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Kern Community College District  
**Administrative Procedure**  
Chapter 5 – Student Services

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**AP 5012 INTERNATIONAL STUDENTS**

**References:**

Education Code Sections 76141 and 76142;  
Title 5 Section 54045;  
Title 8, U.S. Code Sections 1101. et seq.

**NOTE:** *This procedure is **legally required** if the District admits non-citizen students. Local procedures may be inserted. The District should include provisions for adherence to federal requirements regarding immigration documentation. The procedures should address or provide for:*

- *An application process that includes submission of appropriate visa information from the country of residence, including INS forms.*
- *Students who will be attending pursuant to an F-1 visa, submission of paperwork to substantiate issuance by the District of form I-20.*
- *Required TOEFL (Test of English as a Foreign Language) scores, if applicable.*
- *Residence determination, including review of whether student holds a visa that requires the student have a residence outside of the U.S., or entered the U.S. under a visa that permits entry solely for a temporary purpose.*
- *Exemptions from nonresident tuition as authorized by Education Code Section 76140(a)(2) for financial need.*

**NOTE:** *The following language in red ink is **optional**.*

Calculation of nonresident tuition fee applicable to noncitizens who have not or cannot establish residence, in an amount not to exceed the amount expended by the District for capital outlay in the preceding fiscal year divided by the total full-time equivalent students. This fee cannot exceed 50 percent of the nonresident tuition charged other nonresidents.

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**NOTE:** *The **red ink** signifies language that is **legally required** (with some optional language included) and recommended by the Policy & Procedure Service and its legal counsel (Liebert Cassidy Whitmore).*

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**Approved:**

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*(This is a new procedure)*

## Legal Citations for AP 5012

**Education Code Sections 76140, 76141, and 76142; Title 5 Section 54045; Title 8 U.S. Code Section 1101 et. seq.**

**76140.** (a) A community college district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee any person described in paragraph (1), (2), or (3):

(1) All nonresidents who enroll for six or fewer units. Exemptions made pursuant to this paragraph shall not be made on an individual basis.

(2) Any nonresident who is both a citizen and resident of a foreign country, if the nonresident has demonstrated a financial need for the exemption. Not more than 10 percent of the nonresident foreign students attending any community college district may be so exempted. Exemptions made pursuant to this paragraph may be made on an individual basis.

(3) (A) A student who, as of August 29, 2005, was enrolled, or admitted with an intention to enroll, in the fall term of the 2005-06 academic year in a regionally accredited institution of higher **education** in Alabama, Louisiana, or Mississippi, and who could not continue his or her attendance at that institution as a direct consequence of damage sustained by that institution as a result of Hurricane Katrina.

(B) The chancellor shall develop guidelines for the implementation of this paragraph. These guidelines shall include standards for appropriate documentation of student eligibility to the extent feasible.

(C) This paragraph shall apply only to the 2005-06 academic year.

(b) A district may contract with a state, a county contiguous to California, the federal government, or a foreign country, or an agency thereof, for payment of all or a part of a nonresident student's tuition fee.

(c) Nonresident students shall not be reported as full-time equivalent students (FTES) for state apportionment purposes, except as provided by subdivision (k) or another statute, in which case a nonresident tuition fee may not be charged.

(d) The nonresident tuition fee shall be set by the governing board of each community college district not later than February 1 of each year for the succeeding fiscal year. The governing board of each community college district shall provide nonresident students with notice of nonresident tuition fee changes during the spring term before the fall term in which the change will take effect. Nonresident tuition fee increases shall be gradual, moderate, and predictable. The fee may be paid in installments, as determined by the governing board of the district.

