

INA: ACT 231 - LISTS OF ALIEN AND CITIZEN PASSENGERS ARRIVING OR DEPARTING; RECORD OF RESIDENT ALIENS AND CITIZENS LEAVING PERMANENTLY FOR FOREIGN COUNTRY

SEC. 231. 1/ (a) ARRIVAL MANIFESTS- For each commercial vessel or aircraft transporting any person to any seaport or airport of the United States from any place outside the United States, it shall be the duty of an appropriate official specified in subsection (d) to provide to any United States border officer (as defined in subsection (i)) at that port manifest information about each passenger, crew member, and other occupant transported on such vessel or aircraft prior to arrival at that port.

(b) DEPARTURE MANIFESTS- For each commercial vessel or aircraft taking passengers on board at any seaport or airport of the United States, who are destined to any place outside the United States, it shall be the duty of an appropriate official specified in subsection (d) to provide any United States border officer (as defined in subsection (i)) before departure from such port manifest information about each passenger, crew member, and other occupant to be transported.

(c) CONTENTS OF MANIFEST- The information to be provided with respect to each person listed on a manifest required to be provided under subsection (a) or (b) shall include--

(1) complete name;

(2) date of birth;

(3) citizenship;

(4) sex;

(5) passport number and country of issuance;

(6) country of residence;

(7) United States visa number, date, and place of issuance, where applicable;

(8) alien registration number, where applicable;

(9) United States address while in the United States; and

(10) such other information the Attorney General, in consultation with the Secretary of State, and the Secretary of Treasury determines as being necessary for the identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security.

(d) APPROPRIATE OFFICIALS SPECIFIED- An appropriate official specified in this subsection is the master or commanding officer, or authorized agent, owner, or consignee, of the commercial vessel or aircraft concerned.

(e) DEADLINE FOR REQUIREMENT OF ELECTRONIC TRANSMISSION OF MANIFEST INFORMATION- Not later than January 1, 2003, manifest information required to be provided under subsection (a) or (b) shall be transmitted electronically by the appropriate official specified in subsection (d) to an immigration officer.

(f) PROHIBITION- No operator of any private or public carrier that is under a duty to provide manifest information under this section shall be granted clearance papers until the appropriate official specified in subsection (d) has complied with the requirements of this subsection, except that, in the case of commercial vessels or aircraft that the Attorney General determines are making regular trips to the United States, the Attorney General may, when expedient, arrange for the provision of manifest information of persons departing the United States at a later date.

(g) PENALTIES AGAINST NONCOMPLYING SHIPMENTS, AIRCRAFT, OR CARRIERS- If it shall appear to the satisfaction of the Attorney General that an appropriate official specified in subsection (d), any public or private carrier, or the agent of any transportation line, as the case may be, has refused or failed to provide manifest information required by subsection (a) or (b), or that the manifest information provided is not accurate and full based on information provided to the carrier, such official, carrier, or agent, as the case may be, shall pay to the Commissioner the sum of \$1,000 for each person with respect to whom such accurate and full manifest information is not provided, or with respect to whom the manifest information is not prepared as prescribed by this section or by regulations issued pursuant thereto. No commercial vessel or aircraft shall be granted clearance pending determination of the question of the liability to the payment of such penalty, or while it remains unpaid, and no such penalty shall be remitted or refunded, except that clearance may be granted prior to the determination of such question upon the deposit with the Commissioner of a bond or undertaking approved by the Attorney General or a sum sufficient to cover such penalty.

(h) WAIVER- The Attorney General may waive the requirements of subsection (a) or (b) upon such circumstances and conditions as the Attorney General may by regulation prescribe.

(i) UNITED STATES BORDER OFFICER DEFINED- In this section, the term 'United States border officer' means, with respect to a particular port of entry into the United States, any United States official who is performing duties at that port of entry.

(j) RECORD OF CITIZEN AND RESIDENT ALIENS LEAVING PERMANENTLY FOR FOREIGN COUNTRIES.-- The Attorney General may authorize immigration officers to record the following information regarding every resident person leaving the United States by way of the Canadian or Mexican borders for permanent residence in a foreign country: Names, age, and sex; whether married or single; calling or occupation; whether able to read or write; nationality; country of birth; country of which citizen or subject; race; last permanent residence in the United States; intended future permanent residence; and time and port of last arrival in the United States; and if a United States citizen or national, the facts on which claim to that status is based.

FOOTNOTES FOR SECTION 231

INA: ACT 231 FN 1

FN 1 Section 402(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002, dated May 14, 2002, amended section 231 by striking subsections (a), (b), (d), and (e), redesignating subsection (e) as (j), and by adding new subsections (a) through (i).

