removable" alien in immigration court. The procedures may be similar, but the burden of proof and the standard remain significantly different.

The significant difference between being charged with removal on the deportation grounds is that the government bears the burden of proof, and must show by "clear and convincing evidence" that it has met its burden. In cases where the alien is charged with removal under one of the basis for inadmissibility (i.e., exclusion), it is the alien's burden to prove "beyond a reasonable doubt" that he or she is not inadmissible to the United States. Of course, the alien's burden for proving admissibility is far higher than the government's burden for proving deportability.

Use of resources is especially pronounced in cases involving criminal aliens. Under the current policy, most jurisdictions will make a criminal alien serve his or her jail sentence in the United States and upon the conclusion of that sentence the alien is placed in deportation. Therefore, the State or the Federal Government faces the burden of incarcerating the alien and upon conclusion of the sentence, the Federal Government then bears the burden of sometimes detaining the alien while deportation proceedings are held. We will consider criminal aliens in another chapter.

In an attempt to avoid the substantial additional burden and expense incurred in placing aliens in deportation proceedings, the United States Congress amended the Immigration & Nationality Act to define admission as:

101(a)(13)(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.

Under the new law, any person who has not been inspected and admitted by an Immigration Officer has not affected entry. Therefore, whether or not such persons evaded immigration inspection and escaped into the interior of the United States is now a moot issue. If such a person is apprehended, he or she has not "entered" the United States and is therefore excludable. In fact, the amended grounds of deportation include excludable grounds as well. Thus, the government can charge an alien with excludability or deportability at its discretion in removal proceedings.

Obtaining a Non-immigrant visa

A non-immigrant visa is permission by the United States government, given to a citizen of a foreign country to enter the United States. It is generally issued by a United States consulate (USC) in a foreign country – again generally the country of the applicant's nationality or citizenship.

A non-immigrant visa is exactly what its name implies. It is a temporary permission to a person to enter the United States for a certain purpose. For example, "B" visas are issued to business visitors and tourists. "F" visas are issued to students, "H" visas are issued to temporary workers, "P" visas are issued to performers and "J" visas are issued to exchange visitors. In addition, each visa type may have one or more sub-types.

Immigrant visas are visas which enable a person to live and work permanently in the United States. An immigrant visa is typically called a "green card."

There are hundreds of United States consulates around the world and, many countries have more than one consulate. The United States Department of State (DOS) issues non-immigrant visas through its officers at the consulates.

Applying for a non-immigrant visa:

In order to apply for a non-immigrant visa to the United States, you must have a valid passport. In addition, most consulates will require that you fill out Form OF-156 or a similar form, which is obtained at the consulate, usually on the morning that you appear at the consulate to apply for a visa. An applicant for a non-immigrant visa fills out Form OF-156 and submits it at the consulate. The applicant will usually be interviewed by a consular officer, either the same day or within the next few days, on his or her visa application.

What is asked at the visa interview?

Every applicant for a visa to the United States is presumed to be an "immigrant." The term "immigrant" means someone who intends to live permanently in the United States. It is the applicant's burden to prove to the interviewing officer that he or she is not an intending immigrant, but rather qualifies as a non-immigrant. Only if the officer is satisfied that the applicant qualifies as a non-immigrant, will the officer approve the non-immigrant visa.

Proving Non-Immigrant Intent:

In order to prove that you are not an immigrant, you must establish that you have all the typical criteria that the DOS evaluates in determining whether you are an immigrant or a non-immigrant. These criteria include the following:

- Your ties to your home country – do you have family and/or business connections and relationships which will act as a powerful "magnet" to bring you back to your home country at the conclusion of your stay in the USA?
- Ties to the USA – do you have parents or an adult son or daughter who are US citizens? Do you have a boyfriend or girlfriend in the United States? Immediate family relationships or romantic connections with the United States may cause the consular officer to believe that a non-immigrant visa is simply a ruse for the applicant to enter the United States, thereafter apply for an immigrant visa, and thereby circumvent lengthy immigrant visa backlogs.
- Ability to support oneself in the United States: if a visa applicant cannot show sufficient funds to support himself in the United States during the course of a visit, the visa application is likely to be rejected. This is because the consular officer will likely believe that the non-immigrant may have to turn to unauthorized employment or is likely to become a "public charge" (a person needing government assistance for his or her expenses) and should therefore be denied a non-immigrant visa.
- Prior visit to the United States – a visa applicant who has previously visited the United States and has followed all the rules and regulations of the Department of State and the Immigration Service has a far better chance of obtaining a non-immigrant visa than an applicant who has either never visited the United States or has visited the United States and has violated the law in the United States. The law can be violated by something as simple as remaining in the United States for a period longer than was authorized by the INS or the DOS. Indeed, violation of a visa is grounds for the revocation of that visa (Immigration and Nationality Act, Section 222(g)).

Other Grounds for Denial of a Non-Immigrant Visa:

As already referenced above, one of the grounds for rejection of a non-immigrant visa application is the consular officer's determination that the applicant will become a "public charge." Other grounds include lack of family ties, financial ability to support oneself while in the USA, or close family or a romantic relationship in the United States.

Other grounds for a denial of a non-immigrant visa include overstays while previously in the United States, employment without legal work authorization, criminal history, communicable or infectious diseases, and visa fraud. This is not an exhaustive list; these are only a few of the examples of the grounds for denial of a non-immigrant visa application. A detailed list of the grounds for exclusion/denial of a non-immigrant visa application is under §212 of the Immigration and Naturalization Act (INA).