(e) The fee established by the governing board pursuant to subdivision (d) shall represent for nonresident students enrolled in 30 semester units or 45 quarter units of credit per fiscal year (1) the amount that was expended by the district for the expense of **education** as defined by the California Community College Budget and Accounting Manual in the preceding fiscal year increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the FTES (including nonresident students) attending in the district in the preceding fiscal year, (2) the expense of **education** in the preceding fiscal year of all districts increased by the

projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the fiscal year and succeeding fiscal year and divided by the FTES (including nonresident students) attending all districts during the preceding fiscal year, (3) an amount not to exceed the fee established by the governing board of any contiguous district, or (4) an amount not to exceed the amount that was expended by the district for the expense of **education**, but in no case less than the statewide average as set forth in paragraph (2). However, if for the district's preceding fiscal year FTES of all students attending in the district in noncredit courses is equal to, or greater than, 10 percent of the district's total FTES attending in the district, the district, in calculating the amount in paragraph

(1), may substitute, instead, the data for expense of **education** in grades 13 and 14 and FTES in grades 13 and 14 attending in the district.

(f) The governing board of each community college district also shall adopt a tuition fee per unit of credit for nonresident students enrolled in more or less than 15 units of credit per term by dividing the fee determined in subdivision (e) by 30 for colleges operating on the semester system and 45 for colleges operating on the quarter system and rounding to the nearest whole dollar. The same rate shall be uniformly charged nonresident students attending any terms or sessions maintained by the community college. The rate charged shall be the rate established for the fiscal year in which the term or session ends.

(g) In adopting a tuition fee for nonresident students, the governing board of each community college district shall consider nonresident tuition fees of public community colleges in other states.

(h) Any loss in district revenue generated by the nonresident tuition fee shall not be offset by additional state funding.

(i) Any district that has fewer than 1,500 FTES and whose boundary is within 10 miles of another state that has a reciprocity agreement with California governing student attendance and fees may exempt students from that state from the mandatory fee requirement described in subdivision (a) for nonresident students.

(j) Any district that has more than 1,500, but less than 3,001, FTES and whose boundary is within 10 miles of another state that has a reciprocity agreement with California governing student attendance and fees may, in any one fiscal year, exempt up to 100 FTES from that state from the mandatory fee requirement described in subdivision

(a) for nonresident students.

(k) The attendance of nonresident students who are exempted pursuant to subdivision (i) or (j), or pursuant to paragraph (3) of subdivision (a), from the mandatory fee requirement described in subdivision (a) for nonresident students may be reported as resident FTES for state apportionment purposes. Any nonresident student reported as resident FTES for state apportionment purposes pursuant to subdivision (i) or (j) shall pay a fee of forty-two dollars (\$42) per course unit. That fee is to be included in the FTES adjustments described in Section 76330 for purposes of computing apportionments.

**76141.** (a) In addition to the nonresident tuition fee established pursuant to Section **76140**, a community college district may charge to nonresident students who are both citizens and residents of a foreign country an amount not to exceed the amount that was expended by the district for capital outlay in the preceding fiscal year divided by the total full-time equivalent students of the district in the preceding fiscal year.

(b) Any fee charged pursuant to this section shall not exceed 50 percent of the nonresident tuition fee established pursuant to Section **76140**.

(c) (1) Any student who can demonstrate economic hardship, or who is a victim of persecution or discrimination in the country in which the student is a citizen and resident, is exempt from this fee.

(2) For purposes of this section, the governing board of each community college district that chooses to impose the fee authorized by this section shall adopt a definition of economic hardship that encompasses the financial circumstances of a person who is a recipient of benefits under the Temporary Assistance for Needy Families program described in Parts A and F of Title IV of the Social Security Act (42 U.S.C. Secs. 601 et seq.), the Supplemental Income/State Supplementary Program, or a general assistance program.

(d) Revenue from any fee charged pursuant to this section shall be expended only for purposes of capital outlay, maintenance, and equipment.

**76142.** (a) A community college district may charge nonresident applicants who are both citizens and residents of a foreign country a processing fee not to exceed the lesser of: (1) the actual cost of processing an application and other documentation required by the federal government, or (2) one hundred dollars (\$100), which may be deducted from the tuition fee at the time of enrollment.

(b) No processing fee shall be charged to an applicant who would be eligible for an exemption from nonresident tuition pursuant to Section **76140** or who can demonstrate economic hardship. For purposes of this section, the governing board of each community college district that chooses to impose the fee authorized by this section shall adopt a definition of economic hardship that includes the financial circumstances of a person who is a victim of persecution or discrimination in the foreign country in which the applicant is a citizen and resident, or who is a recipient of benefits under the Temporary Assistance for Needy Families program described in Parts A and F of Title IV of the Social Security Act (42 U.S.C. Secs. 601 et seq.), the Supplemental Income/State Supplementary Program, or a general assistance program.

