

an Effective Date of 1996 Amendments note under section 1101 of this title.

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

For purposes of this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104-208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1155, 1158, 1159, 1182, 1184, 1225, 1228, 1229, 1229c, 1231, 1252, 1256, 1282, 1357, 1368 of this title; title 18 section 4113; title 28 section 1821.

**§ 1229b. Cancellation of removal; adjustment of status**

**(a) Cancellation of removal for certain permanent residents**

The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien—

- (1) has been an alien lawfully admitted for permanent residence for not less than 5 years,
- (2) has resided in the United States continuously for 7 years after having been admitted in any status, and
- (3) has not been convicted of any aggravated felony.

**(b) Cancellation of removal and adjustment of status for certain nonpermanent residents**

**(1) In general**

The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien—

- (A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application;
- (B) has been a person of good moral character during such period;
- (C) has not been convicted of an offense under section 1182(a)(2), 1227(a)(2), or 1227(a)(3) of this title; and
- (D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

**(2) Special rule for battered spouse or child**

The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien demonstrates that—

- (A) the alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent);

(B) the alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application;

(C) the alien has been a person of good moral character during such period;

(D) the alien is not inadmissible under paragraph (2) or (3) of section 1182(a) of this title, is not deportable under paragraph (1)(G) or (2) through (4) of section 1227(a) of this title, and has not been convicted of an aggravated felony; and

(E) the removal would result in extreme hardship to the alien, the alien's child, or (in the case of an alien who is a child) to the alien's parent.

In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

**(3) Recordation of date**

With respect to aliens who the Attorney General adjusts to the status of an alien lawfully admitted for permanent residence under paragraph (1) or (2), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of the Attorney General's cancellation of removal under paragraph (1) or (2).

**(c) Aliens ineligible for relief**

The provisions of subsections (a) and (b)(1) of this section shall not apply to any of the following aliens:

- (1) An alien who entered the United States as a crewman subsequent to June 30, 1964.
- (2) An alien who was admitted to the United States as a nonimmigrant exchange alien as defined in section 1101(a)(15)(J) of this title, or has acquired the status of such a nonimmigrant exchange alien after admission, in order to receive graduate medical education or training, regardless of whether or not the alien is subject to or has fulfilled the two-year foreign residence requirement of section 1182(e) of this title.
- (3) An alien who—

(A) was admitted to the United States as a nonimmigrant exchange alien as defined in section 1101(a)(15)(J) of this title or has acquired the status of such a nonimmigrant exchange alien after admission other than to receive graduate medical education or training,

(B) is subject to the two-year foreign residence requirement of section 1182(e) of this title, and

(C) has not fulfilled that requirement or received a waiver thereof.

(4) An alien who is inadmissible under section 1182(a)(3) of this title or deportable under section 1227(a)(4) of this title.

(5) An alien who is described in section 1231(b)(3)(B)(i) of this title.

(6) An alien whose removal has previously been cancelled under this section or whose deportation was suspended under section 1254(a)

of this title or who has been granted relief under section 1182(c) of this title, as such sections were in effect before September 30, 1996.

**(d) Special rules relating to continuous residence or physical presence**

**(1) Termination of continuous period**

For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end when the alien is served a notice to appear under section 1229(a) of this title or when the alien has committed an offense referred to in section 1182(a)(2) of this title that renders the alien inadmissible to the United States under section 1182(a)(2) of this title or removable from the United States under section 1227(a)(2) or 1227(a)(4) of this title, whichever is earliest.

**(2) Treatment of certain breaks in presence**

An alien shall be considered to have failed to maintain continuous physical presence in the United States under subsections (b)(1) and (b)(2) of this section if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

**(3) Continuity not required because of honorable service in Armed Forces and presence upon entry into service**

The requirements of continuous residence or continuous physical presence in the United States under subsections (a) and (b) of this section shall not apply to an alien who—

(A) has served for a minimum period of 24 months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and

(B) at the time of the alien's enlistment or induction was in the United States.