The Secrets of a Successful Visa Application:

- Be well prepared – have clear, legible photocopies of all documents and originals wherever possible.
- Have detailed lists of family relationships, ties to your home country, and lists of assets.
- Have a well-defined plan for what you wish to do when you visit the United States. If you are going to enter as a student, be specific about your goals. If you are going to visit the United States for a business, have specific business plans, meetings or visits to trade shows lined up. If you are simply entering the United States to visit a friend or relative, be specific about where you plan to stay, what you plan to do, sights you intend to see.
- Have adequate proof of your financial ability to support yourself while in the USA. This might include a commitment from your United States citizen or permanent resident friend or relative who agrees to be your host for the duration of your trip.
- Do not lie – consular officers are very well experienced and well trained. It will obviously hurt an applicant enormously to be found to have lied in the event of a consular interview. Also, be aware that even though you may obtain a non-immigrant visa and enter the United States, subsequent visa proceedings may be difficult or impossible because of statements you have made during your initial visa interview overseas.

Reciprocity in Visa Issuance:

The DOS issues visas for different duration and for different numbers of "entries" to the USA. For example, an H-1b visa from India is valid for the duration of the H-1b classification and for multiple entries to the USA. An H-1b visa for a Chinese professional is valid for only 3 months and up to two entries to the USA during that 3 month period. The "I-94" (white/green card) issued on entry to the USA will state the duration of a non-immigrant's authorized stay in the USA, which may or may not be the same duration as authorized by the visa. The date on the I-94 is the controlling date in all non-immigrant visa cases.

Procedures on Entering the United States:

Even though you have been issued a visa at an overseas consulate, you are subject to "secondary inspection" at the time you enter the USA. The INS inspector can – and will – order you to leave the United States if additional facts come to light which indicate that you should not have been issued a non-immigrant visa in the first place. If you are eligible for entry to the USA, the inspecting officer will "date-stamp" and validate your Form I-94, as described above.

Every year millions of foreign visitors enter the United States for a variety of reasons. The key to a successful non-immigrant visa application is to be prepared, be honest and know exactly what you want.

A note about Visa Issuance

Restrictions on visa issuance - new rules effective April 1st, 2002

The Department of State, in response to the 9-11 attacks, promulgated an interim rule which became effective on April 1, 2002 and has since become final. A close examination of the rule is very important in order to protect individuals who apply for a visa to reenter the United States.

In brief, keeping with its desire to ensure that aliens remain in valid status at all times within the U.S., the Department of State changed its regulations on automatic visa revalidation. In the past, the Department of State approved visas (or at least reentry) to the United States for individuals in valid status who had departed the United States to contiguous territories (Mexico, Canada, and certain Caribbean islands). The Department of State now takes the position that an alien with an expired visa will not be allowed to re-enter the United States from a contiguous territory, but must apply for a new visa and wait in that third country until the visa is issued in order to re-enter the USA. If for some reason the visa is not issued, then the alien would have to return to his or her home country and reapply for a visa there.

Likewise, the Department of State used to issue or revalidate visas while the alien was in the USA, and so an alien in valid status did not have to leave the US to obtain a new visa. This policy also changed and the Department of State will not reissue visas in the USA. All visa issuance functions are conducted solely at US consulates in other countries.

To understand this article and the points discussed below, it is necessary to understand the distinction between a "visa" and an "arrival-departure document", or "Form I-94." The visa is a document which includes a photograph of the passport holder. The visa is issued by the U.S. Department of State through U.S. consulates overseas, and is attached to a page in the foreign national's passport. The visa is issued for a specific non-immigrant visa classification and is valid only for a specified period of time. It permits entry to the United States for a specified number of occasions (single entry, a defined number of entries, or multiple entries) over a specific period of time.

By contrast, the Form I-94, arrival-departure document, is issued by the Immigration and Naturalization Service. The I-94 is a white card and is stamped at the port of entry by an INS or US customs officer. The I-94 indicates the type of visa classification held by the foreign national and the duration that the INS authorizes the foreign national to remain in the United States. The duration of stay on an I-94 may be substantially different from the dates of validity of the visa. Even if the visa has expired, the I-94 may still be valid. For example, a student visa may be good for only a single entry over a two-month window. If the alien enters during that two-month window, he or she may be issued an I-94 which is valid for "D/S" or "Duration of Status", which will permit the foreign national to remain in the United States as an F-1 student as long as he or she remains in status, i.e. attending a course of study as authorized by the appropriate U.S. educational institution. Therefore, it is important to remember this distinction between a "visa" and an "I-94".

Before April 1st, 2002, any non-immigrant alien in the United States who held a valid and unexpired I-94 could travel to a contiguous territory for up to 30 days, and return to the United States. Likewise, individuals who were "third country" nationals could apply for a visa in either Mexico or Canada, and even if the visa were refused, could return to the United States under their valid unexpired I-94, if they had one.

The interim rule effective April 1, 2002 changes this policy in two significant ways:

Individuals who have a valid unexpired I-94 but desire a new visa stamp in their passport (for example, a change of status from F-1 to H-1 which would require a new H-1 visa stamp in the passport) must now await for the approval of a new visa at a U.S. Consulate in Canada or Mexico (or, by analogy, other third country) before re-entering the United States. Simply having a valid unexpired I-94 will not be sufficient to allow individuals to re-enter the United States if their visa

application at the U.S. Consulate abroad has been rejected. In other words, if you apply for a visa in a contiguous country and are rejected you may not then re-enter the United States from such contiguous territory. You **MUST** go back to your home country and reapply. This is significantly different from the prior policy.

Likewise, individuals who are nationals of countries identified as “state sponsors of terrorism” (currently Iraq, Iran, Syria, Libya, Sudan, North Korea, and Cuba) cannot re-enter the United States from a contiguous territory even if they have a valid unexpired I-94. These individuals are therefore in essence restricted to travel within the United States only. If these individuals should leave the United States, and their visa has expired, they will need to have a visa issued at a U.S. Consulate overseas prior re-entering the USA.