**Cal. Admin. Code tit. 5, s 54045**

**TITLE 5. EDUCATION  
DIVISION 6. CALIFORNIA COMMUNITY COLLEGES  
CHAPTER 5. STUDENTS  
SUBCHAPTER 1. STUDENT RESIDENCE CLASSIFICATION**

s 54045. Alien Students.

(a) An alien not precluded from establishing domicile in the United States by the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) shall be eligible to establish residency pursuant to the provisions of this subchapter.

(b) An alien is precluded from establishing domicile in the United States if the alien:

(1) entered the United States illegally (undocumented aliens);

(2) entered the United States under a visa which requires that the alien have a residence outside of the United States; or

(3) entered the United States under a visa which permits entry solely for some temporary purpose.

(c) An alien described in paragraph (b) shall not be classified as a resident unless and until he or she has taken appropriate steps to obtain a change of status from the Immigration and Naturalization Service to a classification which does not preclude establishing domicile, and has met the requirements of Sections 54020-54024 related to physical presence and the intent to make California home for other than a temporary purpose. The Chancellor shall, after consultation with the University of California and the California State University, issue guidelines for the implementation of this section.

(d) Notwithstanding any other provision of this subchapter, an alien who was classified as a California resident by any college in a district as of September 30, 1991, or during the Fall 1991 term, shall not be subject to reclassification unless the student has not been in attendance at any college in the district for more than one semester or quarter.

## **Title 8 U.S. Code § 1101. Definitions**

*Release date: 2006-04-21*

(a) As used in this chapter—

(1) The term “administrator” means the official designated by the Secretary of State pursuant to section 1104 (b) of this title.

(2) The term “advocates” includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.

(3) The term “alien” means any person not a citizen or national of the United States.

(4) The term “application for admission” has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.

(5) The term “Attorney General” means the Attorney General of the United States.

(6) The term “border crossing identification card” means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance

with such conditions for its issuance and use as may be prescribed by regulations. Such regulations shall provide that

**(A)** each such document include a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable and

**(B)** an alien presenting a border crossing identification card is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

**(7)** The term “clerk of court” means a clerk of a naturalization court.

**(8)** The terms “Commissioner” and “Deputy Commissioner” mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

**(9)** The term “consular officer” means any consular, diplomatic, or other officer or employee of the United States designated under regulations prescribed under authority contained in this chapter, for the purpose of issuing immigrant or nonimmigrant visas or, when used in subchapter III of this chapter, for the purpose of adjudicating nationality.

**(10)** The term “crewman” means a person serving in any capacity on board a vessel or aircraft.

**(11)** The term “diplomatic visa” means a nonimmigrant visa bearing that title and issued to a nonimmigrant in accordance with such regulations as the Secretary of State may prescribe.

**(12)** The term “doctrine” includes, but is not limited to, policies, practices, purposes, aims, or procedures.

**(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.

**(B)** An alien who is paroled under section 1182 (d)(5) of this title or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.

**(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—

**(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 chapter and extradition proceedings,

**(v)** has committed an offense identified in section 1182 (a)(2) of this title, unless since such offense the alien has been granted relief under section 1182 (h) or 1229b (a) of this title, 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.

**(14)** The term “foreign state” includes outlying possessions of a foreign state, but

self-governing dominions or territories under mandate or trusteeship shall be regarded as separate foreign states.