**(e) Annual limitation**

**(1) Aggregate limitation**

Subject to paragraphs (2) and (3), the Attorney General may not cancel the removal and adjust the status under this section, nor suspend the deportation and adjust the status under section 1254(a) of this title (as in effect before September 30, 1996), of a total of more than 4,000 aliens in any fiscal year. The previous sentence shall apply regardless of when an alien applied for such cancellation and adjustment, or such suspension and adjustment, and whether such an alien had previously applied for suspension of deportation under such section 1254(a) of this title. The numerical limitation under this paragraph shall apply to the aggregate number of decisions in any fiscal year to cancel the removal (and adjust the status) of an alien, or suspend the deportation (and adjust the status) of an alien, under this section or such section 1254(a) of this title.

**(2) Fiscal year 1997**

For fiscal year 1997, paragraph (1) shall only apply to decisions to cancel the removal of an alien, or suspend the deportation of an alien, made after April 1, 1997. Notwithstanding any other provision of law, the Attorney General

may cancel the removal or suspend the deportation, in addition to the normal allotment for fiscal year 1998, of a number of aliens equal to 4,000 less the number of such cancellations of removal and suspensions of deportation granted in fiscal year 1997 after April 1, 1997.

**(3) Exception for certain aliens**

Paragraph (1) shall not apply to the following:

(A) Aliens described in section 309(c)(5)(C)(i) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as amended by the Nicaraguan Adjustment and Central American Relief Act).

(B) Aliens in deportation proceedings prior to April 1, 1997, who applied for suspension of deportation under section 1254(a)(3) of this title (as in effect before September 30, 1996).

(June 27, 1952, ch. 477, title II, ch. 4, §240A, as added Pub. L. 104-208, div. C, title III, §304(a)(3), Sept. 30, 1996, 110 Stat. 3009-594; amended Pub. L. 105-100, title II, §204(a)-(c), Nov. 19, 1997, 111 Stat. 2200, 2201.)

REFERENCES IN TEXT

Section 1254 of this title, referred to in subsecs. (c)(6) and (e)(1), (3)(B), was repealed by Pub. L. 104-208, div. C, title III, §308(b)(7), Sept. 30, 1996, 110 Stat. 3009-615.

Section 1182(c) of this title, referred to in subsec. (c)(6), was repealed by Pub. L. 104-208, div. C, title III, §304(b), Sept. 30, 1996, 110 Stat. 3009-597.

Section 309(c)(5)(C)(i) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as amended by the Nicaraguan Adjustment and Central American Relief Act), referred to in subsec. (e)(3)(A), is section 309(c)(5)(C)(i) of title III of div. C of Pub. L. 104-208, as amended by title II of Pub. L. 105-100, which is set out as a note under section 1101 of this title.

AMENDMENTS

1997—Subsec. (b)(1), (2). Pub. L. 105-100, §204(b), in introductory provisions, substituted “may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien” for “may cancel removal in the case of an alien”.

Subsec. (b)(3). Pub. L. 105-100, §204(c), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: “The Attorney General may adjust to the status of an alien lawfully admitted for permanent residence any alien who the Attorney General determines meets the requirements of paragraph (1) or (2). The number of adjustments under this paragraph shall not exceed 4,000 for any fiscal year. The Attorney General shall record the alien's lawful admission for permanent residence as of the date the Attorney General's cancellation of removal under paragraph (1) or (2) or determination under this paragraph.”

Subsec. (e). Pub. L. 105-100, §204(a), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: “The Attorney General may not cancel the removal and adjust the status under this section, nor suspend the deportation and adjust the status under section 1254(a) of this title (as in effect before September 30, 1996), of a total of more than 4,000 aliens in any fiscal year. The previous sentence shall apply regardless of when an alien applied for such cancellation and adjustment and whether such an alien had previously applied for suspension of deportation under such section 1254(a) of this title.”

