LEXSTAT 8 U.S.C. 1227

TITLE 8. ALIENS AND NATIONALITY

CHAPTER 12. IMMIGRATION AND NATIONALITY

IMMIGRATION

INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

8 USCS § 1227 (2002)

§ 1227. General classes of deportable aliens

(a) Classes of deportable aliens. Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

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

(A) Inadmissible aliens. Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable.

(B) Present in violation of law. Any alien who is present in the United States in violation of this Act or any other law of the United States is deportable.

(C) Violated nonimmigrant status or condition of entry.

(i) Nonimmigrant status violators. Any alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 248 [*8 USCS § 1258],* or to comply with the conditions of any such status, is deportable.

(ii) Violators of conditions of entry. Any alien whom the Secretary of Health and Human Services certifies has failed to comply with terms, conditions, and controls that were imposed under section 212(g) [*8 USCS § 1182*(g)] is deportable.

(D) Termination of conditional permanent residence.

(i) In general. Any alien with permanent resident status on a conditional basis under section 216 [*8 USCS § 1186a]* (relating to conditional permanent resident status for certain alien spouses and sons and daughters) or under section 216A [*8 USCS § 1186b]* (relating to conditional permanent resident status for certain alien entrepreneurs, spouses, and children) who has had such status terminated under such respective section is deportable.

(ii) Exception Clause (i) shall not apply in the cases described in section 216(c)(4) [*8 USCS § 1186a*(c) (4)] (relating to certain hardship

waivers).

(E) Smuggling.

(i) In general. Any alien who (prior to the date of entry, at the time of any entry, or within 5 years of the date of any entry) knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is deportable.

(ii) Special rule in the case of family reunification. Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990 [*8 USCS § 1255a* note]), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) [*8 USCS § 1153*(a)(2)] (including under section 112 of the Immigration Act of 1990 [*8 USCS § 1153* note]) or benefits under section 301(a) of the Immigration Act of 1990 [*8 USCS § 1255a* note]if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) Waiver authorized. The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) in the case of any alien lawfully admitted for permanent residence if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(F) [Deleted]

(G) Marriage fraud. An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 212(a)(6)(C)(i)) [*8 USCS § 1182*(a)(6)(C)(i)] and to be in the United States in violation of this Act (within the meaning of subparagraph (B)) if--

(i) the alien obtains any admission into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than 2 years prior to such admission of the alien and which, within 2 years subsequent to any admission of the alien in the United States, shall be judicially annulled or terminated, unless the alien establishes to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws, or

(ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's marital agreement which in the opinion of the Attorney General was made for the purpose of procuring the alien's admission as an immigrant.

(H) Waiver authorized for certain misrepresentations. The provisions of this paragraph relating to the removal of aliens within the United States on the ground that they were inadmissible at the time of admission as aliens described in section 212(a)(6)(C)(i) [*8 USCS § 1182*(i)], whether willful or innocent, may, in the discretion of the Attorney General, be waived for any alien (other than an alien described in paragraph (4)(D)) who--

(i) (I) is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence; and

(II) was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such admission except for those grounds of inadmissibility specified under paragraphs (5)(A) and (7)(A) of section 212(a) [*8 USCS § 1182*(a)] which were a direct result of that fraud or misrepresentation.

(ii) is an alien who qualifies for classification under clause (iii) or

(iv) of section 204(a)(1)(A) [*8 USCS § 1154*(a)(1)(A)] or clause (ii) or (iii) of section 204(a)(1)(B) [*8 USCS § 1154*(a)(1)(B)].

A waiver of removal for fraud or misrepresentation granted under this subparagraph shall also operate to waive deportation based on the grounds of inadmissibility directly resulting from such fraud or misrepresentation.

(2) Criminal offenses.

(A) General crimes.

(i) Crimes of moral turpitude. Any alien who--

(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 245(j) [*8 USCS § 1255*(j)]) after the date of admission, and

(II) is convicted of a crime for which a sentence of one year or longer may be imposed,

is deportable.

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

(iii) Aggravated felony. Any alien who is convicted of an aggravated felony at any time after admission is deportable.

(iv) High speed flight. Any alien who is convicted of a violation of section 758 of title 18, United States Code (relating to high speed flight from an immigration checkpoint), is deportable.

(v) Waiver authorized. Clauses (i), (ii), (iii), and (iv) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.

(B) Controlled substances.

(i) Conviction. Any alien who at any time alter admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act *(21 U.S.C. 802)),* other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

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

(C) Certain firearm offenses. Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) in violation of any law is deportable.

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

(i) any offense under chapter 37 [*18 USCS §§ 791* et seq.] (relating to espionage), chapter 105 [*18 USCS §§ 2151* et seq.] (relating to sabotage), or chapter 115 [*18 USCS §§ 2381* et seq.] (relating to treason and sedition) of title 18, United States Code, for which a term of imprisonment of five or more years may be imposed;

(ii) any offense under section 871 or 960 of title 18, United States Code;

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

(iv) a violation of section 215 or 278 of this Act [*8 USCS § 1185* or § 1328], is deportable.

(E) Crimes of domestic violence, stalking, or violation of protection order, crimes against children [and].

(i) Domestic violence, stalking, and child abuse. Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term "crime of domestic violence" means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.

(ii) Violators of protection orders. Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term "protection order" means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

(3) Failure to register and falsification of documents.

(A) Change of address. An alien who has failed to comply with the provisions of section 265 [*8 USCS § 1305]* is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

(B) Failure to register or falsification of documents. Any alien who at any time has been convicted--

(i) under section 266(c) of this Act [*8 USCS § 1306*(c)] or under section 36(c) of the Alien Registration Act, 1940,

(ii) of a violation of, or an attempt or a conspiracy to violate, any provision of the Foreign Agents Registration Act of 1938 *(22 U.S.C. 611* et seq.), or

(iii) of a violation of, or an attempt or a conspiracy to violate, section 1546 of title 18, United States Code (relating to fraud and misuse of visas, permits, and other entry documents),

is deportable.

(C) Document fraud.

(i) In general. An alien who is the subject of a final order for violation of section 274C [*8 USCS § 1324c]* is deportable.

(ii) Waiver authorized. The Attorney General may waive clause (i) in the case of an alien lawfully admitted for permanent residence if no previous

civil money penalty was imposed against the alien under section 274C [*8 USCS § 1324c]* and the offense was incurred solely to assist, aid, or support the alien's spouse or child (and no other individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this clause.

(D) Falsely claiming citizenship.

(i) In general. Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A [*8 USCS § 1324a])* or any Federal or State law is deportable.

(ii) Exception. In the case of an alien making a representation described in clause (i), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be deportable under any provision of this subsection based on such representation.

(4) Security and related grounds.

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

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

(ii) any other criminal activity which endangers public safety or national security, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is deportable.

(B) Terrorist activities. Any alien who has engaged, is engaged, or at any time after admission engages in any terrorist activity (as defined in section 212(a)(3)(B)(iv) [*8 USCS § 1182*(a)(3)(B)(iv)]) is deportable.

(C) Foreign policy.

(i) In general. An alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable.

(ii) Exceptions. The exceptions described in clauses (ii) and (iii) of section 212(a)(3)(C) [*8 USCS § 1182* (a)(3)(C)(ii), (iii)] shall apply to deportability under clause (i) in the same manner as they apply to inadmissibility under section 212 (a)(3)(C)(i) [*8 USCS § 1182* (a)(3)(C) (i)].

(D) Assisted in nazi persecution or engaged in genocide. Any alien described in clause (i) or (ii) or section 212 (a)(3)(E) [*8 USCS § 1182* (a)(3)(E)(i) or (ii)] is deportable.

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

(6) Unlawful voters.

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

(B) Exception. In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of

a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was a citizen, the alien shall not be considered to be deportable under any provision of this subsection based on such violation.

(7) Waiver for victims of domestic violence.

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

[(i)] upon a determination that--

(I) the alien was acting is [in] self-defense;

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

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

(aa) that did not result in serious bodily injury; and

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

(B) Credible evidence considered. 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.

(b) Deportation of certain nonimmigrants. An alien, admitted as a nonimmigrant under the provisions of either section 101(a)(15)(A)(i) or 101(a)(15)(G)(i) [*8 USCS § 1101*(a)(15)(A)(i) or (a)(15)(G)(i)], and who fails to maintain a status under either of those provisions, shall not be required to depart from the United States without the approval of the Secretary of State, unless such alien is subject to deportation under paragraph (4) of subsection (a).

(c) Waiver of grounds for deportation. Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), and (3)(A) of subsection (a) (other than so much of paragraph (1) as relates to a ground of inadmissibility described in paragraph (2) or (3) of section 212 (a) [*8 USCS § 1152* (a)(2) or (3)] shall not apply to a special immigrant described in section 101(a)(27)(J) [*8 USCS § 1101*(a)(27)(J)] based upon circumstances that existed before the date the alien was provided such special immigrant status.

HISTORY: (June 27, 1952, ch 477, Title II, Ch 5, § 237 [241], 66 Stat. 204; July 18, 1956, ch 629, Title III, § 301(b), (c), 70 Stat. 575; July 14, 1960, P.L. 86-648, § 9, 74 Stat. 505; Sept. 26, 1961, P.L. 87-301, § 16, 75 Stat. 655; Oct. 3, 1965, P.L. 89-236, § 11(e), 79 Stat. 918; Oct. 20, 1976, P.L. 94-571, § 7(e), 90 Stat. 2706; Oct. 30, 1978, P.L. 95-549, Title I, § 103, 92 Stat. 2065; Dec. 29, 1981, P.L. 97-116, § 8, 95 Stat. 1616; Oct. 27, 1986, P.L. 99-570, Title I, Subtitle M, § 1751(b), 100 Stat. 3207-47; Nov. 6, 1986, P.L. 99-603, Title III, Part A, § 303(b), 100 Stat. 3431; Nov. 10, 1986, P.L. 99-639, § 2(b), 100 Stat. 3541; Nov. 14, 1986, P.L. 99-653, § 7(c) in part, 100 Stat. 3657; Oct. 24, 1988, P.L. 100-525, §§ 2(n)(2), 9(m), 102 Stat. 2613, 2620; Nov. 18, 1988, P.L. 100-690, Title VII, Subtitle J, §§ 7344(a)(2), 7348(a), 102 Stat. 4471,

4473; Nov. 29, 1990, P.L. 101-649, Title I, Subtitle D, § 153 (b) Title V, Subtitle A, §§ 505(a), 508(a), Subtitle D, § 544(b), Title V, § 602(a), (b), 104 Stat. 5006, 5050, 5051, 5061, 5077, 5081; Dec. 12, 1991, P.L. 102-232, Title III, §§ 302(d)(3), 307(h), (k), 105 Stat. 1745, 1755, 1756; Sept. 13, 1994, P.L. 103-322, Title XIII, § 130003(d), 108 Stat. 2026; Oct. 25, 1994, P.L. 103-416, Title II, §§ 203(b), 219(g), 108 Stat. 4311, 4317; April 24, 1996, P.L. 104-132, Title IV, Subtitle B, § 414(a), Subtitle C, § 435(a), 110 Stat. 1270, 1275; Sept. 30, 1996, P.L. 104-208, Div C, Title I, Subtitle A, § 108(c), Title III, Subtitle A, §§ 301(d), 305(a)(2), 308(d)(2), (3)(A), (e)(1)(E), (2)(C), (f)(1)(L)-(N), (5), Subtitle C, §§ 344(b), 345(b), 347(b), 350(a), 351(b), Title VI, Subtitle E, § 671(a)(4)(B), (d)(1)(C), 110 Stat. 3009-558, 3009-579, 3009-598, 3009-617, 3009-619, 3009-620, 3009-621, 3009-637, 3009-638, 309-639, 3009-640, 3009-721, 3009-723.)

(As amended Oct. 28, 2000, P.L. 106-386, Div B, Title V, § 1505(b)(1), (c)(2), 114 Stat. 1525, 1526; Oct. 30, 2000, P.L. 106-395, Title II, § 201(c)(1), (2), 114 Stat. 1634; Oct. 26, 2001, P.L. 107-56, Title IV, Subtitle B, § 411(b)(1), 115 Stat. 348.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act June 27, 1952, ch 477, popularly known as the "Immigration and Nationality Act", which appears generally as *8 USCS §§ 1101* et seq. For full classification of such Act, consult USCS Tables volumes.

"Section 36(c) of the Alien Registration Act, 1940", referred to in this section, is § 36(c) of Act June 28, 1940, ch 439, which was repealed by Act June 27, 1952, ch 477, Title IV, § 403(a)(39), 66 Stat. 280.

Explanatory notes:

The word "and" has been enclosed in brackets in the heading of subsec. (a)(2)(E) to indicate the probable intent of Congress to delete such word.

The clause designator "(i)" has been enclosed in brackets in subsec. (a)(7)(A) because no cl. (ii) was enacted.

The word "in" has been inserted in brackets in subsec. (a)(7)(A)[(i)](I) to indicate the word probably intended by Congress.

This section formerly appeared as *8 USCS § 1251.*

A prior *8 USCS § 1227* (Act June 27, 1952, ch 477, Title II, Ch 4, § 237, 66 Stat. 201; Dec. 29, 1981, P.L. 97-116, § 7, 95 Stat. 1615; Oct. 18, 1986, P.L. 99-500, Title I, § 101(b) [Title II, § 206(b)(1)]; Oct. 30, 1986, P.L. 99-591 Title I, § 101(b) [Title II, § 206(b)(1)]; Oct. 24, 1988, P.L. 100-525, § 4(b)(4), 102 Stat. 2615); Oct. 24, 1988, P.L. 100-525, § 9(1), 102 Stat. 2620; Nov. 29, 1990, P.L. 101-649, Title V, Subtitle D, § 543(a)(2), 104 Stat. 5057; Dec. 12, 1991, P.L. 102-232, Title III, § 306(c)(4)(B), 105 Stat. 1752; April 24, 1996, P.L. 104-132, Title IV, Subtitle C, § 422(b), 110 Stat. 1272; Sept. 30, 1996, P.L. 104-208, Div C, Title III, Subtitle A, § 308(d)(5), 110 Stat. 3009-619) was repealed by Act Sept. 30, 1996, P.L. 104-208, Div C, Title III, Subtitle A, § 305(a)(1), 110 Stat. 3009-597 (effective as provided by § 309(a) of such Act, which appears as *8 USCS § 1101* note). Such section provided for immediate deportation of aliens excluded from admission or entering in violation of law.

Effective date of section:

Act June 27, 1952, ch 477, Title IV, § 407, 66 Stat. 281, which appears as *8*

USCS § 1101 note, provided that this section is effective at 12:01 ante meridian United States Eastern Standard Time on the 180th day immediately following enactment on June 27, 1952.

Amendments:

1956. Act July 18, 1956 (effective 7/19/56 as provided in § 401 of such Act), in subsec. (a)(11), inserted ", or a conspiracy to violate," in two places and "possession of or" in one place; and, in subsec. (b), added the sentence beginning "The provisions of this subsection . . .".

1960. Act July 14, 1960, in subsec. (a)(11), inserted "or marihuana" following "narcotic drugs".

1961. Act Sept. 26, 1961 added subsec. (f).

1965. Act Oct. 3, 1965 (effective on the first day of the first month after the expiration of 30 days following enactment on 10/3/65, except as provided herein, as provided by § 20 of such Act, which appears as *8 USCS § 1151* note), in subsec. (a)(10), substituted "(A)" for "(C)".

1976. Act Oct. 20, 1976 (effective on the first day of the first month which begins more than 60 days after enactment, as provided by § 10 of such Act, which appears as *8 USCS § 1101* note) substituted subsec. (a)(10), for one which read: "entered the United States from foreign contiguous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory transportation company under section 238(a) and was without the required period of stay in such foreign contiguous territory or adjacent islands following such arrival (other than an alien who is a native-born citizen of any of the countries enumerated in section 101(a)(27)(A) and an alien described in section 101(a)(27)(B);".

1978. Act Oct. 30, 1978, in subsec. (a), in para. (17), deleted "or" after "section 960 of title 18, United States Code;", in para. (18), substituted "; or" for a period at the end, and added para. (19).

1981. Act Dec. 29, 1981 (effective on enactment, as provided by § 21(a) of such Act, which appears as *8 USCS § 1101* note) substituted subsec. (f) for one which read: "The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence.".

1986. Act Oct. 27, 1986 (applicable as provided by § 1751(c) of such Act, which appears as *8 USCS § 1182* note), in subsec. (a)(11), substituted "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act *(21 U.S.C. 802))*" for "any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate".

Act Nov. 6, 1986, in subsec. (a), in para. (18), deleted "or" following "1917;", in para. (19), in subpara. (D), substituted "; or" for the concluding

period, and added para. (20).

Act Nov. 10, 1986, in subsec. (a)(9), designated the existing provisions as cl. (A) and added a comma and cl. (B); and added subsec. (g).

Act Nov. 14, 1986, in subsec. (a), deleted para. (10), which read: "entered the United States from foreign contiguous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory transportation company under section 238(a) and was without the required period of stay in such foreign contiguous territory or adjacent islands following such arrival (other than an alien described in section 101(a)(27)(A) and aliens born in the Western Hemisphere);".

1988. Act Oct. 24, 1988, in subsec. (a)(17), substituted "amendment, thereof, known as the Trading" for "amendment thereof; the Trading".