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

**(A)**

**(i)** an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government, recognized de jure by the United States and who is accepted by the President or by the Secretary of State, and the members of the alien’s immediate family;

**(ii)** upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and the members of their immediate families; and

**(iii)** upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status under (i) and (ii) above;

**(B)** an alien (other than one coming for the purpose of study 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;

**(C)** an alien in immediate and continuous transit through the United States, or an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Headquarters Agreement with the United Nations ([61 Stat. 758](#));

**(D)**

**(i)** an alien crewman serving in good faith as such in a capacity required for normal operation and service on board a vessel, as defined in section [1288 \(a\)](#) of this title (other than a fishing vessel having its home port or an operating base in the United States), or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

**(ii)** an alien crewman serving in good faith as such in any capacity required for normal operations and service aboard a fishing vessel having its home port or an operating base in the United States who intends to land temporarily in Guam and solely in pursuit of his calling as a crewman and to depart from Guam with the vessel on which he arrived;

**(E)** an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him;

**(i)** solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of which he is a national; or

**(ii)** solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a

substantial amount of capital;

**(F)**

**(i)** an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 1184 (l) <sup>[1]</sup> of this title at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn,

**(ii)** the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and

**(iii)** an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

**(G)**

**(i)** a designated principal resident representative of a foreign government recognized de jure by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669) [22 U.S.C. 288 et seq.], accredited resident members of the staff of such representatives, and members of his or their immediate family;

**(ii)** other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;

**(iii)** an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized de jure by the United States, or that the government of which he is an accredited representative is not a member of such international organization; and the members of his immediate family;

**(iv)** officers, or employees of such international organizations, and the members of their immediate families;

**(v)** attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees;

**(H)** an alien (i)[(a) Repealed. Pub. L. 106-95, § 2(c), Nov. 12, 1999, 113 Stat. 1316] (b) subject to section 1182 (j)(2) of this title, who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 1184 (i)(1) of this title or as a fashion model, who meets the requirements for the occupation specified in section 1184 (i)(2) of this

title or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 1182 (n)(1) of this title, or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section 1184 (g)(8)(A) of this title, who is engaged in a specialty occupation described in section 1184 (i)(3) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 1182 (t)(1) of this title, or (c) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 1182 (m)(1) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 1182 (m)(2) of this title for the facility (as defined in section 1182 (m)(6) of this title) for which the alien will perform the services; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121 (g) of title 26 and agriculture as defined in section 203 (f) of title 29, of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

**(I)** upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative, if accompanying or following to join him;

**(J)** an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 1182 (j) of this title, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

**(K)** subject to subsections (d) and (p) <sup>[2]</sup> of section 1184 of this title, an alien

who—

**(i)** is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission;

**(ii)** has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 1151 (b)(2)(A)(i) of this title that was filed under section 1154 of this title by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or

**(iii)** is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

**(L)** subject to section 1184 (c)(2) of this title, an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

**(M)**

**(i)** an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn,

**(ii)** the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and

**(iii)** an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

**(N)**

**(i)** the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i) (or under analogous authority under paragraph (27)(L)), but only if and while the alien is a child, or

**(ii)** a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I) (or under analogous authority under paragraph (27)(L));

**(O)** an alien who—

**(i)** has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the

field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability; or

**(ii)**

**(I)** seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,

**(II)** is an integral part of such actual performance,

**(III)**

**(a)** has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or

**(b)** in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing longstanding working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and

**(IV)** has a foreign residence which the alien has no intention of abandoning; or

**(iii)** is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

**(P)** an alien having a foreign residence which the alien has no intention of abandoning who—

**(i)**

**(a)** is described in section 1184 (c)(4)(A) of this title (relating to athletes), or

**(b)** is described in section 1184 (c)(4)(B) of this title (relating to entertainment groups);

**(ii)**

**(I)** performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

**(II)** seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers;

**(iii)**

**(I)** performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

**(II)** seeks to enter the United States temporarily and solely to perform, teach, or coach as such an artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique; or

**(iv)** is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien;

**(Q)**

**(i)** an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program

approved by the Secretary of Homeland Security for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers; or

**(ii)**

**(I)** an alien citizen of the United Kingdom or the Republic of Ireland, 21 to 35 years of age, unemployed for not less than 12 months, and having a residence for not less than 18 months in Northern Ireland, or the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal within the Republic of Ireland, which the alien has no intention of abandoning who is coming temporarily (for a period not to exceed 24 months) to the United States as a participant in a cultural and training program approved by the Secretary of State and the Secretary of Homeland Security under section 2(a) of the Irish Peace Process Cultural and Training Program Act of 1998 for the purpose of providing practical training, employment, and the experience of coexistence and conflict resolution in a diverse society, and