The only issue which remains unchanged relates to the reentry of individuals who are not nationals of “state sponsors of terrorism” countries as listed above. If these individuals leave the United States for a contiguous territory, and they have a valid unexpired I-94 and a valid visa, they need no additional documentation to reenter the United States. Such individuals do not need to apply for a new visa at a US consulate. As stated above, however, if their visa has expired or they want a different visa status, they must apply for a new visa. If they do so and the new visa application is denied, they cannot re-enter the USA and must reapply in their home country.

This is an area of the law that is not likely to see significant change. For the latest status updates on this issue as well as an examination of Forms DS-156 and DS-157 which the Department of State requires for visa applications, please visit the US Department of State website. The DOS website should include new regulations, policy updates and the applicable forms.

A Note about the Visa Waiver Program

The citizens or nationals of many countries (at present, approximately 35 nations are on the list) are exempt from having to obtain B-1 or B-2 visas to visit the USA for business or pleasure. These countries are typically the developed nations, where statistics have shown that nationals of those countries leave the USA after the conclusion of their intended activities. The rate of “overstay” is typically very low for these countries, hence their inclusion in the Visa Waiver Program. Also, historically, citizens and “Landed Immigrants” of Canada do not need a visa to enter the US for pleasure. Note that the waiver applies only for what is typically the most common visa issued - B1/B2. Aliens intending to enter the USA for other purposes must still apply for a visa at a US Consulate overseas. Visa waiver entrants are not permitted to change status to another non-immigrant classification in the USA.

The Law

Grounds for Exclusion: INA Section 212(a) *et seq.*

212(a)(1) Health-related grounds

212(a)(2) Criminal and related grounds

212(a)(2)(A)(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--

212(a)(2)(A)(i)(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

212(a)(2)(A)(i)(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 admissible.

212(a)(2)(A)(ii) Exception.--Clause (i)(I) shall not apply to an alien who committed only one crime if--

212(a)(2)(A)(ii)(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

212(a)(2)(A)(ii)(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).

212(a)(2)(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 were 5 years or more is inadmissible.

212(a)(2)(c) Controlled substance traffickers.--Any alien who the consular officer or the Attorney General knows or has reason to believe

212(a)(2)(C)(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

212(a)(2)(C)(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.

212(a)(2)(D) Prostitution and commercialized vice.--Any alien who--

212(a)(2)(D)(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,

212(a)(2)(D)(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

212(a)(2)(D)(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution, is inadmissible.

212(a)(2)(E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution. (Author's note: example - diplomats)

212(a)(2)(F) Waiver authorized.--For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h)

212(a)(2)(G) Foreign government officials who have committed particularly severe violations of religious freedom.

212(a)(2)(H) Significant traffickers in persons.

212(a)(2)(I) Money laundering.

212(a)(3) Security and related grounds.

212(a)(3)(B) Terrorist activities...An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this Act, to be engaged in a terrorist activity.

212(a)(3)(D) Immigrant membership in totalitarian party.

212(a)(3)(E) Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing.

212(a)(3)(F) Association with terrorist organizations

212(a)(3)(G) Recruitment or use of child soldiers

212(a)(4) Public charge.

212(a)(4)(D) Certain employment-based immigrants.

212(a)(5) Labor certification and qualifications for certain immigrants.

212(a)(6) Illegal entrants and immigration violators

212(a)(6)(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

212(a)(6)(c) Misrepresentation.--

212(a)(6)(C)(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.

212(a)(6)(C)(ii) Falsely claiming citizenship.

212(a)(6)(C)(ii)(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.

212(a)(6)(C)(iii) Waiver authorized.--For provision authorizing waiver of clause (i), see subsection (i).

212(a)(6)(D) Stowaways.--Any alien who is a stowaway is inadmissible

212(a)(6)(E) Smugglers.

212(a)(6)(F) Subject of civil penalty.

212(a)(6)(F)(i) In general.--An alien who is the subject of a final order for violation of section 274C is inadmissible.

212(a)(6)(F)(ii) Waiver authorized.--For provision authorizing waiver of clause (i), see subsection (d)(12).

212(a)(6)(G) Student visa abusers

212(a)(7) Documentation requirements

212(a)(7)(A) Immigrants.

212(a)(7)(B) Nonimmigrants.

212(a)(7)(B)(ii) General waiver authorized.--For provision authorizing waiver of clause (i), see subsection (d)(4)

212(a)(8) Ineligible for citizenship.

212(a)(8)(A) In general.--Any immigrant who is permanently ineligible to citizenship is inadmissible.

212(a)(8)(B) Draft evaders.

212(a)(9) Aliens previously removed.

212(a)(10) Miscellaneous.--

212(a)(10)(A) Practicing polygamists.

212(a)(10)(B) Guardian required to accompany helpless alien.

212(a)(10)(c) International child abduction.

212(a)(10)(D) Unlawful voters.

212(a)(10)(E) Former citizens who renounced citizenship to avoid taxation is excludable.

In addition, the grounds for deportation (removal) somewhat echo the grounds for exclusion; this makes sense - after all, if the United States wishes to keep out those who have committed a crime

overseas or in the USA in the past or have some infirmity that makes them less than desirable to the United States, then these same crimes or infirmities would likewise also be grounds for removal of a person from the USA.

Grounds for Removal (formerly deportation)

Sec. 237 Deportable Aliens

237(a) Classes of deportable aliens.

237(a)(1) Inadmissible at time of entry or of adjustment of status or violates status.