Such Act further (effective as if included in Act Nov. 6, 1986, as provided by § 2(s) of the 1988 Act, which appears as *8 USCS § 1101* note), in subsec. (a)(20), deleted "who becomes" following "status of an alien".

Act Nov. 18, 1988 (applicable as provided by § 7344(b) of such Act, which appears as a note to this section), in subsec. (a)(4), inserted "or (B) is convicted of an aggravated felony at any time after entry;".

Section 7348(a) of such Act further (applicable as provided by § 7348(b) of such Act, which appears as a note to this section), in subsec. (a)(14), inserted "any firearm or destructive device (as defined in paragraphs (3) and (4)), respectively, of section 921(a) of title 18, United States Code, or any revolver or".

1990. Act Nov. 29, 1990 § 505(a) (effective on enactment and applicable as provided by § 505(b) of such Act, which appears as a note to this section), in subsec. (b), deleted "(1)" preceding "in the case of any alien" and deleted ", or (2) if the court sentencing such alien for such crime shall make, at the time of first imposing judgment or passing sentence, or within thirty days thereafter, a recommendation to the Attorney General that such alien not be deported, due notice having been given prior to making such recommendation to representatives of the interested State, the Service, and prosecution authorities, who shall be granted an opportunity to make representations in the matter following "the several States" and inserted "or who has been convicted of an aggravated felony".

Section 508(a) of such Act (applicable as provided by § 508(b) of such Act, which appears as a note to this section), in subsec. (a)(11), inserted "or attempt".

Section 544(b) of such Act (applicable to persons or entities that have committed violations on or after the date of enactment as provided by § 544(c) of such Act, which appears as a note to this section), in subsec. (a), in para. (19), in the concluding matter, deleted "or" following the semicolon, in para. (20), substituted "; or" for the concluding period, and added para. (21).

Section 153(b) (1) of such Act (effective on enactment and applicable to fiscal year 1991 as provided by § 161(b)(6) of such Act, which appears as *8 USCS § 1101* note) added a subsec. (h).

Section 153(b)(2) of such Act (effective as provided by § 153 (b)(2) of such Act, which appears as a note to this section) substituted subsec. (h) for one which read: "Paragraphs (1), (2), (5), (9), or (12) of subsection 241(a) (other than so much of paragraph (1) as relates to a ground of exclusion described in paragraph (9), (10), (23), (27), (29), or (33) of section 212(a)) shall not apply to a special immigrant described in section 101(a) (27) (J) based upon circumstances that exist before the date the alien was provided such special immigrant status.".

Section 602(a), (b) (1) of such Act (applicable as provided by § 602(d) of

such Act, which appears as *8 USCS § 1161* note) substituted subsec. (a) for one which read:

"(a) General classes. Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who--

"(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;

"(2) entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this Act or in violation of any other law of the United States;

"(3) hereafter, within five years after entry, becomes institutionalized at public expense because of mental disease, defect, or deficiency, unless the alien can show that such disease, defect, or deficiency did not exist prior to his admission to the United States.

"(4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial; or is convicted of an aggravated felony at any time after entry;

"(5) has failed to comply with the provisions of section 265 unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful, or has been convicted under section 266(c) of this title, or under section 36(c) of the Alien Registration Act, 1940, or has been convicted of violating or conspiracy to violate any provision of the Act entitled 'An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes,' approved June 8, 1938, as amended, or has been convicted under section 1546 of title 18 of the United States Code;

"(6) is or at any time has been, after entry, a member of any of the following classes of aliens:

"(A) Aliens who are anarchists;

"(B) Aliens who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches, opposition to all organized government;

"(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States; (ii) any other totalitarian party of the United States; (iii) the Communist Political Association; (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: Provided, That nothing in this paragraph, or in any other provision of this Act, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means;

"(D) Aliens not within any of the other provisions of this paragraph who advocate the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who are members of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian

dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under the authority of such organization or paid for by the funds of, or funds furnished by, such organization;

"(E) Aliens not within any of the other provisions of this paragraph, who are members of or affiliated with any organization during the time it is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950, unless such aliens established that they did not have knowledge or reason to believe at the time they became members of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist organization;

"(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage;

"(G) Aliens who write or publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, publication, distribution, or display any written or printed matter, advocating or teaching opposition to all organized government, or advocating or teaching (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship;

"(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in paragraph (G);

"(7) is engaged, or at any time after entry has engaged, or at any time after entry has had a purpose to engage, in any of the activities described in paragraph (27) or (29) of section 212(a), unless the Attorney General is satisfied, in the case of any alien within category (C) of paragraph (29) of such section that such alien did not have knowledge or reason to believe at the time such alien became a member of, affiliated with, or participated in the activities of the organization (and did not thereafter and prior to the date upon which such organization was registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950 have such knowledge or reason to believe) that such organization was a Communist organization;

"(8) in the opinion of the Attorney General, has within five years after

entry become a public charge from causes not affirmatively shown to have arisen after entry;

"(9)

(A) was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 248, or to comply with the conditions of any such status, (B) or is an alien with permanent resident status on a conditional basis under section 216 and has such status terminated under such section;

"(10) [Repealed]

"(11) is, or hereafter at any time after entry has been, a narcotic drug addict, or who at any time has been convicted of a violation of, or a conspiracy or attempt to violate, any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act *(21 U.S.C. 802));*

"(12) by reason of any conduct, behavior or activity at any time after entry became a member of any of the classes specified in paragraph (12) of section 212(a); or is or at any time after entry has been the manager, or is or at any time after entry has been connected with the management, of a house of prostitution or any other immoral place;

"(13) prior to, or at the time of any entry, or at any time within five years after any entry, shall have knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law;

"(14) at any time after entry, shall have been convicted of possessing or carrying in violation of any law any firearm or destructive device (as defined in paragraphs (3) and (4)), respectively, of section 921(a) of title 18, United States Code, or any revolver or any weapon which shoots or is designed to shoot automatically or semiautomatically more than one shot without manual reloading, by a single function of the trigger, or a weapon commonly called a sawed-off shotgun;

"(15) at any time within five years after entry, shall have been convicted of violating the provisions of title I of the Alien Registration Act, 1940;

"(16) at any time after entry, shall have been convicted more than once of violating the provisions of title I of the Alien Registration Act, 1940; or

"(17) the Attorney General finds to be an undesirable resident of the United States by reason of any of the following, to wit: has been or may hereafter be convicted of any violation or conspiracy to violate any of the following Acts or parts of Acts or any amendment thereto, the judgment on such conviction having become final, namely: an Act entitled 'An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes,' approved June 15, 1917, or the amendment thereof approved May 16, 1918; section 791, 792, 793, 794, 2388, and 3241, title 18, United States Code; and Act entitled 'An Act to prohibit the manufacture, distribution, storage, use, and possession in time of war of explosives, providing regulations for the safe manufacture, distribution, storage, use, and possession of the same, and for other purposes,' approved October 6, 1917; an Act entitled 'An Act to prevent in time of war departure from and entry into the United States contrary to the public safety,' approved May 22, 1918; section 215 of this Act; an Act entitled 'An Act to punish the willful injury or destruction of war material or of war premises or utilities used in connection with war material, and for other purposes,' approved April 20, 1918; sections 2151, 2153, 2154, 2155, and 2156 of title 18, United States Code; an Act entitled 'An Act to authorize the President to increase temporarily

the Military establishment of the United States,' approved May 18, 1917, or any amendment thereof or supplement thereto; the Selective Training and Service Act of 1940; the Selective Service Act of 1948; the Universal Military Training and Service Act; an Act entitled 'An Act to punish persons who make threats against the President of the United States,' approved February 14, 1917; section 871 of title 18, United States Code; an Act entitled 'An Act to define, regulate, and punish trading with the enemy, and for other purposes,' approved October 6, 1917, or any amendment, thereof, known as the Trading With the Enemy Act; section 6 of the Penal Code of the United States; section 2384 of title 18, United States Code; has been convicted of any offense against section 13 of the Penal Code of the United States committed during the period of August 1, 1914, to April 6, 1917, or of a conspiracy occurring within said period to commit an offense under said section 13 or of any offense committed during said period against the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, in aid of a belligerent in the European war; section 960 of title 18, United States Code;

"(18) has been convicted under section 278 of this Act or under section 4 of the Immigration Act of February 5, 1917;

"(19) during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with--

"(A) the Nazi government of Germany,

"(B) any government in any area occupied by the military forces of the Nazi government of Germany,

"(C) any government established with the assistance or cooperation of the Nazi government of Germany, or

"(D) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion;

"(20) obtains the status of an alien lawfully admitted for temporary residence under section 210A and fails to meet the requirement of section 210A(d)(5)(A) by the end of the applicable period; or

(21) is the subject of a final order for violation of section 2740.".

Section 602(b) of such Act further (applicable as above) deleted subsecs. (b) and (c), which read:

"(b) Nonapplicability of subsection (a)(4). The provisions of subsection (a)(4) respecting the deportation of an alien convicted of a crime or crimes shall not apply in the case of any alien who has subsequent to such conviction been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States. The provisions of this subsection shall not apply in the case of any alien who is charged with being deportable from the United States under subsection (a)(11) of this section or who has been convicted of any aggravated felony.

"(c) Fraudulent entry. An alien shall be deported as having procured a visa or other documentation by fraud within the meaning of paragraph (19) of section 212(a), and to be in the United States in violation of this Act within the meaning of subsection (a)(2) of this section, if (1) hereafter he or she obtains any entry into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than two years prior to such entry of the alien and which, within two years subsequent to any entry of the alien into the United States, shall be judicially annulled or terminated, unless such alien shall establish to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws; or (2) it appears to the satisfaction of the Attorney

General that he or she has failed or refused to fulfill his or her marital agreement which in the opinion of the Attorney General was hereafter made for the purpose of procuring his or her entry as an immigrant.";

and deleted subsecs. (f) and (g), which read:

"(f) Discretion of Attorney General to waive deportation for fraudulent entry in specified cases.

(1)

(A) The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure or have procured visas or other documentation, or entry into the United States, by fraud or misrepresentation, whether willful or innocent, may, in the discretion of the Attorney General, be waived for any alien (other than an alien described in subsection (a)(19)) who--

"(i) is the spouse, parent, or child of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence; and

"(ii) was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such entry except for those grounds of inadmissibility specified under paragraphs (14), (20), and (21) of section 212(a) which were a direct result of that fraud or misrepresentation.

"(B) A waiver of deportation for fraud or misrepresentation granted under subparagraph (A) shall also operate to waive deportation based on the grounds of inadmissibility at entry described under subparagraph (A)(ii) directly resulting from such fraud or misrepresentation.

"(2) The provisions of subsection (a)(11) as relate to a single offense of simple possession of 30 grams or less of marihuana may, in the discretion of the Attorney General, be waived for any alien (other than an alien described in subsection (a)(19)) who--

"(A) is the spouse or child of a citizen of the United States or of an alien lawfully admitted for permanent residence, or

"(B) has a child who is a citizen of the United States or an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the alien's deportation would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, or child of such alien and that such waiver would not be contrary to the national welfare, safety, or security of the United States.

"(g) Inapplicability of subsec. (a)(9)(B). The provisions of subsection (a)(9)(B) shall not apply in the cases described in section 216(c)(4).";

redesignated subsec. (e) as subsec. (b) and, in such subsection, substituted "paragraph (4) of subsection (a)" for "subsection (a) (6) or (7) of this section".

1991. Act Dec. 12, 1991 (effective as if included in the enactment of Act Nov. 29, 1990, as provided by § 310(1) of the 1991 Act, which appears as *8 USCS § 1101* note), in subsec. (a), in the introductory matter, deleted "deportable as being" following "alien is" and inserted "deportable" following "classes of", in para. (1), in subpara. (D)(i), inserted "respective", in subpara. (E), in cl. (i), substituted "any entry" for "entry" following "time of" and "date of", redesignated cl. (ii) as cl. (iii), and added a new cl. (ii), in subpara. (G), in the introductory matter, substituted "212(a)(6)(C)(i)" for "212(a)(5)(C)(i)" and, in subpara. (H), substituted "paragraph (4)(D)" for "paragraph (6) or (7)", in para. (2)(D), in the introductory matter, inserted "or attempt", in para. (3), added subpara. (C), and, in para. (4), in subpara. (A), in the introductory

matter, and in subpara. (B), substituted "after entry engages" for "after entry has engaged" and, in subpara. (C)(ii), substituted "excludability" for "excluability"; and, in subsec. (h), deleted a comma after "(3)(A)".

Such Act further (effective as if included in § 602(b) of Act Nov. 29, 1990, as provided by § 307(k) of the 1991 Act), deleted subsec. (d) which read: "Applicability to all aliens. Except as otherwise specifically provided in this section, the provisions of this section shall be applicable to all aliens belonging to any of the classes enumerated in subsection (a), notwithstanding (1) that any such alien entered the United States prior to the date of enactment of this Act, or (2) that the facts, by reason of which any such alien belongs to any of the classes enumerated in subsection (a), occurred prior to the date of enactment of this Act."; in subsec. (h), substituted "existed" for "exist", and redesignated such subsec. as subsec. (c).

1994. Act Sept. 13, 1994, in subsec. (a)(2)(A)(i)(I), inserted "(or 10 years in the case of an alien provided lawful permanent resident status under section 245(i))".

Act Oct. 25, 1994 (applicable to convictions occurring before, on, or after enactment, as provided by § 203(c) of such Act, which appears as *8 USCS § 1182* note), in subsec. (a), in para. (2)(C), substituted ", or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry," for "in violation of any law," and inserted "in violation of any law" after "Code)" and, in para. (3)(B), in cls. (ii) and (iii), inserted "an attempt or".

Such Act further (effective as if included in the enactment of Act Nov. 29, 1990, P.L. 101-649, as provided by § 219(dd) of the 1994 Act, which appears as *8 USCS § 1101* note), in subsec. (c), substituted "and 3(A) of subsection (a)" for "or (3)(A) of subsection 241(a)".

1996. Act April 24, 1996 (applicable as provided by § 435(b) of such Act, which appears as a note to this section), in subsec. (a), substituted para. (2)(A)(i)(II) for one which read: "(II) either is sentenced to confinement or is confined therefor in a prison or correctional institution for one year or longer,".

Such Act further (effective on the first day of the first month beginning more than 180 days after enactment, as provided by § 414(b) of such Act, which appears as a note to this section) added subsec. (d).

Act Sept. 30, 1996, in subsec (a), in para. (1), deleted subpara. (F), which read: "(F) Failure to maintain employment. Any alien who obtains the status of an alien lawfully admitted for temporary residence under section 210A who fails to meet the requirement of section 210A(d)(5)(A) by the end of the applicable period is deportable.", in para. (2)(A), redesignated cl. (iv) as cl. (v), added new cl. (iv) and, in cl. (v) as redesignated, substituted "(iii), and (iv)" for "and (iii)" and, in para. (3), substituted subpara. (C) for one which read: "(C) Document fraud. Any alien who is the subject of a final order for violation of section 274C is deportable.".

Such Act further (effective as provided by § 309(a) of such Act, which appears as *8 USCS § 1101* note), in subsec. (a), in the introductory matter, substituted "in and admitted to the United States" for "in the United States" and substituted "removed" for "deported", in para. (1), in the heading, substituted "inadmissible" for "excludable", in subpara. (A), in the heading and in the text, substituted "inadmissible" for "excludable", substituted subpara. (B) for one which read: "(B) Entered without inspection. Any alien who entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this Act or any other law of the United States is deportable.", in subpara. (G),

substituted "admission" for "entry" wherever appearing, in subpara. (H), substituted "inadmissible" for "excludable", substituted "removal" for "deportation" wherever appearing, and substituted "admission" for "entry" wherever appearing, in para. (2), substituted "admission" for "entry" wherever appearing, and, in para. (4), in subparas. (A) and (B), substituted "admission" for "entry" and, in subpara. (C)(ii), substituted "inadmissibility" for "excludability"; and, in subsec. (c), substituted "inadmissibility" for "exclusion".

Such Act further (effective as above) purported to amend subsec. (a)(1)(H)(ii) by deleting "at entry"; however, this deletion was made in the concluding matter of subsec. (a)(1), following "inadmissibility", in order to effectuate the probable intent of Congress.

Such Act further (effective on enactment as provided by § 308(d)(2)(D) of such Act) deleted subsec. (d) which read: "(d) Notwithstanding any other provision of this title, an alien found in the United States who has not been admitted to the United States after inspection in accordance with section 235 is deemed for purposes of this Act to be seeking entry and admission to the United States and shall be subject to examination and exclusion by the Attorney General under chapter 4. In the case of such an alien the Attorney General shall provide by regulation an opportunity for the alien to establish that the alien was so admitted.".

Such Act further (applicable as provided by § 344(c) of such Act, which appears as *11 USCS § 1182* note), in subsec. (a)(3), added subpara. (D).

Such Act further (applicable as provided by § 347(c) of such Act, which appears as *11 USCS § 1182* note), in subsec. (a), added para. (6).

Such Act further (applicable as provided by § 350(b) of such Act, which appears as *11 USCS § 1227* note), in subsec. (a)(2), added subpara. (E).