**(II)** the alien spouse and minor children of any such alien if accompanying the alien or following to join the alien;

**(R)** an alien, and the spouse and children of the alien if accompanying or following to join the alien, who—

**(i)** for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

**(ii)** seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii);

**(S)** subject to section 1184 (k) of this title, an alien—

**(i)** who the Attorney General determines—

**(I)** is in possession of critical reliable information concerning a criminal organization or enterprise;

**(II)** is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and

**(III)** whose presence in the United States the Attorney General determines is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise; or

**(ii)** who the Secretary of State and the Attorney General jointly determine—

**(I)** is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation;

**(II)** is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;

**(III)** will be or has been placed in danger as a result of providing such information; and

**(IV)** is eligible to receive a reward under section 2708 (a) of title 22,

**(T)**

and, if the Attorney General (or with respect to clause (ii), the Secretary of State and the Attorney General jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i) or (ii) if accompanying, or following to join, the alien;

**(i)** subject to section 1184 (o) of this title, an alien who the Attorney General

determines—

**(I)** is or has been a victim of a severe form of trafficking in persons, as defined in section 7102 of title 22,

**(II)** is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking,

**(III)**

**(aa)** has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, or

**(bb)** has not attained 18 years of age, and

**(IV)** the alien would suffer extreme hardship involving unusual and severe harm upon removal; and

**(ii)** if the Attorney General considers it necessary to avoid extreme hardship—

**(I)** in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; and

**(II)** in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien,

**(U)**

if accompanying, or following to join, the alien described in clause (i);

**(i)** subject to section 1184 (p) of this title, an alien who files a petition for status under this subparagraph, if the Attorney General determines that—

**(I)** the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

**(II)** the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

**(III)** the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

**(IV)** the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

**(ii)** if the Attorney General considers it necessary to avoid extreme hardship to the spouse, the child, or, in the case of an alien child, the parent of the alien described in clause (i), the Attorney General may also grant status under this paragraph based upon certification of a government official listed in clause (i)(III) that an investigation or prosecution would be harmed without the assistance of the spouse, the child, or, in the case of an alien child, the parent of the alien; and

**(iii)** the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction;

unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes; or

**(V)** subject to section 1184 (q) of this title, an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 1153 (d) of this title) of a petition to accord a status under section 1153 (a)(2)(A) of this title that was filed with the Attorney General under section 1154 of this title on or before December 21, 2000, if—

**(i)** such petition has been pending for 3 years or more; or

**(ii)** such petition has been approved, 3 years or more have elapsed since such filing date, and—

**(I)** an immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 1153 (a)(2)(A) of this title; or

**(II)** the alien's application for an immigrant visa, or the alien's application for adjustment of status under section 1255 of this title, pursuant to the approval of such petition, remains pending.

**(16)** The term "immigrant visa" means an immigrant visa required by this chapter and properly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this chapter.

**(17)** The term "immigration laws" includes this chapter and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens.

**(18)** The term "immigration officer" means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title.

**(19)** The term "ineligible to citizenship," when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time permanently debarred from becoming a citizen of the United States under section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 4(a) of the Selective Service Act of 1948, as amended (62 Stat. 605; 65 Stat. 76) [50 App. U.S.C. 454 (a)], or under any section of this chapter, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.

**(20)** The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

**(21)** The term "national" means a person owing permanent allegiance to a state.

**(22)** The term "national of the United States" means

**(A)** a citizen of the United States, or

**(B)** a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

**(23)** The term "naturalization" means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

**(24)** Repealed. [Pub. L. 102-232](#), title III, § 305(m)(1), Dec. 12, 1991, [105 Stat. 1750](#).

**(25)** The term “noncombatant service” shall not include service in which the individual is not subject to military discipline, court martial, or does not wear the uniform of any branch of the armed forces.