(b) EXTENSION TO LAND CARRIERS-

(1) STUDY- The President shall conduct a study regarding the feasibility of extending the requirements of subsections (a) and (b) of section 231 of the Immigration and Nationality Act (8 U.S.C. 1221), as amended by subsection (a), to any commercial carrier transporting persons by land to or from the United States. The study shall focus on the manner in which such requirement would be implemented to enhance the national security of the United States and the efficient cross-border flow of commerce and persons.

(2) REPORT- Not later than two years after the date of enactment of this Act, the President shall submit to Congress a report setting forth the findings of the study conducted under paragraph (1).

(c) EFFECTIVE DATE- The amendments made by subsection (a) shall apply with respect to persons arriving in, or departing from, the United States on or after the date of enactment of this Act (May 14, 2002).

INA: ACT 231 FN 2

FN 2 Section 115(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002, Public Law 107-77, dated November 28, 2001, amended section 231(b) in its entirety.

INA: ACT 231 FN 3

FN 3 Section 115(c) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002, Public Law 107-77, dated November 28, 2001, amended section 231(d).

INA: ACT 235 - INSPECTION BY IMMIGRATION OFFICERS; EXPEDITED REMOVAL OF INADMISSIBLE ARRIVING ALIENS; REFERRAL FOR HEARING

Sec. 235. 1/ (a) Inspection.-

(1) Aliens treated as applicants for admission.-An alien present in the United States who has not been admitted, or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this Act an applicant for admission.

(2) Stowaways.-An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer. Upon such inspection if the alien indicates an intention to apply for asylum under section 208 or a fear of persecution, the officer shall refer the alien for an interview under subsection (b)(1)(B). A stowaway may apply for asylum only if the stowaway is found to have a credible fear of

persecution under subsection (b)(1)(B). In no case may a stowaway be considered an applicant for admission or eligible for a hearing under section 240.

(3) Inspection.-All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.

(4) Withdrawal of application for admission.-An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.

(5) Statements.-An applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States, including the applicant's intended length of stay and whether the applicant intends to remain permanently or become a United States citizen, and whether the applicant is inadmissible.

(b) 2/ Inspection of Applicants for Admission.-

(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled.-

(A) Screening.-

(i) In general.-If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or 212(a)(7), the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution.

(ii) Claims for asylum.-If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or 212(a)(7) and the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

(iii) Application to certain other aliens.-

(I) In general.-The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(II) Aliens described.-An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically

present in the United States continuously for the 2- year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

(B) Asylum interviews.-

(i) Conduct by asylum officers.-An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Attorney General.

(ii) Referral of certain aliens.-If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.

(iii) Removal without further review if no credible fear of persecution.-

(I) In general.-Subject to subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.

(II) Record of determination.-The officer shall prepare a written record of a determination under subclause (I). Such record shall include a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in light of such facts, the alien has not established a credible fear of persecution. A copy of the officer's interview notes shall be attached to the written summary.

(III) Review of determination.-The Attorney General shall provide by regulation and upon the alien's request for prompt review by an immigration judge of a determination under subclause (I) that the alien does not have a credible fear of persecution. Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I).

(IV) Mandatory Detention.-Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.

(iv) Information about interviews.-The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process.

(v) Credible fear of persecution defined.-For purposes of this subparagraph, the term "credible fear of persecution" means that there is a significant possibility, taking into account the credibility

of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208.

(C) Limitation on administrative review.-Except as provided in subparagraph (B)(iii)(III), a removal order entered in accordance with subparagraph (A)(i) or (B)(iii)(I) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order under subparagraph (A)(i) against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, after having been warned of the penalties for falsely making such claim under such conditions, to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section 207, or to have been granted asylum under section 208.

(D) Limit on collateral attacks.-In any action brought against an alien under section 275(a) or section 276, the court shall not have jurisdiction to hear any claim attacking the validity of an order of removal entered under subparagraph (A)(i) or (B)(iii).

(E) Asylum officer defined.-As used in this paragraph, the term "asylum officer" means an immigration officer who-

(i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 208, and

(ii) is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications.

(F) Exception.-Subparagraph (A) shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.

(2) Inspection of other aliens.-

(A) In general.-Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 240.

(B) Exception.-Subparagraph (A) shall not apply to an alien-

(i) who is a crewman,

(ii) to whom paragraph (1) applies, or

(iii) who is a stowaway.

(C) Treatment of aliens arriving from contiguous territory.-In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a

foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 240.

(3) Challenge of decision.-The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 240.

(c) Removal of Aliens Inadmissible on Security and Related Grounds.-

(1) Removal without further hearing.-If an immigration officer or an immigration judge suspects that an arriving alien may be inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 212(a)(3), the officer or judge shall-

(A) order the alien removed, subject to review under paragraph (2);

(B) report the order of removal to the Attorney General; and

(C) not conduct any further inquiry or hearing until ordered by the Attorney General.