Such Act further (applicable as provided by § 351(c) of such Act, which appears as *11 USCS § 1182* note), in subsec. (a)(1)(E)(iii), inserted "an individual who at the time of the offense was".

Such Act further (effective as if included in Act Sept. 13, 1994, as provided by § 671(a)(7) of such Act, which appears as *8 USCS § 1101* note), in subsec. (a)(2)(A)(i), substituted "245(j)" for "245(i)".

2000. Act Oct. 28, 2000, in subsec. (a), in para. (1)(H), in cl. (i), designated the existing provisions as subcl. (I), redesignated cl. (ii) as subcl. (II), and added a new cl. (ii), and added para. (7).

Act Oct. 30, 2000 (effective as provided by § 201(c)(3) of such Act, which appears as a note to this section), in subsec. (a), in para. (3), substituted subpara. (D) for one which read: "(D) Falsely claiming citizenship. Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any Federal or State law is deportable.", and substituted para. (6) for one which read: "(6) Unlawful voters. Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable.".

2001. Act Oct. 26, 2001 (effective and applicable as provided by § 411(c) of such Act, which appears as *8 USCS § 1182* note), in subsec. (a)(4)(B), substituted "section 212(a)(3)(B)(iv)" for "section 212(a)(3)(B)(iii)".

Redesignation:

This section, enacted as § 241 of Title II of Act June 27, 1952, ch 477, was redesignated § 237 of such Title by Act Sept. 30, 1996, P.L. 104-208, Div C, Title III, Subtitle A, § 305(a)(2), 110 Stat. 3009-598 (effective as provided by § 309(a) of such Act, which appears as *8 USCS § 1101* note).

Other provisions:

Repeal of subsec. (a)(10) with no consequent renumbering. Act Nov. 14, 1986, P.L. 99-653, § 7(c), 100 Stat. 3657, provided: "Section 241(a) *(8 U.S.C. 1251*(a)) is amended by repealing paragraph (10) thereof: Provided, That no paragraph following paragraph (10) shall be redesignated as a result of this amendment.".

Application of Nov. 18, 1988 amendment of subsec. (a)(4). Act Nov. 18, 1988, P.L. 100-690, Title VII, Subtitle J, § 7344(b), 102 Stat. 4471, provides: "The amendments made by subsection (a) [amending subsec. (a)(4) of this section] shall apply to any alien who has been convicted, on or after the date of the enactment of this Act, of an aggravated felony.".

Application of Nov. 18, 1988 amendment of subsec. (a)(14). Act Nov. 18, 1988, P.L. 100-690, Title VII, Subtitle J, § 7348(b), 102 Stat. 4473, provides: "The amendment made by subsection (a) [amending subsec. (a)(14) of this section] shall apply to any alien convicted, on or after the date of the enactment of this Act, of possessing any firearm or destructive device referred to in such subsection.".

Effective date of Nov. 29, 1990 amendment of subsec. (h). Act Nov. 29, 1990, P.L. 101-649, Title I, Subtitle D, § 153(b) (2), 104 Stat. 5006, provides that subsec. (h) of this section, as added by § 153(b) (1) of such Act, is amended "effective on the date that the amendments made by section 602 of this Act [see § 602(d) of such Act which appears as *8 USCS § 1161* note] become effective". (See the 1990 Amendment notes to this section.)

General transitions, admissibility standards, and construction. For provisions relating to the general transitions, admissibility standards and construction of the amendments made by Act Nov. 29, 1990, P.L. 101-649, see § 161(c)-(e) of such Act, which appears as *8 USCS § 1101* note.

Effective date and application of Nov. 29, 1990 amendment of subsec. (b) Act Nov. 29, 1990, P.L. 101-649, Title V, Subtitle A, § 505(b), 104 Stat. 5050, provides: "The amendments made by subsection (a) [amending subsec. (b) of this section] shall take effect on the date of the enactment of this Act and shall apply to convictions entered before, on, or after such date.".

Application of Nov. 29, 1990 amendment of subsec. (a)(11). Act Nov. 29, 1990, P.L. 101-649, Title V, Subtitle A, § 508(b), 104 Stat. 5051, provides: "The amendment made by subsection (a) [amending subsec. (a)(11) of this section] shall apply to convictions occurring on or after the date of the enactment of this Act.".

Report on criminal aliens. Act Nov. 29, 1990, P.L. 101-649, Title V, Subtitle A, § 510, 104 Stat. 5051; Dec. 12, 1991, P.L. 102-232, Title III, § 306(a)(8),(9), 105 Stat. 1751 (effective as if included in Act Nov. 29, 1990, as provided by § 310(1) of Act Dec. 12, 1991, which appears as *8 USCS § 110l* note) provides:

"(a) In general. The Attorney General shall submit to the appropriate Committees of the Congress, by not later than December 1, 1991, a report that describes the efforts of the Immigration and Naturalization Service to identify, apprehend, detain, and remove from the United States aliens who have been convicted of crimes in the United States.

"(b) Criminal alien census. Such report shall include a statement of--

"(1) the number of aliens in the United States who have been convicted of a criminal offense in the United States, and, of such number, the number of such aliens who are not lawfully admitted to the United States;

"(2) the number of aliens lawfully admitted to the United States who have been convicted of such an offense and, based on such conviction, are subject to deportation from the United States;

"(3) the number of aliens in the United States who are incarcerated in a penal institution in the United States, and, of such number, the number of such aliens who are not lawfully admitted to the United States;

"(4)

(A) the number of aliens whose deportation hearings have been conducted pursuant to section 242A(a) of the Immigration and Nationality Act [*8 USCS § 1252a*(a)], and (B) the percentage that such number represents of the total number of deportable aliens with respect to whom a hearing under such section could have been conducted since November 18, 1988; and

"(5) the number of aliens in the United States who have reentered the United States after having been convicted of a criminal offense in the United States.

Within each of the numbers of aliens specified under this subsection who have been convicted of criminal offenses, the Attorney General shall distinguish between criminal offenses that are aggravated felonies (as defined in section 101(a)(43) of the Immigration and Nationality Act, as amended by this Act [*8 USCS § 1101*(a)(43)]) and other criminal offenses.

(c) Criminal alien removal plan. The Attorney General shall include in the report a plan for the prompt removal from the United States of criminal aliens who are subject to exclusion or deportation. Such plan shall also include a statement of additional funds that would be required to provide for the prompt removal from the United States of--

"(1)(A) aliens who are not lawfully admitted to the United States and who, as of the date of the enactment of this Act, have committed any criminal offense in the United States, and (B) aliens who are lawfully admitted to the United States and who, as of such date, have committed a criminal offense in the United States the commission of which makes the alien subject to deportation; and

"(2)(A) aliens who are not lawfully admitted to the United States and who, in the future, commit a criminal offense in the United States, and (B) aliens who are lawfully admitted to the United States and who, in the future, commit a criminal offense in the United States the commission of which makes the alien subject to deportation.

Such plan shall also include a method for identifying and preventing the unlawful reentry of aliens who have been convicted of criminal offenses in the United States and removed from the United States.".

Application of amendments made by § 544 of Act Nov. 29, 1990. Act Nov. 29, 1990, P.L. 101-649, Title V, Subtitle D, § 544(d), 104 Stat. 5061; Dec. 12, 1991, P.L. 102-232, Title III, § 306(c)(5)(B), 105 Stat. 1752 (effective as if included in Act Nov. 29, 1990, as provided by § 310(1) of Act Dec. 12, 1991, which appears as *8 USCS § 110l* note) provides: "The amendments made by this section [amending subsec. (a)(19)-(21) of this section, enacting *8 USCS § 1324c]* shall apply to persons or entities that have committed violations on or after the date of the enactment of this Act.".

Savings provisions of Nov. 29, 1990 amendments. Act Nov. 29, 1990, P.L. 101-649, Title VI, § 602(c), 104 Stat. 5081, provides: "Notwithstanding the amendments made by this section [amending this section], any alien who was deportable because of a conviction (before the date of the enactment of this Act) of an offense referred to in paragraph (15), (16), (17), or (18) of section 241(a) of the Immigration and Nationality Act [subsec. (a) (15), (16), (17), or (18) of this section], as in effect before the date of the enactment of this Act, shall be considered to remain so deportable. Except as otherwise specifically provided in such section and subsection (d) [*8 USCS § 1161* note], the provisions of such section, as amended by this section, shall apply to all aliens described in subsection (a) thereof notwithstanding that (1) any such

alien entered the United States before the date of the enactment of this Act, or (2) the facts, by reason of which an alien is described in such subsection, occurred before the date of the enactment of this Act.".

Effective date of April 24, 1996 addition of subsec. (d). Act April 24, 1996, P.L. 104-132, Title IV, Subtitle B, § 414(b), 110 Stat. 1270, provides: "The amendment made by subsection (a) [adding subsec. (d) of this section] shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act.".

Application of April 24, 1996 amendment of subsec. (a)(2)(A)(i)(II). Act April 24, 1996, P.L. 104-132, Title IV, Subtitle C, § 414(b), 110 Stat. 1270, provides: "The amendment made by subsection (a) [amending subsec. (a)(2)(A)(i)(II) of this section] shall apply to aliens against whom deportation proceedings are initiated after the date of the enactment of this Act.".

Effective date of Sept. 30, 1996 deletion of subsec. (d). Act Sept. 30, 1996, P.L. 104-208, Div C, Title III, Subtitle A, § 308(d)(2)(D), 110 Stat. 3009-617, provides that the deletion of subsec. (d) of this section, as added by section 414(a) of Act April 24, 1996, P.L. 104-132, is effective upon enactment of Act Sept. 30, 1996.

Effective date and applicability of Oct. 30, 2000 amendments. Act Oct. 30, 2000, P.L. 106-395, Title II, § 201(c)(3), 114 Stat. 1635, provides: "The amendment made by paragraph (1) [amending subsec. (a)(6) of this section] shall be effective as if included in the enactment of section 347 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-638) [enacted Sept. 30, 1996] and shall apply to voting occurring before, on, or after September 30, 1996. The amendment made by paragraph (2) [amending subsec. (a)(3)(D) of this section] shall be effective as if included in the enactment of section 344 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-637) [enacted Sept. 30, 1996] and shall apply to representations made on or after September 30, 1996. Such amendments shall apply to individuals in proceedings under the Immigration and Nationality Act on or after September 30, 1996.".

NOTES:

CODE OF FEDERAL REGULATIONS

Immigration and Naturalization Service, Department of Justice--Documentary requirements: Nonimmigrants; waivers; admission of certain inadmissible aliens; parole, 8 CFR Part 212.

Immigration and Naturalization Service, Department of Justice--Reentry permits, refugee travel documents, and advance parole documents, 8 CFR Part 223.

Immigration and Naturalization Service, Department of Justice--Inspection of persons applying for admission, 8 CFR Part 235.

Immigration and Naturalization Service, Department of Justice--Deportation of excluded aliens, 8 CFR Part 237.

Immigration and Naturalization Service, Department of Justice--Imposition and collection of fines, 8 CFR Part 280.

CROSS REFERENCES

Power of President to grant reprieves and pardons, USCS, Constitution, Article 2, § 2, cl 1.

Advocates defined, *8 USCS § 1101*(a)(2).

Alien defined, *8 USCS § 1101*(a)(3).

Attorney General defined, *8 USCS § 1101*(a)(5).

Crewman defined, *8 USCS § 1101*(a)(10).

Doctrine defined, *8 USCS § 1101*(a)(12).
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Unmarried defined, *8 USCS § 1101*(a)(39).
World communism defined, *8 USCS § 1101*(a)(40).
Adjacent islands defined, *8 USCS § 1101*(b)(5).
Advocating doctrine defined, *8 USCS § 1101*(e)(1).
Affiliation defined, *8 USCS § 1101*(e)(2).
Advocating doctrines of world communism defined, *8 USCS § 1101*(e)(3).
Diplomatic and semidiplomatic immunities, *8 USCS § 1102.*
Deportation after imprisonment of convicted aliens, *8 USCS § 1252*(h).
Felony classified as offense punishable by death or imprisonment for term exceeding one year, *18 USCS § 1.*
Principals, 18 USCS § 2.
Conspiracy, 18 USCS §§ 371 et seq.
Deportation of foreign participants in Peace Corps programs, *22 USCS § 2508.*

RESEARCH GUIDE

Federal Procedure:
12 Fed Proc L Ed, Evidence §§ 33:91, 286.
18A Fed Proc L Ed, Immigration, Naturalization, and Nationality § 45:1252.
18B Fed Proc L Ed, Immigration, Naturalization, and Nationality §§ 45:1728, 1752, 2442.

Am Jur:
3A Am Jur 2d, Aliens and Citizens §§ 70, 139, 188, 416, 417, 835, 933, 949, 990, 1014-1018, 1020-1029, 1032-1038, 1039, 1042, 1043, 1046, 1048-1054, 1057-1063, 1065, 1067-1069, 1072, 1073, 1075-1078, 1080, 1086, 1114, 1119, 1128, 1150, 1161, 1166, 1175-1177, 1186, 1215, 1302, 1327, 1338, 1375, 1524, 1690, 1823, 1932, 1968, 1976, 2088.
16A Am Jur 2d, Constitutional Law § 509.
70C Am Jur 2d, Social Security and Medicare §§ 1697, 1700, 1701.

Am Jur Trials:
Representation of an Alien in Exclusion, Rescission and Deportation Proceedings, 26 Am Jur Trials, p. 327.

Forms:
1C Am Jur Pl & Pr Forms (Rev), Aliens and Citizens, § 32.

Annotations:
Exclusion or deportation of alien as subversive. *2 L Ed 2d 1617.*
Alien's right, under 1952 Immigration and Nationality Act, to re-enter United States after temporary absence. *10 L Ed 2d 1397.*

Validity and construction of § 212(a)(1-7) of Immigration and Nationality Act of 1952 *(8 USCS § 1182*(a)(1-7), excluding aliens with mental or physical illnesses or defects. *18 L Ed 2d 1550.*

Supreme Court's development of the "clear and present danger" rule and the related rule concerning advocacy of unlawful acts as limitations on the constitutional right of free speech and press. *38 L Ed 2d 835.*

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Procedural due process requirements in proceedings to exclude or deport aliens--Supreme Court cases. *74 L Ed 2d 1066.*

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Construction and application of § 245 of the Immigration and Nationality Act of 1952 *(8 USCS § 1255)* authorizing adjustment of status. *4 ALR Fed 557.*

Comment Note.--Hearsay evidence in proceedings before Federal administrative agencies. *6 ALR Fed 76.*

Withdrawal of plea of guilty or nolo contendere, after sentence, under Rule 32(d) of Federal Rules of Criminal Procedure. *9 ALR Fed 309.*

Who qualifies to act as counsel within §§ 242(b)(2), 292 of Immigration and Nationality Act of 1952 *(8 USCS §§ 1252*(b)(2), 1362) entitling alien to be represented in exclusion or deportation proceedings by counsel of his own choosing "authorized to practice in such proceedings." *9 ALR Fed 924.*

Validity, construction, and application of provisions of Federal Youth Corrections Act *(18 USCS § 5010)* governing sentencing and rehabilitative treatment of youth offenders. *11 ALR Fed 499.*

Construction and application of § 203(a)(7) of Immigration and Nationality Act *(8 USCS § 1153*(a)(7)) authorizing allotment of visas to aliens who are refugees, and conditional entry of refugees. *15 ALR Fed 288.*

What constitutes "single scheme of criminal misconduct" for purposes of § 241(a)(4) of Immigration and Nationality Act of 1952 *(8 USCS § 1251*(a)(4)), providing for deportation of aliens convicted of two crimes involving moral turpitude, not arising out of single scheme of criminal misconduct. *19 ALR Fed 598.*

What constitutes "crime involving moral turpitude" within meaning of §§ 212(a)(9) and 241(a)(4) of Immigration and Nationality Act *(8 USCS §§ 1182*(a)(9), 1251(a)(4)), and similar predecessor statutes providing for exclusion or deportation of aliens convicted of such crime. *23 ALR Fed 480.*

What constitutes "convicted" within meaning of § 241(a)(4, 11, 14-16, 18) of Immigration and Nationality Act *(8 USCS § 1251*(a)(4, 11, 14-16, 18)) providing that alien shall be deported who has been convicted of certain offenses. *26 ALR Fed 709.*

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Construction and application of provisions of Federal Youth Corrections Act *(18 USCS § 5021)* authorizing setting aside of youth offender's conviction. *38 ALR Fed 470.*

Validity, construction and application of *8 USCS § 1401*(a)(7), (b), and (c) and predecessor statutes, granting citizenship, under certain conditions, to child born outside United States, one of whose parents was United States citizen. *40 ALR Fed 763.*

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Infant citizen as entitled to stay of alien parents' deportation order. *42 ALR Fed 924.*

Right of alien who is under deportation proceedings to depart voluntarily from United States, under § 244(e) of Immigration and Nationality Act *(8 USCS § 1254*(e)). *44 ALR Fed 574.*

Suspension of deportation and adjustment of status for permanent residence of alien under § 244(a)(1) of Immigration and Nationality Act *(8 USCS § 1254*(a)(1)). *45 ALR Fed 185.*

Waiver of deportation based on family relationships, under § 241(f) of Immigration and Nationality Act *(8 USCS § 1251*(f)). *48 ALR Fed 281.*