EFFECTIVE DATE OF 1997 AMENDMENT

Section 204(e) of Pub. L. 105-100 provided that: “The amendments made by this section [amending this section and provisions set out as a note under section 1101 of this title] shall take effect as if included in the en-

actment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-546).’

#### EFFECTIVE DATE

Section effective on the first day of the first month beginning more than 180 days after Sept. 30, 1996, with certain transitional provisions including provision that subsec. (d)(1), (2) of this section be applicable to notices to appear issued before, on, or after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

#### DEFINITIONS

For definition of the term “removable” used in subsec. (d)(1), see section 1229a(e) of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1151, 1229a, 1229c, 1252, 1254a, 1367, 1534, 1641 of this title.

### § 1229c. Voluntary departure

#### (a) Certain conditions

##### (1) In general

The Attorney General may permit an alien voluntarily to depart the United States at the alien’s own expense under this subsection, in lieu of being subject to proceedings under section 1229a of this title or prior to the completion of such proceedings, if the alien is not deportable under section 1227(a)(2)(A)(iii) or section 1227(a)(4)(B) of this title.

##### (2) Period

Permission to depart voluntarily under this subsection shall not be valid for a period exceeding 120 days.

##### (3) Bond

The Attorney General may require an alien permitted to depart voluntarily under this subsection to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.

##### (4) Treatment of aliens arriving in the United States

In the case of an alien who is arriving in the United States and with respect to whom proceedings under section 1229a of this title are (or would otherwise be) initiated at the time of such alien’s arrival, paragraph (1) shall not apply. Nothing in this paragraph shall be construed as preventing such an alien from withdrawing the application for admission in accordance with section 1225(a)(4) of this title.

#### (b) At conclusion of proceedings

##### (1) In general

The Attorney General may permit an alien voluntarily to depart the United States at the alien’s own expense if, at the conclusion of a proceeding under section 1229a of this title, the immigration judge enters an order granting voluntary departure in lieu of removal and finds that—

(A) the alien has been physically present in the United States for a period of at least one year immediately preceding the date the notice to appear was served under section 1229(a) of this title;

(B) the alien is, and has been, a person of good moral character for at least 5 years immediately preceding the alien’s application for voluntary departure;

(C) the alien is not deportable under section 1227(a)(2)(A)(iii) or section 1227(a)(4) of this title; and

(D) the alien has established by clear and convincing evidence that the alien has the means to depart the United States and intends to do so.

#### (2) Period

Permission to depart voluntarily under this subsection shall not be valid for a period exceeding 60 days.

#### (3) Bond

An alien permitted to depart voluntarily under this subsection shall be required to post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified.

#### (c) Aliens not eligible

The Attorney General shall not permit an alien to depart voluntarily under this section if the alien was previously permitted to so depart after having been found inadmissible under section 1182(a)(6)(A) of this title.

#### (d) Civil penalty for failure to depart

If an alien is permitted to depart voluntarily under this section and fails voluntarily to depart the United States within the time period specified, the alien shall be subject to a civil penalty of not less than \$1,000 and not more than \$5,000, and be ineligible for a period of 10 years for any further relief under this section and sections 1229b, 1255, 1258, and 1259 of this title. The order permitting the alien to depart voluntarily shall inform the alien of the penalties under this subsection.

#### (e) Additional conditions

The Attorney General may by regulation limit eligibility for voluntary departure under this section for any class or classes of aliens. No court may review any regulation issued under this subsection.

#### (f) Judicial review

No court shall have jurisdiction over an appeal from denial of a request for an order of voluntary departure under subsection (b) of this section, nor shall any court order a stay of an alien’s removal pending consideration of any claim with respect to voluntary departure.

(June 27, 1952, ch. 477, title II, ch. 4, §240B, as added Pub. L. 104-208, div. C, title III, §304(a)(3), Sept. 30, 1996, 110 Stat. 3009-596.)

#### EFFECTIVE DATE

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

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1229a, 1231, 1252, 1330 of this title; title 18 section 4113.