237(a)(1)(A) Inadmissible aliens.

237(a)(1)(B) Present in violation of law

237(a)(1)(c) Violated nonimmigrant status or condition of entry.

237(a)(1)(D) Termination of conditional permanent residence.

237(a)(1)(E) Smuggling.

237(a)(1)(F) [repealed]

237(a)(1)(G) Marriage fraud.

237(a)(2) Criminal offenses.

237(a)(2)(A)(i) Crimes of moral turpitude. Any alien who--

237(a)(2)(A)(i)(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 245(j)) after the date of admission, and

237(a)(2)(A)(i)(II) is convicted of a crime for which a sentence of one year or longer may be imposed, is deportable.

237(a)(2)(A)(ii) Multiple criminal convictions.--Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.

237(a)(2)(A)(iii) Aggravated felony.

237(a)(2)(A)(iv) High Speed Flight.

237(a)(2)(A)(v) Failure to register as a sex offender.

237(a)(2)(A)(vi) Waiver authorized.--Clauses (i), (ii), (iii), and (iv) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President

of the United States or by the Governor of any of the several States.

237(a)(2)(B) Controlled substances.

237(a)(2)(B)(i) Conviction.--Any alien who at any time after admission has been convicted of 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)), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

237(a)(2)(B)(ii) Drug abusers and addicts.--Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable.

237(a)(2)(c) Certain firearm offenses.

237(a)(2)(D) Miscellaneous crimes.--Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or has been so convicted of a conspiracy or attempt to violate--

237(a)(2)(D)(i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of title 18, United States Code, for which a term of imprisonment of five or more years may be imposed;

237(a)(2)(D)(ii) any offense under section 871 or 960 of title 18, United States Code; (Author: § 871- threats against president; § 960 - offense against friendly nation)

237(a)(2)(D)(iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or

237(a)(2)(D)(iv) a violation of section 215 or 278 of this Act, is deportable. (Author: § 215 - Travel control of citizens and aliens; § 278 - Importing alien for immoral purpose)

237(a)(2)(E) Crimes of Domestic violence, stalking, or violation of protection order, crimes against children

237(a)(2)(F) Trafficking.-- Any alien described in section 212(a)(2)(H) is deportable

237(a)(3) Failure to register and falsification of documents.

237(a)(3)(A) Change of address.

237(a)(3)(B) Failure to register or falsification of documents.

237(a)(3)(c) Document fraud.

237(a)(3)(D) Falsely claiming citizenship.

237(a)(3)(D)(i) In general.--Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any Federal or State law is deportable.

237(a)(3)(D)(ii) Exception.--In the case of an alien making a representation described in clause (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 deportable under any provision of this subsection based on such representation.

237(a)(4) Security and related grounds

237(a)(4)(A) In general.--Any alien who has engaged, is engaged, or at any time after admission engages in

237(a)(4)(A)(i) any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

237(a)(4)(A)(ii) any other criminal activity which endangers public safety or national security, or

237(a)(4)(A)(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 deportable.

237(a)(4)(B) Terrorist activities.

237(a)(4)(c) Foreign policy.

237(a)(4)(D) Participated in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing.

237(a)(4)(E) Recipient of Military-Type Training.

237(a)(4)(E) Participated in the commission of severe violations of religious freedom. (Not a typo - both sections have the same number due to an error in the Act that created them, §5502(b) of P.L. 108-458 (12/17/04).

237(a)(4)(F) Recruitment or use of child soldiers

237(a)(5) Public charge. Any alien who, within five years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable.

237(a)(6) Unlawful voters.

237(a)(6)(A) In general.--Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable.

237(a)(6)(B) 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 deportable under any provision of this subsection based on such violation.

237(a)(7) Waiver for victims of domestic violence.

237(a)(7)(A) In general.--The Attorney General is not limited by the criminal court record and may waive the application of paragraph (2)(E)(i) (with respect to crimes of domestic violence and crimes of stalking) and (ii) in the case of an alien who has been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship

237(a)(7)(A)(i) upon a determination that--

237(a)(7)(A)(i)(I) the alien was acting in self-defense;

237(a)(7)(A)(i)(II) the alien was found to have violated a protection order intended to protect the alien; or

237(a)(7)(A)(i)(III) the alien committed, was arrested for, was convicted of, or pled guilty to committing a crime--

237(a)(7)(A)(i)(III)(aa) that did not result in serious bodily injury; and

237(a)(7)(A)(i)(III)(bb) where there was a connection between the crime and the alien's having been battered or subjected to extreme cruelty.

Discussion and Analysis

Congress has made significant additions over time to expand the grounds of exclusion and deportation. In many cases, there are waivers available. However, the above is not intended to be a complete recitation of the law, but only of salient sections designed to give you an overview of this complex area of immigration practice.

Also under the IIRIRA Congress authorized additional border patrol agents, additional fencing across the border, and other methods to keep out unwanted illegal aliens. The USA

PATRIOT act exempted the DHS from any kind of environmental restriction in building such barriers. These stricter standards in conjunction with the Welfare Law enacted in 1996 may perhaps deter illegal aliens. However, some studies have shown that many illegal aliens do not evade themselves of any social services at all, and are therefore unlikely to be deterred by the lack of welfare benefits. However, aliens do enter the United States for work, and the new border fences and the additional border patrol guards may make it difficult for them to do so.

Likewise, once admitted, aliens commit crimes or fall out of valid immigration status. As you see from the grounds of deportation above, the law makes most status violations and crimes (other than petty first offenses) subject to deportation. As with exclusion, waivers exist for certain situations.