**(26)** The term “nonimmigrant visa” means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this chapter.

**(27)** The term “special immigrant” means—

**(A)** an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

**(B)** an immigrant who was a citizen of the United States and may, under section [1435 \(a\)](#) or [1438](#) of this title, apply for reacquisition of citizenship;

**(C)** an immigrant, and the immigrant’s spouse and children if accompanying or following to join the immigrant, who—

**(i)** for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

**(ii)** seeks to enter the United States—

**(I)** solely for the purpose of carrying on the vocation of a minister of that religious denomination,

**(II)** before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

**(III)** before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section [501 \(c\)\(3\)](#) of title [26](#)) at the request of the organization in a religious vocation or occupation; and

**(iii)** has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);

**(D)** an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: Provided, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status;

**(E)** an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section [3602 \(a\)\(1\)](#) of title [22](#)) enters into force [October 1, 1979], who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty [April 1, 1979], and who has performed faithful service as such an employee for one year or more;

**(F)** an immigrant, and his accompanying spouse and children, who is a Panamanian national and

**(i)** who, before the date on which such Panama Canal Treaty of 1977 enters into

force [October 1, 1979], has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or

**(ii)** who, on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment or continues to be employed by the United States Government in an area of the former Canal Zone;

**(G)** an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977 [April 1, 1979], who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment;

**(H)** an immigrant, and his accompanying spouse and children, who—

**(i)** has graduated from a medical school or has qualified to practice medicine in a foreign state,

**(ii)** 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,

**(iii)** entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) of this section before January 10, 1978, and

**(iv)** has been continuously present in the United States in the practice or study of medicine since the date of such entry;

**(I)**

**(i)** an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who

**(I)** while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and

**(II)** applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after October 24, 1988, whichever is later;

**(ii)** an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who

**(I)** while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and

**(II)** files a petition for status under this subparagraph no later than six months after the date of such death or six months after October 24, 1988, whichever is

later;

**(iii)** an immigrant who is a retired officer or employee of such an international organization, and who

**(I)** while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and

**(II)** files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after October 25, 1994, whichever is later; or

**(iv)** an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family;

**(J)** an immigrant who is present in the United States—

**(i)** who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment;

**(ii)** for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

**(iii)** in whose case the Attorney General expressly consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status; except that—

**(I)** no juvenile court has jurisdiction to determine the custody status or placement of an alien in the actual or constructive custody of the Attorney General unless the Attorney General specifically consents to such jurisdiction; and

**(II)** no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;

**(K)** an immigrant who has served honorably on active duty in the Armed Forces of the United States after October 15, 1978, and after original lawful enlistment outside the United States (under a treaty or agreement in effect on October 1, 1991) for a period or periods aggregating—

**(i)** 12 years and who, if separated from such service, was never separated except under honorable conditions, or

**(ii)** 6 years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this subparagraph and who has reenlisted to incur a total active duty service obligation of at least 12 years, and the spouse or child of any such immigrant if accompanying or following to join the immigrant, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the immigrant;

**(L)** an immigrant who would be described in clause (i), (ii), (iii), or (iv) of subparagraph (I) if any reference in such a clause—

**(i)** to an international organization described in paragraph (15)(G)(i) were treated as a reference to the North Atlantic Treaty Organization (NATO);

**(ii)** to a nonimmigrant under paragraph (15)(G)(iv) were treated as a reference to a nonimmigrant classifiable under NATO–6 (as a member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, a member of a civilian component attached to or employed by an Allied Headquarters under the “Protocol on the Status of International Military Headquarters” set up pursuant to the North Atlantic Treaty, or as a dependent); and

**(iii)** to the Immigration Technical Corrections Act of 1988 or to the Immigration and Nationality Technical Corrections Act of 1994 were a reference to the American Competitiveness and Workforce Improvement Act of 1998 <sup>[3]</sup>

**(M)** subject to the numerical limitations of section 1153 (b)(4) of this title, an immigrant who seeks to enter the United States to work as a broadcaster in the United States for the International Broadcasting Bureau of the Broadcasting Board of Governors, or for a grantee of the Broadcasting Board of Governors, and the immigrant’s accompanying spouse and children.

**(28)** The term “organization” means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.

**(29)** The term “outlying possessions of the United States” means American Samoa and Swains Island.

**(30)** The term “passport” means any travel document issued by competent authority showing the bearer’s origin, identity, and nationality if any, which is valid for the admission of the bearer into a foreign country.