Foreign residence requirement for educational (exchange) visitors under § 212(e) of Immigration and Nationality Act *(8 USCS § 1182*(e)). *48 ALR Fed 509.*

Who is "stepchild" for purposes of § 101(b)(1)(B) of Immigration and Nationality Act *(8 USCS § 1101*(b)(1)(B)). *54 ALR Fed 182.*

Illegal re-entry, under § 276 of Immigration and Nationality Act of 1952 *(8 USCS § 1326),* of alien previously arrested and deported, or excluded and deported. *59 ALR Fed 190.*

Alien's taking of employment other than type specified in labor certification as warranting deportation under immigration law. *62 ALR Fed 402.*

Propriety, under § 287(a)(1) of Immigration and Nationality Act *(8 USCS § 1357*(a)(1)), of warrantless interrogation of alien, or person believed to be alien, as to alien's right to be or to remain in United States. *63 ALR Fed 180.*

When is illegitimate child "legitimated" for purposes of § 101(b)(1)(C) of Immigration and Nationality Act *(8 USCS § 1101*(b)(1)(C)). *63 ALR Fed 520.*

What constitutes "final deportation order" appealable to United States Court of Appeals under § 106 of Immigration and Nationality Act *(8 USCS § 1105a). 65 ALR Fed 742.*

What constitutes "extreme hardship" or "exceptional and extremely unusual hardship," under § 244(a) of Immigration and Nationality Act *(8 USCS § 1254*(a)), allowing Attorney General to suspend deportation of alien and allow admission for permanent residence. *72 ALR Fed 133.*

When is aiding of alien's illegal entry into United States "for gain," so as to be ground for exclusion under § 212(a)(31) of Immigration and Nationality Act *(8 USCS § 1182*(a)(31)) or for deportation under § 241(a)(13) of Immigration and Nationality Act *(8 USCS § 1251*(a)(13)). *77 ALR Fed 83.*

What constitutes concealment of material facts or willful misrepresentation warranting revocation of naturalization under § 340 of Immigration and Nationality Act of 1952 *(8 USCS § 1451). 77 ALR Fed 379.*

Excludability of alien under § 212(a)(1-7) of Immigration and Nationality Act of 1952 *(8 USCS § 1182*(a)(1-7), excluding aliens for mental or physical defect, disease, or disability. *77 ALR Fed 828.*

Eligibility, for discretionary admission under § 212(c) of Immigration and Nationality Act of 1952 *(8 USCS § 1182*(c)), of alien returning to unrelinquished domicile after trip abroad. *80 ALR Fed 8.*

Alien's entitlement to sixth-preference classification under § 203(a)(6) of Immigration and Nationality Act of 1952 *(8 USCS § 1153*(a)(6)), where labor certification has been granted. *80 ALR Fed 676.*

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Ineffective assistance of counsel: failure to seek judicial recommendation against deportation under § 241(b) of Immigration and Nationality Act of 1952 *(8 USCS § 1251*(b)). *94 ALR Fed 868.*

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Effect of expungement of conviction on § 241(a)(4), (11) of Immigration and Nationality Act of 1952 *(8 USCS § 1251*(a)(4), (11)), making aliens deportable for crimes involving moral turpitude or drugs. *98 ALR Fed 750.*

What Constitutes "Aggravated Felony" for which Alien Can Be Deported or Removed Under § 237(a)(2)(A)(iii) of Immigration and Nationality Act *(8 U.S.C.A. § 1227*(a)(2)(A)(iii) [*8 USCS § 1227*(a)(2)(A)(iii)]). *168 ALR Fed 575.*

Evidence Warranting Refusal of Admission, Removal, or Denaturalization for Nazi-Related Conduct. *180 ALR Fed 243.*

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What absence from United States constitutes interruption of permanent residence so as to subject alien to exclusion or deportation on re-entry. *22 ALR3d 749.*

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I. IN GENERAL

1. Generally

Congress has power to order at any time deportation of aliens whose presence in country it deems hurtful, and may do so by appropriate executive proceedings. *Ng Fung Ho v White (1922) 259 US 276, 66 L Ed 938, 42 S Ct 492.*

Stay of all aliens is matter of privilege granted and revocable at will of United States. *United States ex rel. Knauer v Jordan (1946, CA7 Ill) 158 F2d 337,* cert den *(1947) 331 US 810, 91 L Ed 1830, 67 S Ct 1200.*

Aliens have no absolute right to remain in United States, as Congress has plenary power over them and may deport them at any time, for any reason, even on grounds nonexistent at time of their entry. *Marcello v Ahrens (1954, CA5 La) 212 F2d 830,* affd *(1955) 349 US 302, 99 L Ed 1107, 75 S Ct 757,* reh den *(1955) 350 US 856, 100 L Ed 761, 76 S Ct 38.*

Alien resident in United States may be deported for any reason which makes his residence here not in best interests of government, as determined by Congress. *Brice v Pickett (1975, CA9 Cal) 515 F2d 153.*

Provisions of *8 USCS §§ 1103*(a), 1184(a), and 1251 [redesignated 1227] former subsection (a)(9) furnish ample statutory basis for Immigration and Naturalization Service regulations concerning Iranians in United States. *Shoaee v Immigration & Naturalization Service (1983, CA9) 704 F2d 1079.*

The Fifth Circuit has upheld, as not unreasonable, the BIA's decision in Re Arthur, I & N Interim Dec No 3173, that its prior decision in *Re Garcia, 16 I & N Dec 653,* was inconsistent with the Congressional intent expressed in the Immigration Marriage Fraud Amendments of 1986 and the Immigration Act of 1990, which created a presumption that a marriage contracted after the institution of deportation proceedings is fraudulent, and that therefore the BIA will no longer grant a motion to reopen a deportation proceeding to permit consideration of an application for an adjustment of status based on an unadjudicated visa petition resulting from such a marriage; thus, where an alien who had entered into a sham marriage with a U.S. citizen pled guilty to a violation of *18 USCS § 1546* and was subsequently found deportable under former INA § 241(a)(5) [former *8 USCS § 1251* [redesignated 1227] former subsection (a)(5)], the BIA did not abuse its discretion in denying the alien's motion to reopen the deportation proceeding in order to allow her to apply for lawful permanent resident status on the basis of her second marriage, also to a U.S. citizen, which occurred while the deportation proceeding was pending. *Pritchett v INS (1993, CA5) 993 F2d 80,* reh den (1993, CA5) *1993 US App LEXIS 19349* and cert den *(1993) 510 US 932, 126 L Ed 2d 310, 114 S Ct 345.*

Where BIA interprets state or federal criminal laws, court of appeals reviews its decision *de novo. Sutherland v Reno (2000, CA2) 228 F3d 171.*

Deportation is not regarded as punishment for unlawful conduct; rather it is in nature of civil proceeding. *Najafi v Civiletti (1981, WD Mo) 511 F Supp 236.*

2. Construction

Any doubts as to construction of predecessors to *8 USCS § 1251* [redesignated 1227] would be resolved in favor of alien, because deportation is drastic measure and at times equivalent of banishment or exile; it is not to be assumed that Congress meant to tread on alien's freedom beyond that which is required by narrowest of several possible meanings of words used. *Fong Haw Tan v Phelan (1948) 333 US 6, 92 L Ed 433, 68 S Ct 374.*

Although it is not penal in character, deportation is drastic measure, at times equivalent of banishment or exile, for which deportation statute should be given narrowest of several possible meanings. *United States ex rel. Brancato v Lehmann (1956, CA6 Ohio) 239 F2d 663.*

Where BIA interprets state or federal criminal laws, court of appeals reviews its decision *de novo. Sutherland v Reno (2000, CA2) 228 F3d 171.*

3. Relationship to state law

Authority of Congress in relation to deportation was supreme and law or practice of state could not and should not have allowed alien to remain in United States longer than permitted by federal law. *Houvardas v Wixon (1948, CA9 Cal) 169 F2d 980,* cert den *(1949) 336 US 913, 93 L Ed 1077, 69 S Ct 603.*

The INS has no power to adjudicate the validity of state convictions underlying deportation hearings. *De La Cruz v U.S. INS (1991, CA9) 951 F2d 226, 91* Daily Journal DAR 15402.

4. Constitutionality

Application of deportation statute to alien with near lifelong residence in United States and no connections with country to which deportation is to be made is not violation of Fifth or Eighth Amendments; deportation is strictly Congressional policy question in which judiciary will not intervene as long as procedural due process requirements have been met. *Le Tourneur v Immigration & Naturalization Service (1976, CA9) 538 F2d 1368,* cert den *(1977) 429 US 1044, 50 L Ed 2d 757, 97 S Ct 748.*

Statutory provisions of INA §§ 241(a)(19), 244(a) [*8 USCS §§ 1251* [redesignated 1227] former subsection (a)(19), 1254(a)] do not constitute bills of attainder, nor are they ex post facto laws as deportation is not punishment; alien who served as Nazi concentration camp guard cannot deny assisting Nazis in their program of racial, political, and religious oppression. *Schellong v U.S. Immigration & Naturalization Service (1986, CA7) 805 F2d 655, 91 ALR Fed 747,* cert den *(1987) 481 US 1004, 95 L Ed 2d 199, 107 S Ct 1624,* reh den *(1987) 482 US 921, 96 L Ed 2d 687, 107 S Ct 3199.*

INA § 241(a)(19) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(19)] is not unconstitutionally vague and overbroad, is not ex post facto law, and is not bill of attainder inflicting punishment without judicial trial; term "persecution" is adequately defined by legislative history and court interpretations and rather than punish individuals for actions previously taken, provision merely insures that U.S. is not haven for individuals who assisted Nazis in brutal persecution and murder of millions of people. *Kulle v Immigration & Naturalization Service (1987, CA7) 825 F2d 1188,* cert den *(1988) 484 US 1042, 98 L Ed 2d 860, 108 S Ct 773.*

Although Equal Protection Clause of U.S. Constitution applies to aliens within United States, because federal authority in areas of immigration and naturalization is plenary, court will apply relaxed scrutiny test in determining whether federal classifications on basis of alienage are valid. *Garberding v INS (1994, CA9) 30 F3d 1187, 94 CDOS 5762, 94* Daily Journal DAR 10499.

Because there is rational basis, related to unique bond between spouses and between parents and children, for Congress to limit waivers of deportation under

8 USCS § 1251 [redesignated 1227] (a)(1)(E)(iii) for aliens who have assisted another alien to enter United States illegally to those who assisted their spouse, parent or child, Court will deny equal protection challenge brought by alien denied waiver of deportation after he had assisted his brother in entering United States illegally. *Perez-Oropeza v INS (1995, CA9) 56 F3d 43, 95 CDOS 4062.*

Fact that aliens who are in deportation proceedings are not entitled to discretionary waiver of deportation, but aliens who are in exclusion proceedings are entitled to such relief, does not violate equal protection. *Almon v Reno (1999, CA1 Mass) 192 F3d 28.*

Aliens who have committed serious crimes in this country may be detained in custody for prolonged periods when country of origin refuses to allow alien's return, and such detention is constitutional if government provides individualized periodic review of alien's eligibility for release on parole. *Chi Thon Ngo v INS (1999, CA3 Pa) 192 F3d 390.*

II. GROUNDS FOR DEPORTATION [*8 USCS § 1227*(a)]

A. In General

5. Application; aliens

8 USCS § 1251 [redesignated 1227] former subsection (a)(4) permits deportation only of person who was alien at time of his convictions. *Costello v Immigration & Naturalization Service (1964) 376 US 120, 11 L Ed 2d 559, 84 S Ct 580.*

In order for United States citizen by virtue of his birth to be subject to deportation, Government must demonstrate that he lost his U.S. citizenship through expatriation and assumed status of alien. *Jolley v Immigration & Naturalization Service (1971, CA5) 441 F2d 1245,* cert den *(1971) 404 US 946, 30 L Ed 2d 262, 92 S Ct 302.*

Admission of foreign citizenship made in 1970 was persuasive evidence of alienage in 1970 but such admission could alone be said to constitute clear and convincing evidence of alienage 4 years later sufficient to support deportability under *8 USCS § 1252. Sint v Immigration & Naturalization Service (1974, CA1) 500 F2d 120.*

Determination of alienage, to support finding of deportability under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2), was supported by reasonable, substantial, and probative evidence, where Service introduced Form 1-213 which indicated that petitioner was native and citizen of Argentina who made no claim to United States citizenship or to resident alien status and where, although petitioner did not sign form, government investigator who interviewed him testified that he voluntarily gave information at interview conducted approximately one month before hearing. *Chacon-Campusano v Immigration & Naturalization Service (1977, CA9) 549 F2d 1329.*

Individual who entered country legally over 20 years ago was found to be deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) after conviction of narcotics offense, such individual being alien notwithstanding fact that such person had paid taxes in this country and registered for draft, was married to American citizen and had 14-year-old son. *Carreon-Hernandez v Levi (1976, DC Minn) 409 F Supp 1208,* affd (1976, CA8 Minn) *543 F2d 637,* cert den *(1977) 430 US 957, 51 L Ed 2d 808, 97 S Ct 1605.*

Person of Mexican parentage who is born in United States territory is not alien even though territory's governmental services are provided by Mexican government and territory is later ceded to Mexico. *In re Cantu (1978, BIA) 17 I*

& N Dec 190.

6. --Denaturalized citizens

Section 241(a)(4) of Immigration and Nationality Act of 1952 *(8 USCS § 1251* [redesignated 1227] former subsection (a)(4)), providing for deportation of an alien who at any time after entry is convicted of two crimes involving moral turpitude, is not applicable to person who was naturalized citizen at time he was convicted of crimes, but was later denaturalized, whether on ground of fraud or for other reasons; § 214(a)(4) permits deportation only of person who was alien at time of his convictions. *Costello v Immigration & Naturalization Service (1964) 376 US 120, 11 L Ed 2d 559, 84 S Ct 580.*

Since respondent was alien, having been denaturalized, he was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), allowing deportation of alien who has been convicted of drug offense notwithstanding narcotics conviction which was basis of deportation occurred at time when respondent was naturalized U. S. citizen. *In re Rossi (1966, BIA) 11 I & N Dec 514.*

7. --Nationals

Deportation of petitioner, as "alien" within meaning of immigration laws, upon his conviction in 1951 on narcotic charge was proper, notwithstanding that at time he was admitted to United States for permanent residence, Philippine Islands was territory of United States and he was national of United States. *Rabang v Boyd (1957) 353 US 427, 1 L Ed 2d 956, 77 S Ct 985,* reh den *(1957) 354 US 944, 1 L Ed 2d 1542, 77 S Ct 1421.*

Petitioner did not "owe permanent allegiance to the United States" and was, therefore, not "national" under *8 USCS § 1101*(a)(22), and hence was "alien" under *8 USCS § 1101*(a)(3) and subject to deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) where, although she had lived for twenty years since early childhood in United States, she had not been naturalized. *Oliver v United States Dep't of Justice, Immigration & Naturalization Service (1975, CA2) 517 F2d 426,* cert den *(1976) 423 US 1056, 46 L Ed 2d 646, 96 S Ct 789.*

Filipino who last arrived in United States in 1925, when he was national of United States, was not deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(12), providing for deportation of alien who, after entry, becomes involved in prostitution, since entry referred to in that subsection must be made by one who was alien at time of entry. *In re C---- (1954, BIA) 6 I & N Dec 398.*

B. Aliens Excludable at Time of Entry [*8 USCS § 1227*(a)(1)(A)]

8. Generally

Illegal arrest of alien in United States does not void subsequent deportation order under *8 USCS § 1251* [redesignated 1227] (a)(1) based on alien's admission of his illegal status at hearing. *Katris v Immigration & Naturalization Service (1977, CA2) 562 F2d 866.*

In deportation proceedings, alien seeking suspension of deportation has burden of demonstrating both statutory eligibility and equities meriting favorable exercise of discretion. *Bu Roe v Immigration & Naturalization Service (1985, CA9) 771 F2d 1328.*

Daily trips to Mexico by alien with F-1 student visa in order to attend school were "meaningfully interruptive" of his stay in U.S. so as to constitute an entry, and thus, alien was deportable under *8 USCS § 1251* [redesignated 1227]

(a)(1) because he was excludable at the time of entry into the United States. *Kabongo v Immigration & Naturalization Service (1988, CA6) 837 F2d 753,* cert den *(1988) 488 US 982, 102 L Ed 2d 564, 109 S Ct 533.*

Function and full force of *8 USCS § 1251* [redesignated 1227] (a)(1) governing deportation of aliens excludable at time of entry is to direct government to law which must be considered in determining whether respondent was excludable and, consonant with principles of due process, to determine if alien falls within class barred by that law. *In re C---- (1954, BIA) 6 I & N Dec 219.*

Provisions of *8 USCS § 1251* [redesignated 1227] (a)(1) governing deportation of aliens excludable at time of entry presuppose that situation will arise where alien's excludability at entry will be discovered only after his admission, and provisions, by their terms, reach all those who manage to enter United States in violation of legislative edict barring them, even if aliens were examined and passed by immigration officer. *In re Khan (1973, BIA) 14 I & N Dec 397,* affd (1975, CA9) *526 F2d 488, 31 ALR Fed 886,* cert den *(1976) 425 US 971, 48 L Ed 2d 794, 96 S Ct 2167.*

9. Grounds for exclusion

Alien who was allowed to enter under visa, even though he could have been excluded under law, could have been deported within five years after entry by warrant of Attorney General, as belonging to class excluded under entry laws. *United States ex rel. Vajta v Watkins (1950, CA2 NY) 179 F2d 137.*

Charge of deportability under *8 USCS § 1251* [redesignated 1227] (a)(1) could not be sustained where based on ground of inadmissibility under repealed law which would no longer constitute basis of inadmissibility under Immigration and Nationality Act by reason of exception contained in *8 USCS § 1182* former subsection (a)(9). *In re R---- (1953, BIA) 5 I & N Dec 463.*

10. --Criminal conduct

Canadian citizen, convicted before entering United States, of Canadian crime of "false pretenses" and given suspended sentence of 6 months for passing bad check with knowledge of insufficient funds to cover it, is excludable alien under *8 USCS § 1182* former subsection (a)(9) and subject to deportation under § 1251 [redesignated 1227] (a)(1), since offense for which he was convicted, although having no Federal counterpart, is analogous to District of Columbia offense of passing bad check, upgraded from misdemeanor to felony prior to alien's entry into United States, even though it was only misdemeanor at time of alien's conviction of Canadian offense, and provisions of law at time of entry govern, rather than provisions at time of conviction. *Squires v Immigration & Naturalization Service (1982, CA6) 689 F2d 1276,* cert den *(1983) 461 US 905, 76 L Ed 2d 806, 103 S Ct 1874.*

Nonimmigrant visitor in United States is subject to deportation pursuant to *8 USCS § 1251* [redesignated 1227] (a)(1), where alien had been convicted of violation of Hong Kong law prohibiting possession of dangerous drug, since Hong Kong law requires not only proof of possession but proof of knowledge of possession. *Cheung Tai Poon v Immigration & Naturalization Service (1983, CA6) 707 F2d 258.*

An alien was deportable under INA § 241(a)(1) [*8 USCS § 1251* [redesignated 1227] (a)(9)] because he was excludable at the time of entry under INA § 212(a)(9) [*8 USCS § 1182* former subsection (a)(9)] based on his conviction of a crime involving moral turpitude; the petty offense exception did not apply because the "sentence actually imposed" was one to five years, notwithstanding that all but 365 days of the sentence was suspended and that the alien spent only 107 days in jail before voluntarily submitting to deportation. *Solis-Muela*

v INS (1993, CA10) 13 F3d 372.