Analysis of Non-Immigrant visa classifications

There are several common features to the non-immigrant classifications discussed above and in other chapters. For example, in almost every class, the alien's spouse and child or children are permitted to also obtain non-immigrant visas under the same classification. For example, spouses and children of F-1 students are classified as F-2 dependents. Similarly, spouses and children of L-1A and L-1B multi-national managers or executives or other employees are classified as L-2 dependents.

It is also important to note that the various classes of non-immigrants are restricted by law to the activities they can perform in the USA. For example, B-1 or B-2 business visitors or tourists cannot engage in any employment in the United States, with certain extremely limited exceptions for B-1 business visitors. If a non-immigrant is found violating the terms of his or her stay, that alien may be deportable. Additional penalties such as inadmissibility for future non-immigrant visas is another likely consequence.

As we discussed at the beginning of this chapter, the INS issues a non-immigrant with a separate stamp indicating that the alien must depart the USA by a date certain. The alien has the responsibility to depart the USA accordingly. Failure to depart the USA by that date could subject the alien to "removal" proceedings and bar him or her from future entry to the USA.

Let's now examine a constantly recurring topic: permissible activities for B-1 non-immigrants.

Cases

Matter of Hira
11 I & N Dec. 824
Decided by Board October 29, 1965 and March 1, 1966;
Affirmed by Attorney General September 30, 1966

In Deportation Proceedings

Volume 11 (Page 824)

An alien who, in behalf of his employer, a Hong Kong manufacturer of custom made men's clothing, travels to various cities in the United States to take orders from, and the measurements of, prospective customers whom he does not solicit but by whom he is contacted as the result of literature distributed in this country by his employer; who sends the order, together with the purchase price, to his employer in Hong Kong; and who receives only expense money while in this country,

his monthly salary being sent to his parents in India by his employer, is engaged in intercourse of a commercial character, and, having indicated he would return to Hong Kong at the termination of his authorized stay, his sojourn here is of a temporary character, and he is eligible for nonimmigrant classification as a visitor for business under section 101(a)(15)(B) of the Immigration and Nationality Act.

A-14493789

11 I. & N. Dec. 824 (BIA 1965); Interim Decision #1647

CHARGES:

Order: Act of 1952 -- Section 241(a)(9) 8 U.S.C. 1251(a)(9) -- Failed to maintain status of admission -- Visitor for business.

Lodged: Act of 1952 -- Section 241(a)(1) 8 U.S.C. 1251(a)(1) -- Immigrant without visa section 212(a)(20), 8 U.S.C. 1182(a)(20) .

BEFORE THE BOARD

The case comes forward on appeal from the order of the special inquiry officer dated April 8, 1965 finding the respondent deportable on the charge contained in the order to show cause and upon the lodged charge, granting him voluntary departure with the further order that if he failed to depart when and as required he be deported to Hong Kong, in the alternative, to India.

The record relates to a native and citizen of India, 28 years old, male, single, who last entered the United States at Detroit, Michigan on or about February 12, 1965 at which time he was admitted to the United States as a visitor for business until April 14, 1965. He had originally entered the United States on or about September 14, 1963 at Honolulu, Hawaii as a visitor for business authorized to remain in the United States until March 14, 1964. On August 26, 1964 the respondent applied for an extension of his temporary stay, setting forth the reason therefor that it was for the purpose of "for further study of market." On the basis of this application on August 27, 1964 he was granted an extension of his stay in the United States as a visitor for business for a period to expire April 14, 1965. The order to show cause was served March 2, 1965 and the hearing in deportation proceedings was held on March 25, 1965.

At the deportation hearing the respondent presented an Indian passport issued at Hong Kong on May 19, 1962 valid to May 18, 1965. The passport contains a "B-1" nonimmigrant visa issued to him at the American Embassy at Hong Kong on September 4, 1963 valid for an unlimited number of admissions to the United States to March 4, 1964. The application for a passport (Ex. 2) indicates that a Mr. Melwani, manager of Mohan's, the respondent's employer, appeared at the Consulate on March 15, 1963 and stated that the respondent would be selling clothes at the New York store. On September 4, 1963 the application for a visa contains a notation that Mr. Melwani has submitted a statement indicating that the respondent is being sent to take orders for the Hong Kong store and the visa was issued on that date to the respondent.

The facts concerning the nature of the respondent's employment are not in dispute. The respondent, in behalf of his employer, Mohan's, Ltd., of Hong Kong, travels to various cities in the United States taking the customers' measurements. The purchase price of the merchandise is sent to the employer in Hong Kong, either by the respondent or directly by the customer. The respondent testified that he does not solicit customers in the United States but takes orders only from persons who contact him

as a result of literature distributed by his employer in this country making known his itinerary, the items he has available for sale and in what hotel he may be contacted.

The respondent testified that he works on a straight salary basis plus an allowance for living and business expenses. His salary is \$600 Hong Kong a month, amounting to approximately \$100 U.S. He testified he receives no percentage of the value of the orders which he takes but might receive a bonus depending on the volume of business upon his return to Hong Kong. While the respondent is in the United States his employer sends his monthly salary to his parents in India. The expense money is estimated to amount to about \$800 per month. He has no other income than that received from his employment by Mohan's Ltd., of Hong Kong.

The respondent has denied that the use of the terms "study the United States business market" and "further study of business market" in his applications for extension of temporary stay (Exs. 3 and 4) were designed to be vague or misleading. He explained that according to his understanding, further study of the market is the same as the business he was doing: a notice would be sent to Hong Kong and the company in Hong Kong would obtain a further extension for the study of the market because they would have knowledge of how much more business they could secure from the United States and he would inform them as to colors and styling which would be in fashion in the United States (pp. 36-37, 57-59). The record indicates that the respondent's employer in Hong Kong buys American textiles. The respondent also testified that his employer formerly made sales in this country entirely through the use of catalogs and other literature and that the individual under such circumstances took his own measurements and then sent the orders to Hong Kong. The respondent displays swatches of materials and he takes measurements in order to overcome complaints arising out of poor fit. The price of men's suits varies from \$75 to \$95, including the customs duty which must be paid by the purchaser upon receipt of his suit, the duty averaging about 20 percent of the cost of the garment which is custom made. The respondent's absence to Canada on or about February 12, 1965 was only for a few hours and apparently he was admitted upon the basis of his nonimmigrant visa.