**(31)** The term “permanent” means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

**(32)** The term “profession” shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

**(33)** The term “residence” means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

**(34)** The term “Service” means the Immigration and Naturalization Service of the Department of Justice.

**(35)** The term “spouse”, “wife”, or “husband” do not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.

**(36)** The term “State” includes the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

**(37)** The term “totalitarian party” means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms “totalitarian dictatorship” and “totalitarianism” mean and refer to

systems of government not representative in fact, characterized by

**(A)** the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and

**(B)** the forcible suppression of opposition to such party.

**(38)** The term “United States”, except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States.

**(39)** The term “unmarried”, when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married.

**(40)** The term “world communism” means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.

**(41)** The term “graduates of a medical school” means aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine.

**(42)** The term “refugee” means

**(A)** any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or

**(B)** in such special circumstances as the President after appropriate consultation (as defined in section 1157 (e) of this title) may specify, any person who is within the country of such person’s nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term “refugee” does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

**(43)** The term “aggravated felony” means—

**(A)** murder, rape, or sexual abuse of a minor;

**(B)** illicit trafficking in a controlled substance (as defined in section 802 of title 21),

including a drug trafficking crime (as defined in section 924 (c) of title 18);

**(C)** illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18) or in explosive materials (as defined in section 841(c) of that title);

**(D)** an offense described in section 1956 of title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;

**(E)** an offense described in—

**(i)** section 842 (h) or (i) of title 18, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

**(ii)** section 922 (g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924 (b) or (h) of title 18 (relating to firearms offenses); or

**(iii)** section 5861 of title 26 (relating to firearms offenses);

**(F)** a crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment at <sup>[4]</sup> least one year;

**(G)** a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at <sup>[4]</sup> least one year;

**(H)** an offense described in section 875, 876, 877, or 1202 of title 18 (relating to the demand for or receipt of ransom);

**(I)** an offense described in section 2251, 2251A, or 2252 of title 18 (relating to child pornography);

**(J)** an offense described in section 1962 of title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

**(K)** an offense that—

**(i)** relates to the owning, controlling, managing, or supervising of a prostitution business;

**(ii)** is described in section 2421, 2422, or 2423 of title 18 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

**(iii)** is described in any of sections 1581–1585 or 1588–1591 of title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

**(L)** an offense described in—

**(i)** section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18;

**(ii)** section 421 of title 50 (relating to protecting the identity of undercover intelligence agents); or

**(iii)** section 421 of title 50 (relating to protecting the identity of undercover agents);

**(M)** an offense that—

**(i)** involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or

**(ii)** is described in section 7201 of title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds \$10,000;

**(N)** an offense described in paragraph (1)(A) or (2) of section 1324 (a) of this title

(relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter <sup>[5]</sup>

**(O)** an offense described in section 1325 (a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

**(P)** an offense

**(i)** which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18 or is described in section 1546(a) of such title (relating to document fraud) and

**(ii)** for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;

**(Q)** an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

**(R)** an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

**(S)** an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

**(T)** an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

**(U)** an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.

**(44)**

**(A)** The term "managerial capacity" means an assignment within an organization in which the employee primarily—

**(i)** manages the organization, or a department, subdivision, function, or component of the organization;

**(ii)** supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

**(iii)** if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

**(iv)** exercises discretion over the day-to-day operations of the activity or function

for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

**(B)** The term "executive capacity" means an assignment within an organization in which the employee primarily—

**(i)** directs the management of the organization or a major component or function of the organization;

**(ii)** establishes the goals and policies of the organization, component, or function;

**(iii)** exercises wide latitude in discretionary decision-making; and

**(iv)** receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

**(C)** If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

**(45)** The term "substantial" means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.

**(46)** The term "extraordinary ability" means, for purposes of subsection (a)(15)(O)(i) of this section, in the case of the arts, distinction.

**(47)**

**(A)** The term "order of deportation" means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.

**(B)** The order described under subparagraph (A) shall become final upon the earlier of—

**(i)** a determination by the Board of Immigration Appeals affirming such order; or

**(ii)** the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.

**(48)**

**(A)** The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

**(i)** a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

**(ii)** the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

**(B)** Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that

imprisonment or sentence in whole or in part.