An alien was deportable under INA § 241(a)(1) [*8 USCS § 1251* [redesignated 1227] (a)(9)] where he was excludable under INA § 212(a)(19) [*8 USCS § 1182* former subsection (a)(19)] based on his procurement of an immigrant visa by misrepresentation of a material fact; although the alien acknowledged that he had been arrested and imprisoned, he did not disclose his conviction or the nature of that conviction (which involved moral turpitude), and had the consular officer known of the alien's conviction and sentence, the alien would have been found excludable under INA § 212(a)(9) [*8 USCS § 1182*(a)(9)]. *Solis-Muela v INS (1993, CA10) 13 F3d 372.*

Aliens accorded status as lawful permanent residents, who left country and were subsequently convicted of re-entering without inspection and who later left again and re-entered for purpose of seeking readmission as lawful permanent residents, on presentation of alien registration receipt cards but without valid immigrant visas, are not deportable under *8 USCS § 1251* [redesignated 1227] (a)(1) as aliens excludable under § 1182 former subsection (a)(20) at time of entry, since status of lawful permanent resident who enters United States without inspection terminates only when adjudication of his deportability becomes final in administrative proceedings. *In re Gunaydin (1982, BIA) 18 I & N Dec 326.*

11. --Labor certification violations

Submission by alien of both forged letter and forged employment certification application to consulate office when he applied for his immigrant visa, knowing documents were forged, constituted willful misrepresentation in visa proceedings in contravention of *8 USCS § 1182*(former subsection a)(19), violation of which constitutes grounds for deportation under *8 USCS § 1251* [redesignated 1227] (a)(1). *Suite v Immigration & Naturalization Service (1979, CA3) 594 F2d 972.*

Pursuant to *8 USCS §§ 1182* former subsection (a)(14) and 1251 [redesignated 1227] (a)(1), U.S. Attorney General may deport alien, who enters United States with labor certificate but fails to take job for which he was certified, only upon proof sufficient to support finding that he obtained certificate by fraud, meaning material misrepresentation, or that he did not intend to take certified employment upon entry, and when alien enters country under labor certificate which he does not intend to use, he willfully misrepresents material fact, but if he enters with requisite intention only to find certified job is no longer available, he commits no fraud and may not be deported merely for accepting other employment, and mere finding that alien in question failed to report for certified job is not sufficient to support deportation. *Jang Man Cho v Immigration & Naturalization Service (1982, CA4) 669 F2d 936, 62 ALR Fed 395.*

Alien was excludable at entry and deportable under *8 USCS § 1251* [redesignated 1227] (a)(1) for lack of valid labor certification where, since her arrival, she never worked as nurse in United States and had been engaged in work totally unrelated to her profession, since inference can be drawn that alien never intended at time of entry to engage in certified profession. *In re Kuo (1976, BIA) 15 I & N Dec 650.*

12. --Marital status

Deportation on invalid visa charge under *8 USCS § 1251* [redesignated 1227] (a)(1) was precluded when predicated upon evidence of fraudulent marriage where evidence of fraud in marriage to United States citizen was found insufficient to support respondent's deportation under *8 USCS § 1251* [redesignated 1227] (c). *In re T---- (1959, BIA) 8 I & N Dec 493.*

Aliens who were admitted in possession of immigrant visas issued them as

beneficiaries of approved visa petitions filed by citizen step-father to accord them immediate relative classification as step-children, were not entitled to such status and were deportable under *8 USCS § 1251* [redesignated 1227] (a)(1), where marriage between children's mother and citizen petitioner was sham and no actual familial relationship between children and step-father ever existed, even though children may have been innocent of any fraudulent intent. *In re Teng (1975, BIA) 15 I & N Dec 516.*

Alien was deportable under *8 USCS § 1251* [redesignated 1227] (a)(1) where Service established that alien was not married to person whose birth certificate was used to establish exemption from labor certification requirement *(8 USCS § 1182* former subsection (a)(14)), and alien did not go forward with evidence to establish true identity of person to whom he claimed to have been married at time he entered United States. *In re Vivas (1977, BIA) 16 I & N Dec 68.*

13. --Membership in organizations

It was sufficient for Service to establish that alien was member of Communist Party and to deport him under *8 USCS § 1251* [redesignated 1227] (a)(1) as excludable at time of entry, even though at time of entry, under prior law, more specific evidence establishing that Communist Party was organization advocating forcible overthrow of Government would have been required. *In re C---- (1954, BIA) 6 I & N Dec 219.*

Mere membership in Communist Party of Great Britain was not sufficient to support charge of deportability under *8 USCS § 1251* [redesignated 1227] (a)(1) as alien who was inadmissible at time of entry in 1947 by reason of such membership prior to entry, and it was incumbent upon Government to establish by competent proof that Communist Party of Great Britain believed in, advocated, or taught overthrow by force and violence of Government of United States. *In re H---- (1956, BIA) 7 I & N Dec 186.*

14. --Other

Alien who first entered United States in 1941, filed an application for relief from military service in 1943, and was admitted as permanent resident in 1949, was deportable under *8 USCS § 1251* [redesignated 1227] (a)(1) because of ineligibility for citizenship, irrespective of fact that, on presentation of his application for pre-examination in 1948, Attorney General had found that alien was not ineligible for citizenship or admission to permanent residence. *Mannerfrid v Brownell (1956) 99 US App DC 171, 238 F2d 32,* cert den *(1957) 352 US 1017, 1 L Ed 2d 550, 77 S Ct 560.*

INS, in denying male alien's request for discretionary waiver of deportation, was allowed to take into account specified acts of fraud committed by alien in connection with his entry into United States, since (1) statutory text did not require that all entry fraud had to be excused, (2) alien's sham divorces and his fraud in naturalization application were removed in time and circumstance from his entry, and (3) alien had engaged in pattern of immigration fraud. *INS v Yueh-Shaio Yang (1996, US) 136 L Ed 2d 288, 117 S Ct 350, 96 CDOS 8202, 96 Daily Journal DAR 13631, 10 FLW Fed S 193, reh den (circa 1997, US) 136 L Ed 2d 691, 117 S Ct 755.*

Where an Immigration Judge relies on the broad language of INA § 241 (a)(1) [*8 USC § 1251* [redesignated 1227] (a)(1)] to support a finding of deportability, the decision necessarily contains an implicit finding that the alien is deportable under INA § 241(a)(11) [*8 USC § 1251* [redesignated 1227] former subsection (a)(11)]; to permit the alien to escape the full effects of a controlled substance conviction simply because the Immigration Judge did not expressly find the alien deportable under INA § 241(a)(11) would be to elevate

form over substance. *Mullen-Cofee v INS (1992, CA11) 976 F2d 1375, 6 FLW Fed C 1325, amd, reh den (1993, CA11 Fla) 986 F2d 1364, 7* FLW Fed C 189.

Attorney General exceeded his authority when he promulgated 8 CFR § 214.1(f), which obligates nonimmigrant to answer truthfully any INS inquiry regardless of its materiality or face deportation, since statute upon which regulation is based, *8 USCS § 1251* [redesignated 1227] (a)(1)(C)(i), does not address nonmaterial inquiries; thus, that portion of regulation which authorizes deportation of nonimmigrants who fail to provide truthful answers to nonmaterial inquiries posed by INS is invalid. *Romero v INS (1994, CA9) 39 F3d 977, 94 CDOS 8419, 94* Daily Journal DAR 15569.

15. Procedural aspects

In deportation proceedings of alien for overstaying visitor visa in violation of INA § 241(a)(2) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(2)], alien's collateral attack of earlier deportation order for entry into United States in violation of INA § 241(a)(1) [*8 USCS § 1251* [redesignated 1227] (a)(1)] properly denied, where alleged INS affirmative misconduct for failure to conduct sua sponte investigation under INA § 241(f) [*8 USCS § 1251* [redesignated 1227] former subsection (f)] does not constitute gross miscarriage of justice if alien does not apply for § 241(f) relief, and does not meet burden of making application for, and of offering proof of, such eligibility. *Ponce-Gonzalez v Immigration & Naturalization Service (1985, CA5) 775 F2d 1342.*

The denial of an alien's request to reopen his deportation proceeding for consideration of his application for adjustment of status under INA § 245(a)(2) [*8 USCS § 1255*(a)(2)] was vacated and the case was remanded for further proceedings where the alien was not excludable under INA § 212(a)(2)(B) [*8 USCS § 1182*(a)(2)(B)] as an alien convicted of 2 or more offenses for which the aggregate sentences to confinement actually imposed were 5 years or more, because the alien (1) was convicted in 1986 of assault with intent to rob and was originally sentenced to 10 years in prison, but that sentence was subsequently reduced to time served (1709 days), and (2) was subsequently of unlicensed possession of a firearm and sentenced to 30 days, and thus the total of the 2 sentences (1739 days) did not equal 5 years (1826 days); although the resentencing order regarding the first offense referred to the 1709 days as a "term of 10 years," simply calling it a 10-year term could not make it one. *Rodrigues v INS (1993, CA1) 994 F2d 32.*

Alien, who entered United States without valid entry documents, was charged as deportable alien under former *8 USCS § 1251*(a)(1)(A), and applied for asylum, was deprived of his due process right to full and fair hearing because of incompetence of interpreter, where interpreter was fluent in English and one dialect of alien's native language (Fulani), but not dialect that alien spoke. *Amadou v INS (2000, CA6) 226 F3d 724, 2000 FED App 312P.*

Given that the 1990 amendments to INA § 212(a) [*8 USCS § 1182*(a)] apply to individuals who entered the United States on or after June 1, 1991, and that the 1990 amendments to INA § 241(a) [*8 USCS § 1251* [redesignated 1227] (a)] apply to aliens to whom notice of deportation proceedings was provided on or after March 1, 1991, an alien in deportation proceedings who was provided with notice on or after March 1, 1991, is properly charged with deportability under the redesignated INA § 241(a)(1)(A) [*8 USCS § 1251* [redesignated 1227] (a)(1)(A)] as an alien excludable at the time of his last entry in 1987 under the appropriate exclusion grounds in their form prior to redesignation under the Immigration Act of 1990. *In re Papazyan (1992, BIA) 20 I & N Dec 568.*

16. --Estoppel of deportation; INS violation of regulation

Failure to warn alien that marriage prior to entry would invalidate visa issued to her as child of United States resident, which failure was in violation of specific duty imposed by 22 CFR section 42.122(d), necessitated reversal of deportation order based on alien's marriage three days prior to entry. *Corniel-Rodriguez v Immigration & Naturalization Service (1976, CA2) 532 F2d 301.*

17. ----Admission of excludable alien

Issuance of visa by U.S. consulate and draft board classification of 4-A did not preclude government from inquiring into excludability of alien for evading draft under *8 USCS §§ 1251* [redesignated 1227] (a)(1) and 1182 former subsection (a)(2), and ordering him deported therefor, where alien, legally within United States, left country in order to avoid draft after he had been classified as 1-A, and was then, ten years later, admitted for permanent residence upon visa and given new draft classification. *Alarcon-Baylon v Brownell (1957, CA5 Tex) 250 F2d 45.*

Government could not be estopped from deporting alien, who was admitted to United States on permanent resident visa almost two years after she had made sworn statements to U.S. officials admitting that she attempted to bring two other aliens into United States for $ 100 compensation, on basis of her admitted attempt to assist aliens to enter illegally into United States, since government was not guilty of affirmative misconduct in matter. *De Hernandez v Immigration & Naturalization Service (1974, CA9) 498 F2d 919.*

Admission of excludable alien through error or negligence did not constitute grounds for estopping government from asserting such excludability as basis for deporting alien under *8 USCS § 1251* [redesignated 1227] (a)(1), since action of government in admitting four aliens in question did not amount to affirmative misconduct. *Santiago v Immigration & Naturalization Service (1975, CA9) 526 F2d 488, 31 ALR Fed 886,* cert den *(1976) 425 US 971, 48 L Ed 2d 794, 96 S Ct 2167.*

A final, uncontested grant of citizenship cannot be revisited at the INS's pleasure, and thus the INS's petition for rehearing of *Medina, 993 F2d 499,* was denied on the ground that when the INS failed to take advantage of the appeal process, res judicata mandated that it be precluded from successive attempts to relitigate the issue of Medina's citizenship. *Medina v INS (1993, CA5) 1 F3d 312.*

A deportation proceeding based on INA § 241(a)(1) [*8 USCS § 1251* [redesignated 1227] (a)(1)], regarding excludability at the time of entry, was barred by res judicata where the INS had conceded (perhaps incorrectly) that the child of a person who was a U.S. citizen by virtue of his birth in the United States was himself a U.S. citizen during a prior hearing and had waived its right to appeal; the INS was ordered to certify the citizen's child's citizenship by issuing appropriate documentation. *Medina v INS (1993, CA5) 993 F2d 499,* adhered to, reh den (1993, CA5) *1 F3d 312.*

Improper admission of alien, who was admitted with permanent resident visa even though it was known, at time, that alien was homosexual and thus excludable as person of constitutional psychopathic inferiority, did not serve to estop government from considering whether alien was medically admissible at time of entry and thus deportable under *8 USCS § 1251* [redesignated 1227] (a)(1). *In re La Rochelle (1965, BIA) 11 I & N Dec 436.*

18. --Evidence

Charge of entry without inspection under *8 USCS § 1251* [redesignated 1227] (a)(2), and of being excludable at time of entry as trafficker in marijuana under *8 USCS § 1251* [redesignated 1227] (a)(1) and *8 USCS § 1182* former

subsection (a)(23), could not be sustained where immigration judge relied solely upon transcript of deportation hearing of alien's brother, who was arrested on same night and under same circumstances as respondent, to provide evidence of deportability and to link alien to Record of Deportable Alien (form I-213) offered in evidence, and where alien's deportability was not in issue at brother's hearing and alien was not present to defend himself or cross-examine witnesses, and record would be remanded for hearing de novo. *In re Martinez (1979, BIA) 16 I & N Dec 723.*

19. --Burden of proof

Upon de novo review of deportation order of immigrant alien not in possession of valid unexpired immigrant visa, alien has burden of proof pursuant to INA § 291 [*8 USCS § 1361]* to show time, place, and manner of entry into U.S. where government's allegation is that alien entered country without valid visa, or other valid authorization; alien fails to carry burden imposed by INA § 291 where she presents no evidence as to legal entry into country. *Veneracion v Immigration & Naturalization Service (1986, CA9) 791 F2d 778.*

Burden and presumption of *8 USCS § 1361* are applicable to charge of deportability which draws into question time, place, or manner of alien's entry into United States; deportability of one who was excludable at entry as stowaway is established by alien's admission of birth in foreign country under presumption of *8 USCS § 1361* where alien fails to meet burden of showing time, place, and manner of entry into United States. *In re Benitez (1984, BIA) 19 I & N Dec 173.*

C. Illegal Entry or Presence [*8 USCS § 1227*(a)(1)(B),(C)]

20. Entry without inspection

Entry without inspection is ground for deportation wholly independent of any basis for deportation under *8 USCS § 1251* [redesignated 1227] (a)(1), and alien maybe deported under § 1251 [redesignated 1227] former subsection (a)(2) on ground of entry without inspection, even though alien was not excludable at time of entry under § 1251 [redesignated 1227] (a)(1). *Reid v INS (1975) 420 US 619, 43 L Ed 2d 501, 95 S Ct 1164* (superseded by statute on other grounds as stated in *Rodriguez-Barajas v INS (1993, CA7) 992 F2d 94).*

To enter without inspection, within provisions of predecessor to *8 USCS § 1251* [redesignated 1227] former subsection (a)(2) providing for deportation of "anyone who enters without inspection," is to enter in evasion of appropriate investigation for purpose of ascertaining whether alien is entitled to enter. *Ex parte Saadi (1928, CA9 Cal) 26 F2d 458,* cert den *(1928) 278 US 616, 73 L Ed 540, 49 S Ct 21.*

Alien is deportable even though he is father of 4 US citizens where he enters country without inspection; further, children are not denied constitutional rights by being forced either to accompany deported father or to remain alone in US. *Delgado v Immigration & Naturalization Service (1980, CA10) 637 F2d 762.*

The Fleuti doctrine does not shield returning resident aliens from deportation for entering the U.S. without inspection; because aliens are charged with knowing that they must pass through inspection points at the border, it is doubtful that a short trip abroad which concludes with an uninspected entry can be characterized as "innocent." *Leal-Rodriguez v INS (1993, CA7) 990 F2d 939.*

Alien who enters United States without inspection is subject to deportation proceedings. *Osorio v INS (1994, CA2) 18 F3d 1017.*

Evasion of inspection occurs when alien avoids ordinary route to nearest point of inspection, or otherwise attempts to circumvent normal inspection

process. *Farquharson v United States AG (2001, CA11 Fla) 246 F3d 1317, 14* FLW Fed C 584.