Section 101(a)(15)(B) of the Immigration and Nationality Act defines the term "immigrant" to mean every alien except an alien who is within one or more of the following classes of nonimmigrant aliens:

(B) an alien (other than one coming for the purpose of studying or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;
* * *

Under the heading of "TEMPORARY VISITORS", 22 CFR 41.25 provides:

Temporary visitors for business and pleasure.

(a) An alien shall be classified as a nonimmigrant visitor for business or pleasure if he establishes to the satisfaction of the consular officer that he qualifies under the provisions of section 101(a)(15)(B) of the Act and that: (1) he intends to depart from the United States at the expiration of his temporary stay; (2) he has permission to enter some foreign country upon the termination of his temporary stay; and (3) adequate financial provisions have been made to enable him to carry out the purpose of his visit and to travel to, sojourn in, and depart from the United States.

(b) The term "business", as used in section 101(a)(15)(B) of the Act, refers to legitimate activities of a commercial or professional character. It does not include purely local employment or labor for hire. An alien seeking to enter as a nonimmigrant for employment or labor pursuant to a contract or other prearrangement shall be required to qualify under the provisions of section 41.55. An alien of

distinguished merit and ability seeking to enter the United States temporarily with the idea of performing temporary services of an exceptional nature, requiring such merit and ability, but having no contract or other prearranged employment, may be classified as a nonimmigrant temporary visitor for business.

The case is one of first impression. Considerable difficulty has been experienced in the past in arriving at a clear and workable definition of "business" within the contemplation of the statute (Gordon and Rosenfeld, Immigration Law and Procedure, Sec. 2.8(b)). Soon after the term visitor for business was originally designated in the Act of 1924, the Supreme Court ruled that a primary aim of the statute was to protect American labor against the influx of foreign labor, that "business" contemplated only "intercourse of a commercial character," and that persons who sought to make temporary visits to perform labor were not nonimmigrants. 1 *Karnuth v. Albro*, 279 U.S. 231 (1929).

The visitor for business designation was retained in the 1952 Act. The authors, Gordon and Rosenfeld, set forth on pages 127 to 129 of their book on "Immigration Laws and Procedures" numerous examples of cases that have been found by the Board to be bona fide nonimmigrants for business and those who have been found not to come within that designation. The significant considerations to be stressed are that there is a clear intent on the part of the alien to continue the foreign residence and not to abandon the existing domicile; the principal place of business and the actual place of eventual accrual of profits, at least predominantly, remains in the foreign country; the business activity itself need not be temporary, and indeed may long continue; the various entries into the United States made in the course thereof must be individually or separately of a plainly temporary nature in keeping with the existence of the two preceding considerations.²

In the instant case we are satisfied that the "business" in which the respondent was engaged was intercourse of a commercial character. The respondent's salary is paid to him in Hong Kong (no funds accrue to the respondent in the United States). The American Consulate in Hong Kong, in granting the respondent the nonimmigrant visa as a visitor for business, had knowledge of the fact that the respondent was an order taker for the Hong Kong firm (Ex. 2). His sojourn in this country is of a temporary character, the respondent having indicated that he would return to Hong Kong upon the expiration of his temporary stay in the United States or extensions thereof.

If the respondent were engaged in taking orders for suits at a wholesale level from large distributors, there would be no questioning his status. The fact that he takes the measurements of prospective customers in the United States, in connection with the business which he does not solicit but whose customers are attracted by literature sent out by the Hong Kong firm, does not warrant a finding that the respondent is not classifiable as a visitor for business. The labor for the orders taken by the respondent is performed in Hong Kong and there appears to be no conflict with local labor. Upon a full consideration of the evidence in the case, we are satisfied that the respondent falls within the category of visitor for business as set forth in the law and regulations. The appeal will be sustained.

Order:

It is ordered that the appeal be sustained and the proceedings terminated.

BEFORE THE BOARD

The case comes forward on motion of the Service dated December 20, 1965 requesting that our order of October 29, 1965 sustaining the alien's appeal and terminating proceedings be reconsidered and the appeal be dismissed.

Briefly, the record relates to a native and citizen of India, 28 years old, male, single, who last entered

the United States at Detroit, Michigan on or about February 12, 1965 when he was admitted to the United States as a visitor for business until April 14, 1965. He had originally entered the United States on or about September 14, 1963 at Honolulu, Hawaii as a visitor for business authorized to remain in the United States until March 14, 1964 which was subsequently extended to April 14, 1965. The order to show cause was served on March 2, 1965, the hearing in deportation proceedings was held on March 25, 1965, and an order of the special inquiry officer dated April 8, 1965 found the respondent deportable on the charge contained in the order to show cause and upon the lodged charge, but granted him the privilege of voluntary departure with an automatic order of deportation to Hong Kong or in the alternative, to India, in the event he failed to depart as required. The prolongation of the time the respondent has spent in the United States by virtue of the appeal and the motion to reconsider has not been attributable to the respondent but from considerations arising out of the possible applicability of 8 CFR 3.4 wherein the departure of the respondent might be considered as a withdrawal of the appeal.