**(49)** The term “stowaway” means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway.

**(50)** The term “intended spouse” means any alien who meets the criteria set forth in section [1154 \(a\)\(1\)\(A\)\(iii\)\(II\)\(aa\)\(BB\)](#), [1154 \(a\)\(1\)\(B\)\(ii\)\(II\)\(aa\)\(BB\)](#), or [1229b \(b\)\(2\)\(A\)\(i\)\(III\)](#) of this title.

**(b)** As used in subchapters I and II of this chapter—

**(1)** The term “child” means an unmarried person under twenty-one years of age who is—

**(A)** a child born in wedlock;

**(B)** a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

**(C)** a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

**(D)** a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

**(E)**

**(i)** a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

**(ii)** subject to the same proviso as in clause (i), a child who:

**(I)** is a natural sibling of a child described in clause (i) or subparagraph (F)(i);

**(II)** was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and

**(III)** is otherwise described in clause (i), except that the child was adopted while under the age of 18 years; or

**(F)**

**(i)** a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section [1151 \(b\)](#) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an

unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence; Provided, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: Provided further, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

**(ii)** subject to the same provisos as in clause (i), a child who:

**(I)** is a natural sibling of a child described in clause (i) or subparagraph (E)(i);

**(II)** has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and

**(III)** is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 1151 (b) of this title.

**(2)** The terms "parent", "father", or "mother" mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

**(3)** The term "person" means an individual or an organization.

**(4)** The term "immigration judge" means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 1229a of this title. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.

**(5)** The term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

**(c)** As used in subchapter III of this chapter—

**(1)** The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 1431 and 1432 <sup>[6]</sup> of this title, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1) of this section), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

**(2)** The terms "parent", "father", and "mother" include in the case of a posthumous child a deceased parent, father, and mother.

**(d)** Repealed. Pub. L. 100-525, § 9(a)(3), Oct. 24, 1988, 102 Stat. 2619.

**(e)** For the purposes of this chapter—

**(1)** The giving, loaning, or promising of support or of money or any other thing of value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.

**(2)** The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

**(3)** Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.

**(f)** For the purposes of this chapter—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established is, or was—

**(1)** a habitual drunkard;

**(2)** Repealed. [Pub. L. 97–116](#), § 2(c)(1), Dec. 29, 1981, [95 Stat. 1611](#).

**(3)** a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (9)(A) of section [1182 \(a\)](#) of this title; or subparagraphs (A) and (B) of section [1182 \(a\)\(2\)](#) of this title and subparagraph (C) thereof of such section <sup>[7]</sup> (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

**(4)** one whose income is derived principally from illegal gambling activities;

**(5)** one who has been convicted of two or more gambling offenses committed during such period;

**(6)** one who has given false testimony for the purpose of obtaining any benefits under this chapter;

**(7)** one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

**(8)** one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43) of this section); or

**(9)** one who at any time has engaged in conduct described in section [1182 \(a\)\(3\)\(E\)](#) of this title (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or [1182\(a\)\(2\)\(G\)](#) of this title (relating to severe violations of religious freedom).

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or 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 statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

**(g)** For the purposes of this chapter any alien ordered deported or removed (whether before or after the enactment of this chapter) who has left the United States, shall be considered to have been deported or removed in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.

**(h)** For purposes of section 1182 (a)(2)(E) of this title, the term “serious criminal offense” means—

**(1)** any felony;

**(2)** any crime of violence, as defined in section 16 of title 18; or

**(3)** any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.

**(i)** With respect to each nonimmigrant alien described in subsection (a)(15)(T)(i) of this section—

**(1)** the Attorney General and other Government officials, where appropriate, shall provide the alien with a referral to a nongovernmental organization that would advise the alien regarding the alien’s options while in the United States and the resources available to the alien; and

**(2)** the Attorney General shall, during the period the alien is in lawful temporary resident status under that subsection, grant the alien authorization to engage in employment in the United States and provide the alien with an “employment authorized” endorsement or other appropriate work permit.