Even temporary evasion of inspection process suffices to produce entry. *Farquharson v United States AG (2001, CA11 Fla) 246 F3d 1317, 14* FLW Fed C 584.

Components of "entry" are (1) crossing into territorial limits of United States, (2) inspection and admission by immigration officer, or actual and intentional evasion of inspection at nearest inspection point, and (3) freedom from official restraint. *Nyirenda v Ins (2002, CA8) 279 F3d 620.*

Declaration of intention to become citizen would not prevent deportation for entry without inspection. *United States ex rel. Fanutti v Flynn (1927, DC NY) 17 F2d 432.*

21. --What constitutes inspection

There had been no inspection under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2) where there was false claim of citizenship made and accepted. *Goon Mee Heung v Immigration & Naturalization Service (1967, CA1) 380 F2d 236,* cert den *(1967) 389 US 975, 19 L Ed 2d 470, 88 S Ct 479.*

22. --Failure to present for inspection

Where alien entered United States from Canada and immediately started for nearest inspection station where he presented himself for inspection he was subject to exclusion and not to deportation. *Thack v Zurbrick (1931, CA6 Mich) 51 F2d 634.*

Alien, previously deported from United States, who admitted entry into United States by crossing international border, without inspection, at location not designated as port of entry, in violation of *8 USCS § 1251* [redesignated 1227] former subsection (a)(2), could be deported for entry without inspection, even if prior exclusion was vacated. *Hernandez-Almanza v United States Dep't of Justice, Immigration & Naturalization Service (1976, CA9) 547 F2d 100.*

Alien who enters United States at place other than officially designated border checkpoint and who never presented himself for medical examination and inspection required of all entering aliens under *8 USCS §§ 1224,* 1225, in violation of *8 USCS § 1325*(2) is subject to deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2). *United States v Rincon-Jimenez (1979, CA9 Cal) 595 F2d 1192.*

Lawful permanent resident who got drunk at party in Mexico, where he worked, and walked drunken Mexican friend across wrong side of Bridge of Americas (the side opposite U.S. inspection facilities) to buy more beer, with intention of then returning to party in Mexico, did not, as matter of law, "enter" United States, and thus could not be deported for entry without inspection or alien smuggling. *Carbajal-Gonzalez v INS (1996, CA5) 78 F3d 194.*

Alien seeking to enter United States who presented local border crossing card to immigration officer, was told to wait in secondary inspection area, but instead fled after brief wait, passing through inspection area, intentionally evaded inspection contemplated by Immigration and Nationality Act *(8 USCS § 1101* et seq.) and was therefore deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2) for having entered United States without inspection. *In re Robles (1976, BIA) 15 I & N Dec 734.*

23. ----Re-entry

Alien who resided in United States, went to Mexico without obtaining permit, and, after having been denied re-entry at one point, went to another point and was allowed to enter on his representation that he was United States citizen, was subject to deportation as having entered without inspection. *Ex parte Saadi*

(1928, CA9 Cal) 26 F2d 458, cert den *(1928) 278 US 616, 73 L Ed 540, 49 S Ct 21.*

Alien was subject to deportation for making entry without inspection, under predecessor to *8 USCS § 1251* [redesignated 1227] former subsection (a)(2), having made new entry into United States on return from Canada where he had gone to assist another alien in making unlawful entry. *United States ex rel. Natali v Day (1930, CA2 NY) 45 F2d 112.*

Where petitioner brought habeas corpus proceeding to review order of deportation for his alleged avoidance of inspection upon his re-entry after visiting foreign port, and where he had testified that he merely joined fishing party and did not know destination of vessel was foreign port, evidence preponderated that he did not know destination had been changed; unintentional and fortuitous entrance of vessel to foreign port did not constitute "entry" by alien so as to subject him to deportation. *Savoretti v United States (1954, CA5 Fla) 214 F2d 314.*

Offense of entry without inspection cannot be cured by simply stepping across border on later date and submitting to inspection on re-entry. *Gunaydin v United States Immigration & Naturalization Service (1984, CA3) 742 F2d 776.*

Where IJ found credible Border Patrol Agent's testimony that permanent resident admitted reentering U.S. without inspection and where IJ received into evidence INS Form I-213 (Record of Deportable Alien) which stated that permanent resident admitted reentering U.S. without inspection, there was sufficient evidence for IJ, and later BIA, to conclude permanent resident had reentered U.S. without inspection. *Rosendo-Ramirez v INS (1994, CA7) 32 F3d 1085.*

Law of Seventh Circuit Court of Appeals is that failure of lawful permanent resident, who has left U.S. for any reason and for any length of time, to be inspected upon his return to U.S. is valid ground for deportation. *Rosendo-Ramirez v INS (1994, CA7) 32 F3d 1085.*

Alien who entered without inspection could have been deported whether or not he was returning to unrelinquished domicile previously lawfully acquired in United States. *United States ex rel. Cizura v Day (1929, DC NY) 41 F2d 861,* affd (1931, CA2 NY) *46 F2d 1022,* cert dismd (1931, US) *76 L Ed 1299, 52 S Ct 124.*

Alien admitted as lawful permanent resident is deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2) for subsequently entering United States without inspection, notwithstanding he later made proper departures and reentry's, since § 1251 [redesignated 1227] (a)(2) is not limited to most recent entry made by alien but relates to any entry made where alien fails to submit to inspection. *In re Ruis (1982, BIA) 18 I & N Dec 320.*

Alien who was deported from United States under assumed name and who subsequently re-entered United States by presenting Alien Registration Receipt Card in her true name, without having applied for permission to reapply for admission after deportation, was excludable at entry because alien automatically lost her lawful permanent resident status when the final order of deportation was entered; therefore, order specifically rescinding alien's lawful permanent resident status was unnecessary. *In re Roman (1988, BIA) 19 I & N Dec 855.*

24. ----Fraud or misrepresentation

Immigration and Naturalization Service, under its authority pursuant to *8 USCS § 1251* [redesignated 1227] (to deport any alien who was excludable at time of his entry), can deport alien who obtained labor certificate from Secretary of Labor on basis of willful and material misrepresentation, since *8 USCS § 1182* former subsection (a)(19) provides that classes of aliens to be excluded from entry include alien who seeks to procure, or has sought to procure, or has procured visa or other documentation by fraud, or by willfully misrepresenting

material fact. *Castaneda-Gonzalez v Immigration & Naturalization Service (1977) 183 US App DC 396, 564 F2d 417.*

One who gained admission to United States by false statement that he was naturalized citizen could have been deported as having entered without inspection. *United States ex rel. Volpe v Smith (1933, CA7 Ill) 62 F2d 808,* affd on other grounds *(1933) 289 US 422, 77 L Ed 1298, 53 S Ct 665.*

Misrepresentation concerning identity by incoming alien resulting in entry into United States without proper statutory investigation by immigration authorities would be material, justifying deportation, no matter what outcome of investigation would have been if it had been made. Landon v *Clarke (1956, CA1 Mass) 239* F2d 631.

Charge of entering without inspection was proper where entrance to United States was gained by false claim to citizenship of United States. *Ben Huie v Immigration & Naturalization Service (1965, CA9) 349 F2d 1014.*

An alien was properly found deportable for entering the U.S. without inspection where the alien, who had been turned away at the border after returning to the U.S. from a day trip to Canada because his nonimmigrant visa had expired, intentionally avoided inspection by answering "U.S." when a second Immigration Inspector at a different inspection point asked the alien where he was from; the alien conceded that he intended to enter the U.S. by misrepresentation. *Ramsay v INS (1994, CA4) 14 F3d 206.*

Making of false statements to inspector at time of entry, by alien not under oath and not belonging to any excluded class, did not render him subject to deportation as one "who enters without inspection." *Ex parte Guest (1923, DC RI) 287 F 884.*

Alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2) where he avoided inspection by making false claim to birth in United States at time of his entry which was tantamount to claim of citizenship in United States. *In re E---- (1954, BIA) 6 I & N Dec 275.*

Finding of alienage and deportability under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2) was based on clear, convincing, unequivocable evidence where Argentine passport issued to person with same name as respondent and containing photograph resembling him, did not contain visa permitting entry into United States or stamp indicating inspection and entry, where alien was present in United States, and where he failed to deny that passport was his. *In re Bulos (1976, BIA) 15 I & N Dec 645.*

Alien who was excludable at entry to United States because she obtained entry by fraud is in unlawful status; hence, applicant for legalization was in unlawful status since prior to January 1, 1982, where she was admitted to United States for permanent residence as unmarried daughter of a lawful permanent resident, when in fact she was married; nonetheless, alien can apply for waiver of such ground of excludability pursuant to 8 CFR § 245a.2(k) so as to not to be barred from obtaining temporary resident status under INA § 245A [*8 USCS § 1255A]. In re S- (1988, Comr) 19 I & N Dec 851.*

25. Entry at improper time or place

Alien who had resided in United States for 10 years could have been deported where he made temporary trip to Mexico and, on his return, entered at place not port of entry. *Morini v United States (1927, CA9 Cal) 21 F2d 1004,* cert den *(1928) 276 US 623, 72 L Ed 736, 48 S Ct 303.*

26. Illegal presence in U. S.

Alien who at one time in past had obtained visa by means of materially fraudulent statements but who subsequently secured another visa untainted by

fraud and was present in United States pursuant to entry under legitimate document, could be deported. *Duran-Garcia v Neelly (1957, CA5 Tex) 246 F2d 287.*

Border patrol agent properly detained defendant and served him with order to show cause requiring him to appear for deportation hearing before immigration judge where defendant informed agent that he was resident alien who had prior criminal narcotics conviction because *8 USCS § 1251* [redesignated 1227] (a)(2)(B)(1) makes deportable any alien convicted of offense relating to controlled substances, other than single offense involving possession of 30 grams or less or marijuana for one's own use. *United States v Sanchez (1994, WD NY) 846 F Supp 241.*

27. --Overstay

To prove overstay under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2), Service need only show nonimmigrant's admission for temporary period, that period has elapsed, and that nonimmigrant has not departed, and any fraud or misrepresentation at time of entry is irrelevant to charge of overstay. *Milande v Immigration & Naturalization Service (1973, CA7) 484 F2d 774.*

Deportation of alien pursuant to *8 USCS § 1251* [redesignated 1227] former subsection (a)(2) for having remained in country longer than authorized was not barred by (1) approval by Attorney General of petition to accord alien status of nonquota immigrant, (2) contention of alien that her husband had withdrawn his petition to accord her status of nonquota immigrant under duress, and (3) contention that alien's marriage to United States citizen was valid under laws of Illinois, where substantial evidence supported finding of special inquiry officer and Board in ruling that her marriage was subterfuge designed to prevent deportation. *De Figueroa v Immigration & Naturalization Service (1974, CA7) 501 F2d 191.*

To prove overstay for purposes of *8 USCS § 1251* [redesignated 1227] former subsection (a)(2), government need only show nonimmigrant's admission for temporary period, that period has elapsed, and that nonimmigrant has not departed. *Ho Chong Tsao v Immigration & Naturalization Service (1976, CA5) 538 F2d 667,* cert den *(1977) 430 US 906, 51 L Ed 2d 582, 97 S Ct 1176.*

Alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2) for overstaying temporary entry as nonimmigrant visitor, where Guatemalan passport introduced by government established that alien was native and citizen of Guatemala, and alien presented no evidence rebutting inference that such status continued. *Cordon De Ruano v Immigration & Naturalization Service (1977, CA9) 554 F2d 944.*

Alien is "overstay" if alien was admitted for temporary period, that period has elapsed, and alien has not departed; alien who was admitted on 4 month visa and who remains in United States after expiration of visa is deportable. *Che-Li Shen v Immigration & Naturalization Service (1984, CA10) 749 F2d 1469.*

In deportation proceedings of alien for overstaying visitor visa in violation of INA § 241(a)(2) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(2)], INS not estopped from deporting alien because of failure to investigate sua sponte to determine alien's eligibility for INA § 241(f) [*8 USCS § 1251* [redesignated 1227] former subsection (f)], where alien did not apply for § 241(f) relief and did not meet burden of making application for, and of offering proof of, such eligibility. *Ponce-Gonzalez v Immigration & Naturalization Service (1985, CA5) 775 F2d 1342.*

Failure of alien to depart after revocation of his status as non-immigrant exchange visitor and in reasonable period to effect his departure rendered alien amenable to deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2) as having "remained longer than permitted." *In re T-- (1961,*

BIA) 9 I & N Dec 239.

Finding as to whether alien's overstay is justified is not germane to determination of deportability under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2). *In re Arao (1969, BIA) 13 I & N Dec 156.*

Deportability of alien on "remained longer" charge under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2) could not be sustained where charge was brought prior to expiration of alien's authorized period of stay. *In re Siffre (1973, BIA) 14 I & N Dec 444.*

Alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2) as nonimmigrant who had remained beyond authorized length of his stay, where service had shown that alien was admitted as nonimmigrant for temporary period, that period had elapsed, and that nonimmigrant had not departed, and it was not necessary that alien receive formal denial of extension request from District Director before establishing alien's deportability as overstay. *In re Teberen (1976, BIA) 15 I & N Dec 689.*

28. ----Crewpersons

Filipino who was deported in 1936, subsequently made several trips to United States as crewman, entered as crewman in 1956 and overstayed his leave, was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2) as alien crewman who overstayed his leave, and Attorney General was not required to institute proceedings under *8 USCS § 1252*(f) for reinstatement of 1936 deportation order. *Mesina v Rosenberg (1960, CA9 Cal) 278 F2d 291.*

In deportation proceedings of nonimmigrant crewmen ineligible for suspension of deportation BIA properly found crewmen deportable, in view of ample evidence supporting determination that alien entered as crewmen, where crewmen's book detailed desertion of alien and showed photograph of good likeness to alien. *Guinto v Immigration & Naturalization Service (1985, CA9) 774 F2d 991.*

Deportation of alien crewmen was sustained under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2) as being in United States in violation of law where he had gone ashore without permission after being inspected and refused landing privileges. *In re P-- (1961, BIA) 9 I & N Dec 368.*

Fact that alien seamen had been illegally in United States under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2) (for period of 1 1/2 years in one case, and 2 years in other case) does not preclude grant of permission for voluntary departure where (1) aliens were clearly bona fide seamen at time of their illegal entry, (2) both had made previous trips to United States as seamen and had reshipped within allotted time, (3) there is no evidence that either alien had previously violated immigration laws, (4) both aliens have manifested ability and willingness to depart from United States if voluntary departure is allowed, and (5) there have been no suggestions that either of aliens lack requisite good moral character. *In re King (1978, BIA) 16 I & N Dec 502.*

29. ----Petitions for extension of stay

Deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2) of aliens who, after admission as exchange visitors, remained for longer period than authorized, was not precluded by fact that, at time of their hearings before Special Inquiry Officer, they had pending before Department of Health, Education, and Welfare applications for waiver of two-year foreign residence requirement imposed on exchange visitors before they could immigrate to United States. *Manantan v Immigration & Naturalization Service (1970, CA7) 425 F2d 693.*

Alien is deportable where filing for extension for stay is 2 months late, and where 2 month delay caused District Director to deny application for extension;

substantial compliance with requirements for student status does not excuse failure to obtain extension of stay; exception exists where alien's violations of immigration regulations are technical or insubstantial, and in determining that violations are technical or insubstantial, court applies balancing test to determine whether character of violation, when balanced against consequence of deportation, is so technical as not to justify deportation. *Tooloee v Immigration & Naturalization Service (1983, CA9) 722 F2d 1434.*