The facts as to the nature of the respondent's employment are not in dispute. In behalf of his employer, Mohan's Ltd., of Hong Kong, a manufacturer of custom or made to measure men's clothing, the respondent travels to various cities in the United States and takes orders from customers whom he does not solicit but who contact him as the result of literature distributed by his employer in this country making known his itinerary, the items he has available for sale and in what hotels he may be contacted. The respondent displays swatches of cloth from which the customer makes his choice, he takes the customer's measurements and sends the order together with the purchase price to his employer in Hong Kong. This practice succeeded a prior practice engaged in by the respondent's employer in which the employer made sales in this country entirely through the use of catalogs, the individual taking his own measurements and then sending the order to Hong Kong. However, complaints arose due to poor fit and the present procedure was adopted. The respondent earns a salary of about \$100 a month plus a bonus depending upon the volume of his business, the amount of such bonus being undisclosed. The employer sends respondent's salary to his parents in India and the respondent receives only expense money amounting to about \$800 per month while in the United States.

Aware that the term "visitor for business" contemplated only "intercourse of a commercial character," *Karnuth v. Albro*, 279 U.S. 231, and bearing in mind that the significant considerations to be stressed were that there is a clear intent on the part of the alien to continue a foreign residence and not to abandon any existing domicile; the principal place of business and the actual place of eventual accrual of profits, at least predominantly, remains in the foreign country; the business activity itself need not be temporary and indeed may long continue; the various entries in the United States made in the course thereof must be individually or separately of a plainly temporary nature in keeping with the existence of the two preceding considerations, we found that the respondent fell within the category of a visitor for business as set forth in the law and regulations. We found that the business was intercourse of a commercial character, and the fact that he took measurements of prospective retail customers in the United States in connection with the business, under the circumstances of the case, did not warrant a finding that the respondent was not classifiable as a visitor for business.

We recognize that the line of demarcation between a visitor for business, and a person in seeking to enter as a nonimmigrant for employment or labor for which the procedure referred to 22 CFR 41.55, the provisions of section 214(c) of the Act and the supporting evidence required by 8 CFR 214.2(h)(ii) is applicable, is sometimes difficult to draw. However, the Act in section 101(a)(15)(B), still retains the category of a visitor for business. There is no indication that Congress intended to eliminate this category. Upon a determination that the business the respondent was engaged in was intercourse of a commercial character, and after carefully weighing the significant considerations set forth in prior administrative decisions, we came to the conclusion that the respondent was truly a visitor for business. The argument of the Service that the respondent is not a "businessman" within

the meaning of the statute appears to be fallacious. The cases set forth in Matter of G , 6 I. & N. Dec. 255, in note 3 list a grant many cases in which it was held that the alien was entitled to the status of a temporary visitor for business. An examination of these cases shows that the great majority were aliens who could not be considered as "businessmen" or even skilled, but in every case there was involved international trade or commerce and the employment was a necessary incident thereto.

Upon a full consideration of the matters set forth in the motion, we affirm our prior decision. The motion will be denied.

Order:

It is ordered that the motion be and the same is hereby denied.

BEFORE THE ATTORNEY GENERAL

The decision of the Board of Immigration Appeals in this case holding the respondent Hotu J. Hira alias Harry Hira to be a temporary visitor for business within section 101(a)(15)(B) of the Immigration and Nationality Act has been certified to me by the Board for review, pursuant to 8 CFR 3.1(h)(1)(iii), upon motion of the Commissioner of Immigration and Naturalization.

For the reasons stated in the Board's opinions of October 29, 1965 and March 1, 1966 the decision of the Board of Immigration Appeals is affirmed.

Discussion

As you saw in Matter of Hira, above there are numbers of factors that the BIA considers in determining whether an alien has violated the terms of B-1 Visa (or, for that matter any relevant non-immigrant visa).

Can a non-immigrant who entered in a certain visa classification change his or her visa to another classification as to perform tasks precluded by the first visa classification? As a concrete example, let's assume an F-1 student enters the country to study and upon the completion of the course of study finds a job and wishes to work. Can the F-1 student work for an off campus employer after the completion of his or her degree? Can the F-1 student work on campus during the course of study? These and other such practical questions are faced by immigration attorneys day after day. In answer to the above, the F-1 student can change to another visa classification, usually the H-1 visa, upon completion of studies provided the alien has found a job with an employer who is willing to petition the INS, on behalf of the alien, for a change of status for the alien employee. However, certain non-immigrant classes are prevented from changing to other non-immigrant visa classes.

The change of status issue has become a hot-button topic after 9-11. The INS has issued regulations barring admission to a course of study for a B-1/B-2 non-immigrant absent a change of status to F-1 prior to enrollment. The DHS has implemented the SEVIS (Student and Exchange Visitor Information System): Schools are now required to enter information into an INS computer system to monitor attendance of non-immigrant students. If students fail to register for or miss classes, or drop out mid-semester, the INS will be notified. Likewise, a student who is placed on academic probation or suspended has the appropriate notation placed in his or her SEVIS record.

U.S. consulates have changed their procedures on the revalidation of visas by third-country nationals. This directly impacts the benefit of the possibility to reenter the USA upon a trip to contiguous territories as was previously codified in the regulations.

The Foreign Affairs Manual

The Foreign Affairs Manual (FAM) which lists the guidelines for the Department of State officers overseas lists a plethora of permissible activities for various non-immigrant classes including B-1s. A sample section of the FAM pertaining to a certain non-immigrant class is set forth below. Read the section and note the limitations on this visa type.