(2) Review of order.- (A) The Attorney General shall review orders issued under paragraph (1).

(B) If the Attorney General-

(i) is satisfied on the basis of confidential information that the alien is inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 212(a)(3), and

(ii) after consulting with appropriate security agencies of the United States Government, concludes that disclosure of the information would be prejudicial to the public interest, safety, or security, the Attorney General may order the alien removed without further inquiry or hearing by an immigration judge.

(C) If the Attorney General does not order the removal of the alien under subparagraph (B), the Attorney General shall specify the further inquiry or hearing that shall be conducted in the case.

(3) Submission of statement and information.-The alien or the alien's representative may submit a written statement and additional information for consideration by the Attorney General.

(d) Authority Relating to Inspections.-

(1) Authority to search conveyances.-Immigration officers are authorized to board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States.

(2) Authority to order detention and delivery of arriving aliens.-Immigration officers are authorized to order an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States-

(A) to detain the alien on the vessel or at the airport of arrival, and

(B) to deliver the alien to an immigration officer for inspection or to a medical officer for examination.

(3) Administration of oath and consideration of evidence.-The Attorney General and any immigration officer shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service.

(4) Subpoena authority.- (A) The Attorney General and any immigration officer shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and to that end may invoke the aid of any court of the United States.

(B) Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer may, in the event of neglect or refusal to respond to a subpoena issued under this paragraph or refusal to testify before an immigration officer, issue an order requiring such persons to appear before an immigration officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

FOOTNOTES FOR SECTION 235

INA: ACT 235 FN 1

FN 1 Revised and rewritten in its entirety by § 302 of IIRIRA. Note: All references to "special inquiry officer" in former Sec. 235 were changed to "immigration judge" after section was stricken by rewrite. Former section 235 remains in effect during transition period (until April 1, 1997). New section 235 added by § 302 of IIRIRA.

INA: ACT 235 FN2

FN 2 §302(b) of IIRIRA

INA: ACT 235A - PREINSPECTION AT FOREIGN AIRPORTS 1/

Sec. 235A. (a) Establishment of Preinspection Stations.-

(1) New Stations.-Subject to paragraph (5), not later than October 31, 1998, the Attorney General, in consultation with the Secretary of State, shall establish and maintain preinspection stations in at least 5 of the foreign airports that are among the 10 foreign airports which the Attorney General identifies as serving as last points of departure for the greatest numbers of inadmissible alien passengers who arrive from abroad by air at ports of entry within the United States. Such preinspection stations shall be in addition to any preinspection stations established prior to the date of the enactment of such Act.

(2) Report.-Not later than October 31, 1998, the Attorney General shall report to the Committees on the Judiciary of the House of Representatives and of the Senate on the implementation of paragraph (1).

(3) Data Collection.-Not later than November 1, 1997, and each subsequent November 1, the Attorney General shall compile data identifying-

(A) the foreign airports which served as last points of departure for aliens who arrived by air at United States ports of entry without valid documentation during the preceding fiscal years;

(B) the number and nationality of such aliens arriving from each such foreign airport; and

(C) the primary routes such aliens followed from their country of origin to the United States.

(4) Additional Stations.- Subject to paragraph (5), not later than October 31, 2000, the Attorney General, in consultation with the Secretary of State, shall establish preinspection stations in at least 5 additional foreign airports which the Attorney General, in consultation with the Secretary of State, determines, based on the data compiled under paragraph (3) and such other information as may be available, would most effectively reduce the number of aliens who arrive from abroad by air at points of entry within the United States who are inadmissible to the United States. Such preinspection stations shall be in addition to those established prior to the date of the enactment of such Act or pursuant to paragraph (1).

(5) Conditions.-Prior to the establishment of a preinspection station the Attorney General, in consultation with the Secretary of State, shall ensure that-

(A) employees of the United States stationed at the preinspection station, and their accompanying family members will receive appropriate protection;

(B) such employees and their families will not be subject to unreasonable risks to their welfare and safety; and

(C) the country in which the preinspection station is to be established maintains practices and procedures with respect to asylum seekers and refugees in accordance with the Convention Relating to the Status of Refugees (done at Geneva, July 28, 1951), or the Protocol Relating to the Status of Refugees (done at New York, January 31, 1967) or that an alien in the country otherwise has recourse to avenues of protection from return to persecution.

(b) Establishment of Carrier Consultant Program._The Attorney General shall assign additional immigration officers to assist air carriers in the detection of fraudulent documents at foreign airports which, based on the records maintained pursuant to subsection (a)(3), served as a point of departure for a significant number of arrivals at United States ports of entry without valid documentation, but where no preinspection station exists.

FOOTNOTES FOR SECTION 235A

INA: ACT 235A FN1

FN 1 Added by § 123 of IIRIRA.