30. Escapee from INS detention

Alien who escapes from Immigration and Naturalization Service detention does not acquire same status as alien who evades Service inspection by entering United States surreptitiously and, hence, may not be accorded procedural benefits of deportation proceedings. *In re Lin (1982, BIA) 18 I & N Dec 219.*

31. Procedural aspects

Immigration judge is without power to terminate deportation proceeding on equitable or humanitarian grounds where INS officials deport alien for entry without inspection. *Rodriguez-Gonzalez v Immigration & Naturalization Service (1981, CA9) 640 F2d 1139.*

Upon review of alien's claim to ineffectiveness of counsel based on failure of accredited representative to introduce evidence refuting charge of deportability and to develop estoppel defense based on INS affirmative misconduct of selective prosecution, alien must show prejudice as result of representative's performance in order to prevail; alien does not show deprivation of full and fair deportation hearing where he does not describe evidence that representative incompetently failed to introduce; without such documentation court finds no prejudice and must presume that representative simply did not possess any evidence refuting deportability on grounds of overstaying nonimmigrant student visas; alien does not show prejudice by failure of representative to adequately raise selective enforcement defense where any prejudice caused by representative's shortcomings at trial are cured by BIA consideration and rejection of this defense. *Mohsseni Behbahani v Immigration & Naturalization Service (1986, CA9) 796 F2d 249.*

Alien incarcerated in state correctional facility, against whom Immigration and Naturalization Service has filed notice deportability which acts as detainer against him and against whom Notice of Custody Determination has been issued in which it is stated he could be released from custody of Service under bond of $ 3,000, is not deprived if rights enumerated in Fifth, Eighth, and Fourteenth Amendments even though, his family is unable to place such required bail in Federal District Court, because alien must appear in person before bail can be accepted, and, under *8 USCS § 1252,* Service allegedly has no power to accept bond until alien is taken into custody of Service, notwithstanding fact that, while detainer is outstanding against him, alien is barred from participating in any state furlough or work release programs. *Rinaldi v United States (1977, SD NY) 484 F Supp 916.*

Alien who entered United States as non-immigrant visitor for pleasure and who remains in United States beyond period authorized has no standing in deportation proceedings, pursuant to *8 USCS § 1251* [redesignated 1227] former subsection (a)(2), to assert Privacy Act claims, under *5 USCS § 552a*(a)(2), because she is not citizen or lawful resident alien. *In re Thorpe (1977, BIA) 16 I & N Dec 219.*

Appeal from deportation of alien overstaying his nonimmigrant visa filed on Form I-290A will be summarily dismissed unless reasons for appeal are meaningfully identified on Notice of Appeal; it is insufficient for attorney to

merely state IJ erred in finding no well-founded fear of persecution where attorney also chooses not to submit a brief giving specific rationale for conclusory assertions and does not request opportunity for oral argument. *In re Valencia (1986, BIA) 19 I & N Dec 354.*

Alien found deportable pursuant to INA § 241(a)(2) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(2)] as having entered U.S. without inspection is not entitled to separate suppression hearing in order to litigate legality of his arrest, and admissibility of unspecified admissions, as exclusionary rule does not apply in deportation proceedings; evidence alien seeks to suppress is not tainted by any violation of Fourth or Fifth Amendments at time of alien's arrest where evidence containing alien's concession as to deportability was filed 3 months after alien's arrest. *In re Velasquez (1986, BIA) 19 I & N Dec 377.*

32. --Evidence and proof

Evidence of foreign birth gives rise to presumption that person so born is alien, and once government submits evidence of foreign birth, burden of proof shifts to alien to demonstrate time, place, and manner of entry into United States. *Ramon-Sepulveda v Immigration & Naturalization Service (1984, CA9) 743 F2d 1307.*

Although Miranda warnings are not required in deportation proceedings because such proceedings are civil rather than criminal in nature, hearing must conform to due process standards and alien's involuntary statements cannot be used against him or her; 8 CFR § 287.3 does not require that alien be given Miranda warnings before interview that provides information to be noted on Form I-213, Record of Deportable Alien, may begin, and thus form is admissible notwithstanding that alien was not informed of any right to remain silent. *Bustos-Torres v INS (1990, CA5) 898 F2d 1053.*

Charge of entry without inspection under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2), and of being excludable at time of entry as trafficker in marijuana under *8 USCS § 1251* [redesignated 1227] (a)(1) and *8 USCS § 1182*(a)(23), could not be sustained where immigration judge relied solely upon transcript of deportation hearing of alien's brother, who was arrested on same night and under same circumstances as respondent, to provide evidence of deportability and to link alien to Record of Deportable Alien (form I-213) offered in evidence, and where alien's deportability was not in issue at brother's hearing and alien was not present to defend himself or cross-examine witnesses, and record would be remanded for hearing de novo. *In re Martinez (1979, BIA) 16 I & N Dec 723.*

Statement elicited from alien concerning her alienage, together with Form I-213 "Record of Deportable Alien", obtained as result of illegal search are admissible in deportation proceeding charging alien with entry without inspection under *8 USCS § 1251* [redesignated 1227] to establish deportability, since neither legal nor policy considerations dictated exclusion of unlawfully seized evidence from such proceedings, when court balances what it considers to be remote likelihood that exclusion of unlawfully seized evidence from deportation proceedings would significantly affect conduct of immigration officers with societal costs that could result from such action and alternatives available to compel respect for constitutional rights. *In re Sandoval (1979, BIA) 17 I & N Dec 70.*

33. ----Overstay cases

To deport as overstay, Immigration and Naturalization Service must convince immigration judge by clear and convincing evidence that alien was admitted as

nonimmigrant for specific period, that period has elapsed, and that alien is still in country. *Shahla v Immigration & Naturalization Service (1984, CA9) 749 F2d 561.*

INS is not estopped from deporting alien for having overstayed nonimmigrant visa, where INS agent allegedly threatened alien's wife with 5 years imprisonment if she did not withdraw her I-130 visa petition; upon review court rejected alien's contention that but for INS affirmative misconduct his status would have been adjusted to lawful permanent resident, as adjustment of status decision is exercise of Attorney Generals discretion, and court lacks jurisdiction to consider visa petition procedures which are outside scope of deportation proceeding and must first be raised in District Court. *Elbez v Immigration & Naturalization Service (1985, CA9) 767 F2d 1313.*

In deportation proceedings of nonimmigrant visitors for pleasure who stayed in United States longer than permitted, government sustains its burden of proof by showing noncitizen was admitted for particular and set time period, that period has elapsed, and noncitizen has failed to depart. *Hwei-Jen Chou v Immigration & Naturalization Service (1985, CA5) 774 F2d 1318.*

In order to sustain burden of proving that legally admitted noncitizen is subject to deportation because of overstay, INS need only show that alien was admitted as nonimmigrant for temporary period, that period has elapsed, and that alien has not departed. *Equan v United States Immigration & Naturalization Service (1988, CA5) 844 F2d 276.*

Deportation will not be ordered for overstay under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2) for person of Mexican parentage born in territory within United States, where government's evidence, that territory's governmental services have been provided by Mexico for period of over 50 years and that territory has since been ceded to Mexico, does not satisfy burden of proof that person is alien. *In re Cantu (1978, BIA) 17 I & N Dec 190.*

34. ----Fraudulent marriages

It is within authority of INS to make inquiry into marriage to extent necessary to determine if it was entered for purpose of evading immigration laws, and conduct and lifestyles before and after marriage is relevant to extent it aids in determining intent of parties at time they were married; substantial evidence that marriage was sham is supplied by fact that former wife testified alien approached her and offered to pay her $ 200 to marry him and help arrange for resident passport, telling her they would not have to live together and he would later get divorce, and by testimony that she lived with roommate both before and after marriage. *Garcia-Jaramillo v Immigration & Naturalization Service (1979, CA9) 604 F2d 1236,* cert den *(1980) 449 US 828, 66 L Ed 2d 32, 101 S Ct 94,* reh den *(1980) 449 US 1026, 66 L Ed 2d 487, 101 S Ct 594.*

Immigration judge erroneously found Filipino alien to be deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(2), (c) for having entered United States with immigration visa procured on basis of fraudulent marriage, in violation of § 1182 former subsection (a)(19), where determination that marriage was fraudulent was based on unsupported affidavit of alien's former wife, taken more than year prior to deportation hearing, since admission of such out-of-court statement by nonparty offered for truth of matter asserted deprived alien of fundamental fairness required for deportation hearings, especially where Government made little effort to obtain presence of former wife to testify at hearing. *Baliza v Immigration & Naturalization Service (1983, CA9) 709 F2d 1231, 12 Fed Rules Evid Serv 759.*

D. Conviction of Crime Involving Moral Turpitude [*8 USCS § 1227*(a)(2)(A)]

1. In General

35. Purpose

General legislative purpose of § 241(a)(4) of Immigration and Nationality Act of 1952 *(8 USCS § 1251* [redesignated 1227] former subsection (a)(4)), providing for deportation of alien who at any time after entry is convicted of two crimes involving moral turpitude, is to broaden provisions governing deportation, particularly those referring to criminal and subversive aliens, but reference to such generalized purpose does little to promote resolution of specific problem of which there is no mention in legislative materials concerning § 241(a)(4). *Costello v Immigration & Naturalization Service (1964) 376 US 120, 11 L Ed 2d 559, 84 S Ct 580.*

Language of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) shows congressional intent that one-time alien offender would be afforded second chance before being subject to deportation; Congress reserved deportation for those who, having completed criminal scheme, committed fresh crime or renewed prior course of criminal conduct. *Nason v INS (1968, CA2) 394 F2d 223, 19 ALR Fed 591,* cert den *(1968) 393 US 830, 21 L Ed 2d 101, 89 S Ct 98.*

It is not necessary that the conviction used to determine whether an alien is a person of good moral character be the basis upon which the alien is found deportable. *In re Correa-Garces (1992, BIA) 20 I & N Dec 451.*

36. Construction

While § 241(a)(4) of Immigration and Nationality Act of 1952 *(8 USCS § 1251* [redesignated 1227] former subsection (a)(4)) makes alien's conviction of two crimes involving moral turpitude ground for deportation, it is qualified by subsection (b)(2), providing that if sentencing court makes recommendation against deportation, provisions of former subsection (a)(4) do not apply; qualifying provisions of subsection (b) are important part of legislative scheme expressed in former subsection (a)(4). *Costello v Immigration & Naturalization Service (1964) 376 US 120, 11 L Ed 2d 559, 84 S Ct 580.*

Moral turpitude is nebulous concept that refers generally to conduct that shocks public conscience as being inherently base, vile or depraved, contrary to rules of morality and duties owed between man and man, either one's fellow man or society in general. *Medina v United States (2001, CA4 Va) 259 F3d 220.*

Construction of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) is not purely "federal question" to be determined in terms of policy behind its enactment but one which must be determined with regard to state law and procedure. *In re G-- (1960, BIA) 9 I & N Dec 159.*

INS is foreclosed from attempting to establish alien's deportability under more general ground of INA § 241(a)(4) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(4)] when it has failed to sustain charge of deportability under § 241(a)(13), which specifically addresses problem of alien smuggling; legislative history does not support position that alien who has been convicted of alien smuggling under § 274(a) [§ 1324(a)] should be found deportable under § 241 former subsection (a)(4) although "for gain" requirement of § 241 former subsection (a)(13) has not been met. Re Tiwari (1989, BIA) I & N Interim Dec. No. 3099.

37. Constitutionality

Statute making conviction of crime involving moral turpitude ground for deportation of alien is held not to be lacking in definiteness required by due

process, as applied to alien twice convicted of conspiring to defraud United States of taxes on distilled spirits, since courts have consistently held crimes involving fraud to involve moral turpitude. *Jordan v De George (1951) 341 US 223, 95 L Ed 886, 71 S Ct 703,* reh den *(1951) 341 US 956, 95 L Ed 1377, 71 S Ct 1011.*

Fact that aliens who are in deportation proceedings are not entitled to discretionary waiver of deportation, but aliens who are in exclusion proceedings are entitled to such relief, does not violate equal protection. *Almon v Reno (1999, CA1 Mass) 192 F3d 28.*

Aliens who have committed serious crimes in this country may be detained in custody for prolonged periods when country of origin refuses to allow alien's return, and such detention is constitutional if government provides individualized periodic review of alien's eligibility for release on parole. *Chi Thon Ngo v INS (1999, CA3 Pa) 192 F3d 390.*

Although order for deportation of alien rested on felony conviction that occurred thirty-six years before, it did not contravene due process guaranty of Fifth Amendment to US Constitution. *United States ex rel. Circella v Neelly (1953, DC Ill) 115 F Supp 615,* affd (1954, CA7 Ill) *216 F2d 33,* cert den *(1955) 348 US 964, 99 L Ed 752, 75 S Ct 525.*

38. Retroactivity

Alien who, two days before effective date of Immigration and Nationality Act of 1952 [two days before June 27, 1952] filed petition for naturalization was subject to deportation by reason of having committed two felonies involving moral turpitude, one in 1913 and other in 1915. *Shomberg v United States (1954, CA2 NY) 210 F2d 82,* affd *(1955) 348 US 540, 99 L Ed 624, 75 S Ct 509.*

It was congressional intent that *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) be given retroactive effect. *Chanan Din Khan v Barber (1958, CA9 Cal) 253 F2d 547,* cert den *(1958) 357 US 920, 2 L Ed 2d 1364, 78 S Ct 1361.*

39. Miscellaneous

In light of the Immigration Judge's correct assertion that he was not authorized to consider the validity of a state court conviction, the BIA was correct in affirming the Immigration Judge's decision that the alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *De La Cruz v U.S. INS (1991, CA9) 951 F2d 226, 91* Daily Journal DAR 15402.

While federal law will determine whether state criminal statute involves crime of moral turpitude for immigration purposes, BIA must examine state statute to determine elements of crime. *Franklin v INS (1995, CA8) 72 F3d 571,* reh, en banc, den (1996, CA8) *1996 US App LEXIS 2092* and cert den (1996, US) *136 L Ed 2d 59, 117 S Ct 105.*

Aliens who have committed serious crimes in this country may be detained in custody for prolonged periods when country of origin refuses to allow alien's return, and such detention is constitutional if government provides individualized periodic review of alien's eligibility for release on parole. *Chi Thon Ngo v INS (1999, CA3 Pa) 192 F3d 390.*

Question of whether alien is aggravated felon is reviewed by court of appeals *de novo. Solorzano-Patlan v INS (2000, CA7) 207 F3d 869.*

2. What Constitutes Requisite Crime

a. In General

40. Generally

Fact that alien was second offender did not establish that his crime involved moral turpitude. *United States ex rel. Zaffarano v Corsi (1933, CA2 NY) 63 F2d 757.*

Lawful permanent resident who got drunk at party in Mexico, where he worked, and walked drunken Mexican friend across wrong side of Bridge of Americas (the side opposite U.S. inspection facilities) to buy more beer, with intention of then returning to party in Mexico, did not, as matter of law, "enter" United States, and thus could not be deported for entry without inspection or alien smuggling. *Carbajal-Gonzalez v INS (1996, CA5) 78 F3d 194.*

Conviction for disorderly conduct under New York Penal Law was conviction for "crime" involving moral turpitude within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4), despite fact that New York courts have defined such violations as "offenses" and not "crimes". *In re G---- (1957, BIA) 7 I & N Dec 520.*

Conviction in Police Court under Scottsbluff, city ordinance for theft under $ 35 was conviction for "crime" within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4), notwithstanding that Nebraska courts view prosecution for violation of city ordinance as "civil" proceeding. *In re C----R---- (1958, BIA) 8 I & N Dec 59.*

If pardon fulfills requirements of *8 USCS § 1251* [redesignated 1227] (b)(1) that it be full, unconditional, and executive in nature, there ceases to be crime on which to base deportability under § 1251 [redesignated 1227] former subsection (a)(4). *In re Nolan (1988, BIA) 19 I & N Dec 539, 101 ALR Fed 657.*

Availability or unavailability of pardon under state or federal law, or existence or nonexistence of qualifying pardoning authority, has no bearing on separate question of whether offense constitutes "crime" for purpose of deportability under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *In re Nolan (1988, BIA) 19 I & N Dec 539, 101 ALR Fed 657.*

41. What constitutes moral turpitude

"Crimes" involving moral turpitude as described by *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) do not just refer to felonies. *Burr v Immigration & Naturalization Service (1965, CA9) 350 F2d 87,* cert den *(1966) 383 US 915, 15 L Ed 2d 669, 86 S Ct 905.*

Act of moral turpitude under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4), allowing deportation of alien for conviction of crime involving moral turpitude, is conduct which is "intrinsically wrong." *Guerrero De Nodahl v Immigration & Naturalization Service (1969, CA9) 407 F2d 1405.*

To determine whether conviction pursuant to particular criminal statute amounts to crime involving moral turpitude, Court will consider elements of crime as set forth in statute, rather than conduct of alien that led to his conviction. *Gonzalez-Alvarado v INS (1994, CA9) 39 F3d 245, 94 CDOS 8464, 94* Daily Journal DAR 15627.