9 FAM 41.83 N1 Background

(CT:VISA-1037; 09-24-2008)

On September 13, 1994 the President signed into law the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322). Section 130001 of this Act amends the Immigration and Nationality Act (INA) by adding a new subparagraph (S) at INA 101(a)(15), thus establishing a new nonimmigrant (S) classification. This new subparagraph, which took effect immediately, provides for the admission of certain witnesses and other aliens who possess critical information relating to acts of terrorism and criminal behavior.

9 FAM 41.83 N2 S-5 Classification under INA 101(a)(15)(S)(i)

(CT:VISA-377; 03-29-2002)

An alien may be classified as an S-5 nonimmigrant, if the Attorney General has determined that the:

- (1) Alien is in possession of critical reliable information concerning a criminal organization or enterprise;
- (2) Alien is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and
- (3) Alien's presence in the United States is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise.

9 FAM 41.83 N2.1 S-6 Classification Under INA 101(a)(15)(S)(ii)

(CT:VISA-1037; 09-24-2008)

An alien may be classified as an S-6 nonimmigrant, if the Secretary of State and the Attorney General jointly determined that the alien:

- (1) Possesses critical, reliable information concerning a terrorist organization, enterprise, or operation;
- (2) Is willing to supply or has supplied such information to Federal law enforcement authorities or

a Federal court;

(3) Will or has been placed in danger as a result of providing such information; and

(4) Is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956.

9 FAM 41.83 N2.2 Accompanying or Following to Join Dependents

(CT:VISA-377; 03-29-2002)

If determined appropriate by the Attorney General (or the Attorney General and the Secretary of State in the case of an alien classified under INA 101(a)(15)(S)(ii)), the accompanying or following to join spouse, married and unmarried sons and daughters, and the parents of an S-5 or S-6 alien may also be classified as S-7.

9 FAM 41.83 N5 Numerical Limitations

(TL:VISA-377; 03-29-2002)

INA 214(k) places an annual limitation on nonimmigrants who may be issued visas under INA 101(a)(15)(S)(i) and (ii) to 200 and 50 respectively.

9 FAM 41.83 N6 No Change of Status

(TL:VISA-156; 10-31-96)

An alien admitted to the United States under INA 101(a)(15)(S) is prohibited from changing status to another nonimmigrant classification.

9 FAM 41.83 N7 Adjustment of Status

(CT:VISA-377; 03-29-2002)

INA 245 provides for adjustment of status of aliens admitted as S-5 or S-6 to permanent resident status under certain circumstances.

9 FAM 41.83 N7.1 Adjustment from S-5 Status

(CT:VISA-1037; 09-24-2008)

An alien who entered the United States as an S-5 under INA 101(a)(15)(S)(i) may apply for adjustment to permanent resident if it is the Attorney General's opinion that:

(1) The S-5 nonimmigrant has supplied critical, reliable information concerning a criminal organization or enterprise;

- (2) Such information has substantially contributed to the success of an authorized criminal investigation or the prosecution of an individual involved in a criminal organization or enterprise; and
- (3) The alien is not ineligible under INA 212(a)(3)(E).

9 FAM 41.83 N7.2 Adjustment from S-6 Status

(TL:VISA-156; 10-31-1996)

An alien who entered the United States as an S-6 under INA 101(a)(15)(S)(ii) may apply for adjustment to permanent resident if in the sole discretion of the Attorney General:

- (1) The S-6 nonimmigrant has supplied critical, reliable information concerning a terrorist organization, enterprise or organization;
- (2) Such information has substantially contributed to:
 - (a) The prevention or frustration of an act of terrorism against a U.S. person or U.S. property; or
 - (b) The success of an authorized criminal investigation of, or prosecution, of an individual involved in such an act of terrorism; and
- (3) The nonimmigrant has received a reward under section 36(a) of the State Department Basic Authorities Act of 1956.

Problems

I. Examine this problem under the new law (IIRIRA): alien X, without a passport or visa or any kind of travel document surfs ashore in sunny California. Once he hits the shore, he picks up his surfboard and strolls away with his backpack, whistling nonchalantly. He goes to a big city, finds a job, and starts working. Six months later, in a random INS sweep of the sweatshop where alien X works, he is picked up by the INS. Would he be subject to deportation or exclusion? Same result under the old law?

II. Examine this problem under the "old law": Alien Y gets off a plane at Kennedy International Airport. Upon inspection by a Customs Officer, his passport appears to have been "doctored". However, the Customs Officer does not immediately put alien Y into exclusion. Rather, alien Y is asked to proceed to his final destination (Akron, Ohio) and within thirty days, proceed to the Cleveland Office of the INS for a further inspection. Has alien Y entered the U.S.A.? Analyze this problem under the new law. What result?

III. An alien enters the USA legally on a tourist visa. He overstays his permissible period of stay in the USA. Subsequently, he meets and marries a US Citizen wife. About a year into their marriage, the alien commits a crime involving moral turpitude. He is sentenced to 6 months in jail, waived in lieu of two years probation. Is he removable from the USA? On what possible grounds?

Sample Documents - U.S. Visa:

Sample
Documents: I-94:
Departure

Número de salida

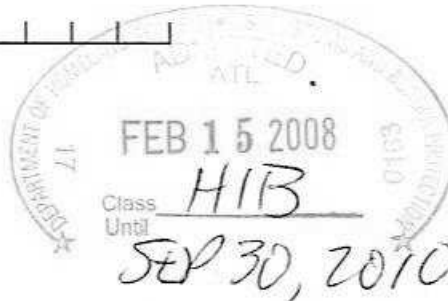
OMB No. 1651-0111

Document
Arrival-
Record

623 19



Registro de salida
I-94



14. Apellidos

15. Nombre

16. Fecha de nacimiento (día/mes/año)

17. País de ciudadanía

CBP Form I-94 (10/04)

Vea la parte posterior

STAPLE HERE