To determine whether criminal conviction amounts to crime involving moral turpitude, it is statute that defines crime, rather than act committed, which is controlling. *Rodriguez-Herrera v INS (1995, CA9) 52 F3d 238, 95 CDOS 2474.*

Generally, where alien has been convicted of less serious crime, moral turpitude will not be found unless statute upon which conviction is based contains fraud element. *Rodriguez-Herrera v INS (1995, CA9) 52 F3d 238, 95 CDOS 2474.*

Since neither INA nor its legislative history provides definition of crime of moral turpitude, Court of Appeals will defer to long-established BIA definition that it includes crime committed recklessly and with conscious disregard of substantial and unjustifiable risk to life and safety of others. *Franklin v INS*

(1995, CA8) 72 F3d 571, reh, en banc, den (1996, CA8) *1996 US App LEXIS 2092* and cert den (1996, US) *136 L Ed 2d 59, 117 S Ct 105.*

Moral turpitude is nebulous concept that refers generally to conduct that shocks public conscience as being inherently base, vile or depraved, contrary to rules of morality and duties owed between man and man, either one's fellow man or society in general. *Medina v United States (2001, CA4 Va) 259 F3d 220.*

Term "moral turpitude" refers, not to legal standard, but rather to those changing morals standards of conduct which society has set up for itself through centuries; Congress, by using phrase "moral turpitude" has unfortunately chosen to base right of resident alien to remain in United States upon application of phrase lacking in legal precision and, therefore, likely to result in judge applying to case before him his own personal views as to morals of community. *United States ex rel. Manzella v Zimmerman (1947, DC Pa) 71 F Supp 534.*

Whether a crime involves moral turpitude is determined by the inherent nature of the crime as defined, rather than the circumstances surrounding the particular transgression. *United States v Concepcion (1992, ED NY) 795 F Supp 1262.*

Moral turpitude refers generally to conduct that shocks public conscience as being inherently base, vile, or depraved, contrary to rules of morality and duties owed between persons or to society in general; if turpitude necessarily inheres in crime defined by statute under which conviction occurred, conviction is for crime involving moral turpitude. *In re Short (1989, BIA) 20 I & N Dec 136.*

42. Governing legal standard

Moral turpitude referred to in predecessor of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) must be determined according to standard in United States, and statutes of Canada need not have been resorted to in order to determine whether crime of which alien was convicted in Canada involved moral turpitude. *Mercer v Lence (1938, CA10 Utah) 96 F2d 122,* cert den *(1938) 305 US 611, 83 L Ed 388, 59 S Ct 69* and (superseded by statute on other grounds as stated in *In re Nolan (1988, BIA) 19 I & N Dec 539, 101 ALR Fed 657).*

Moral turpitude referred to in *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) is determined without reference to laws of foreign jurisdictions, and, in considering whether crime for which alien was convicted in foreign jurisdiction involved moral turpitude, immigration officials and courts sitting in review of their actions need only look to record and inherent nature of offense. *United States ex rel. McKenzie v Savoretti (1952, CA5 Fla) 200 F2d 546.*

Effect of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) was not made to depend upon niceties and nuances of state procedure. *Burr v Immigration & Naturalization Service (1965, CA9) 350 F2d 87,* cert den *(1966) 383 US 915, 15 L Ed 2d 669, 86 S Ct 905.*

Federal definition of word "willful" was controlling rather than California definition for purposes of determining moral turpitude of offense where alien had been convicted of California offense of "willful" child beating. *Guerrero De Nodahl v Immigration & Naturalization Service (1969, CA9) 407 F2d 1405.*

Crime of being stowaway did not involve moral turpitude though designated as "robbery" by foreign government. *United States ex rel. Fontan v Uhl (1936, DC NY) 16 F Supp 428.*

What constitutes crime involving moral turpitude within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) is federal question not dependent upon manner in which state law classifies violation of its law; it is not nomenclature of label attached by state codes that govern, but nomenclature

and definition of federal statute. *Wyngaard v Rogers (1960, DC Dist Col) 187 F Supp 527,* affd *(1961) 111 US App DC 197, 295 F2d 184,* cert den *(1961) 368 US 926, 7 L Ed 2d 190, 82 S Ct 362.*

43. Circumstances of offense

Crime must by its definition necessarily involve moral turpitude, and alien could not be deported merely because in particular instance his conduct was immoral. *United States ex rel. Robinson v Day (1931, CA2 NY) 51 F2d 1022.*

Circumstances of particular offense could not be considered if crime in its general nature is one which in common usage would be classified as crime involving moral turpitude. *Pino v Nicolls (1954, CA1 Mass) 215 F2d 237,* revd on other grounds *(1955) 349 US 901, 99 L Ed 1239, 75 S Ct 576.*

Court could, when question of whether named crime to which alien pleaded guilty involved moral turpitude is doubtful, look behind plea to charge or indictment for purpose of determining question; court could, and should, determine for itself whether allegations of indictment pertinent to crime to which plea of guilty was entered stated crime involving moral turpitude, particularly where plea was to crime not charged in indictment and which must have been necessarily included therein. *United States ex rel. Valenti v Karmuth (1932, DC NY) 1 F Supp 370.*

Alien who was narcotics addict and had twice forged prescriptions for narcotics in violation of *18 USCS § 494* had been convicted of crimes involving moral turpitude, and court could not consider particular circumstances under which these crimes were committed, such as fact that alien did not forge another prescription except to satisfy his own craving for narcotics, nor could it inquire into alleged mental incompetency of petitioner at time offense was committed or at time of his conviction, nor could it consider fact that he was not confined in prison as result of his conviction but was merely sent to hospital for institutionalization and treatment. *United States ex rel. Abbenante v Butterfield (1953, DC Mich) 112 F Supp 324.*

44. --Determination limited to record

Neither immigration officials nor court reviewing their decision may go outside of record of conviction to determine whether in particular instance alien's conduct was immoral, record of conviction meaning charge (indictment), plea, verdict, and sentence; deportation is conditioned by specific criminal charge of which alien was found guilty, provided crime involved moral turpitude and evidence upon which verdict was rendered may not be considered, nor may guilt of defendant be contradicted. *United States ex rel. Zaffarano v Corsi (1933, CA2 NY) 63 F2d 757.*

Orderly administration of justice requires that Immigration Service and reviewing court go no further than record of conviction (indictment, plea, verdict, and sentence) to determine whether alien is deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *Rassano v Immigration & Naturalization Service (1966, CA7) 377 F2d 971.*

Moral turpitude must be inherent in charge, offense must be one which in itself evidences "moral turpitude," and where this element does not appear from record until extraneous evidence is produced, offense cannot be said to be one which necessarily inherently involves moral turpitude. *United States ex rel. Griffo v McCandless (1928, DC Pa) 28 F2d 287.*

In determining whether crime of which alien stood convicted was one involving moral turpitude neither immigration officials nor courts sitting in review of their action could have gone beyond record of conviction. *The Washington (1937, DC NY) 19 F Supp 719.*

Whether offense is one involving moral turpitude is determined from inherent nature of crime, as defined by statute or interpreted by courts, and as limited and described by record of conviction. *In re H---- (1957, BIA) 7 I & N Dec 616.*

Inherent nature of offense, as defined by statute and interpreted by courts, and as limited and described by record of conviction, determines whether crime involves moral turpitude; only if statute under which alien was convicted includes some offenses which involve moral turpitude and others which do not will BIA look to record of conviction, which includes indictment, plea, verdict, and sentence, to determine offense for which alien was convicted. *In re Short (1989, BIA) 20 I & N Dec 136.*

45. Criminal intent

Crime that does not necessarily involve evil intent, such as intent to defraud, is not necessarily crime involving moral turpitude, and conviction of violation of state statute in question could not support deportation order under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) where it was not necessary that government prove defendant in fact had evil intent in order for jury properly to convict under such statute. *Hirsch v INS (1962, CA9) 308 F2d 562.*

Criminal statute need not require "evil intent" for it to be considered crime involving moral turpitude; instead, statute need only require act of such debased or depraved behavior that it violates accepted moral standards. *Gonzalez-Alvarado v INS (1994, CA9) 39 F3d 245, 94 CDOS 8464, 94* Daily Journal DAR 15627.

Not every conviction based on criminal statute requiring "evil intent" is crime involving moral turpitude. *Rodriguez-Herrera v INS (1995, CA9) 52 F3d 238, 95 CDOS 2474.*

Whether crime involved moral turpitude depended upon intent with which it was committed. *United States ex rel. Shladzien v Warden of Eastern State Penitentiary (1930, DC Pa) 45 F2d 204.*

46. --Particular crimes

Relatively minor misdemeanor of issuing insufficient funds check with intent to cheat and defraud nevertheless constituted crime involving moral turpitude under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4), since crime in which fraud was ingredient had always been regarded as involving moral turpitude and since, both by specific language used in state statute and by cases interpreting it, intent to defraud was essential element of section of state code under which alien had been convicted. *Burr v Immigration & Naturalization Service (1965, CA9) 350 F2d 87,* cert den *(1966) 383 US 915, 15 L Ed 2d 669, 86 S Ct 905.*

Absence of evil intent from elements of offense of child abuse as defined by statute did not bar crime from being considered as involving moral turpitude where act within statute might by definition, without regard to motivation, involve moral turpitude, since inflicting cruel or inhuman corporal punishment or injury on child is so offensive to American ethics that fact that it was done purposely was conclusive as to moral turpitude of offense. *Guerrero De Nodahl v Immigration & Naturalization Service (1969, CA9) 407 F2d 1405.*

Alien's conviction of obtaining goods under false pretenses in violation of Connecticut law was not conviction of crime involving moral turpitude where it was not established that intent to defraud was essential element of conviction under law. *In re Kinney (1964, BIA) 10 I & N Dec 548.*

Conviction for drawing check with insufficient funds in violation of Kansas law was not conviction of crime involving moral turpitude where it was clear

that intent to defraud was not element of crime for which alien was convicted. *In re Bailie (1964, BIA) 10 I & N Dec 679.*

Wisconsin crime of sexual intercourse with child under age 18 was equivalent of statutory rape or carnal knowledge and such crime involved moral turpitude, notwithstanding absence of mens rea or criminal intent in statutory definition of crime. *In re Dingena (1966, BIA) 11 I & N Dec 723.*

Although the Georgia statute does not expressly include guilty knowledge, as evidenced by the requirement of an intent to defraud, as an essential element of a bad check offense, Georgia case law clearly establishes that guilty knowledge is an essential element of the offense and the crime is thus one of moral turpitude for immigration purposes. *In re Bart (1992, BIA) 20 I & N Dec 436.*

Because the Pennsylvania Supreme Court had ruled that an intent to defraud is no longer an essential element of the crime of issuing a bad check in Pennsylvania, a conviction under the statute was not a conviction of a crime of moral turpitude for immigration purposes. *In re Balao (1992, BIA) 20 I & N Dec 440.*

47. Included offenses

Generally, where alien has been convicted of less serious crime, moral turpitude will not be found unless statute upon which conviction is based contains fraud element. *Rodriguez-Herrera v INS (1995, CA9) 52 F3d 238, 95 CDOS 2474.*

All offenses which could conceivably come within language delineating offense must necessarily and under any and all circumstances involve moral turpitude, and moral turpitude attaches only if minimum reading of statutory language necessarily reaches only offenses which involve moral turpitude without regard to detail to misconduct. *United States ex rel. Mongiovi v Karnuth (1929, DC NY) 30 F2d 825.*

Plea of guilty to second degree assault under indictment attempting to charge first degree robbery was not ground for deportation where lesser crime did not involve moral turpitude, and indictment was insufficient to charge greater offense. *United States ex rel. Valenti v Karmuth (1932, DC NY) 1 F Supp 370.*

If violation of particular law under any and all circumstances constitutes moral turpitude, then all convictions under law involve moral turpitude, but if law punishes acts which do not involve moral turpitude, as well as those which do, then no conviction under that law involves moral turpitude. *In re R---- (1954, BIA) 6 I & N Dec 444.*

48. Inchoate offenses

There was no distinction in respect to moral turpitude between commission of substantive crime of grand larceny and attempt to commit it. *United States ex rel. Meyer v Day (1931, CA2 NY) 54 F2d 336.*

49. Conspiracy

When two or more persons got together and agreed that they deliberately would, and then did, enter into scheme which had for its purpose violation of laws of land, this involved moral turpitude. *United States ex rel. Berlandi v Reimer (1939, DC NY) 30 F Supp 767,* affd (1940, CA2 NY) *113 F2d 429.*

Conspiracy to commit offense involves moral turpitude only when substantive offense charged therein involves moral turpitude. *In re G---- (1956, BIA) 7 I & N Dec 114.*

Conspiracy is crime involving moral turpitude only if underlying offense involves moral turpitude. Re Tiwari (1989, BIA) I & N Interim Dec. No. 3099.

50. Accessory offenses

Conviction of being accessory before fact was conviction for crime involving moral turpitude under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) where substantive offense was one involving moral turpitude. *In re F---- (1955, BIA) 6 I & N Dec 783.*

Determination of whether crime involves moral turpitude must be confined to alien's record of conviction, and thus IJ erred in considering alien's husband's record of conviction for purpose of determining underlying crime of which alien was convicted of aiding and abetting; nowhere did alien's record of conviction relate alien's crime of aiding and abetting to specific sexual offense of which husband was convicted, and in fact, statute under which alien was convicted specifically excluded sexual abuse offenses, and case was remanded to IJ to give INS opportunity to provide further evidence from alien's record of conviction regarding nature of crime of which alien was convicted. *In re Short (1989, BIA) 20 I & N Dec 136.*

b. Particular Crimes As Involving Moral Turpitude

51. Assault

Conviction of second degree assault under New York statute did not involve moral turpitude. *United States ex rel. Zaffarano v Corsi (1933, CA2 NY) 63 F2d 757.*

Assault in second degree with dangerous weapon, such as shooting with revolver, was contrary to good morals and justified deportation, though simple assault and battery would not have involved that degree of depravity. *United States ex rel. Morlacci v Smith (1925, DC NY) 8 F2d 663.*

Assault and battery upon police officer was not crime involving moral turpitude where alien hit officer while latter was attempting to stop fight in restaurant, and result was not affected by fact that alien was armed with dangerous weapon where he did not use it. *Ciambelli ex rel. Maranci v Johnson (1926, DC Mass) 12 F2d 465.*

Alien, who, while drunk, assaulted cab driver and drove away with his cab, was guilty of offense involving moral turpitude, so that conviction of assault in second degree warranted deportation. *United States ex rel. Mazzillo v Day (1926, DC NY) 15 F2d 391.*

Aggravated assault and battery did not involve moral turpitude, since it was not inherent in charge and not evidenced by record. *United States ex rel. Griffo v McCandless (1928, DC Pa) 28 F2d 287.*

Assault and battery with intent to kill was crime involving moral turpitude within meaning of immigration law. *United States ex rel. Shladzien v Warden of Eastern State Penitentiary (1930, DC Pa) 45 F2d 204.*

Assault with intent to rob involved moral turpitude. *United States ex rel. Rizzio v Kenney (1931, DC Conn) 50 F2d 418.*

Alien, who was indicted for robbery in first degree and pleaded guilty to assault in second degree, was not guilty of crime involving moral turpitude where allegations and indictment were sufficient only to charge assault in third degree and where assault in third degree was misdemeanor, not involving moral turpitude. *United States ex rel. Valenti v Karmuth (1932, DC NY) 1 F Supp 370.*

Assault by alien and firing of shot which inflicted wound upon another constituted crime involving moral turpitude. *United States ex rel. Pellegrino v Karnuth (1938, DC NY) 23 F Supp 688.*

Alien who plead guilty to crime of attempted assault, second degree, and was sentenced by New York court to term of from one year and 3 months to 3 years imprisonment, within 5 years from legal entry into United States, was properly

subject to deportation as having committed crime involving moral turpitude. *In re Application of Molina (1958, DC NY) 167 F Supp 655.*

Conviction in Virgin Islands of assault in third degree, resulting in sentence to two and one half year's imprisonment, was conviction of crime involving moral turpitude within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *In re Baker (1974, BIA) 15 I & N Dec 50.*

Conviction for aggravated assault under Illinois law was conviction of crime involving moral turpitude. *In re Medina (1976, BIA) 15 I & N Dec 611.*

Crime of interfering with law enforcement officer, where alien knowingly threatens officer with knife, is crime involving moral turpitude. *In re Logan (1980, BIA) 17 I & N Dec 367.*

BIA withdraws from *Re Baker (1974, BIA) 15 I & N Dec 50,* to extent it holds that assault with intent to commit felony is per se crime involving moral turpitude, without regard to whether underlying felony involves moral turpitude; simple assault does not constitute crime involving moral turpitude, nor is classification of crime as felony determinative of whether it constitutes crime involving moral turpitude, and combination of simple assault and intended felony that does not involve moral turpitude also does not involve moral turpitude. *In re Short (1989, BIA) 20 I & N Dec 136.*

An alien's conviction of assault in the third degree under § 9A.36.031(1)(f) of the Revised Code of Washington was not a conviction of a crime involving moral turpitude, for purposes of INA § 241(a)(2)(A)(ii) [*8 USCS § 1251* [redesignated 1227] (a)(2)(A)(ii)], since there was no intent required for conviction, nor any conscious disregard of a substantial and unjustifiable risk. *In re Perez-Contreras (1992, BIA) 20 I & N Dec 615.*

Imprisoned in Massachusetts for indeterminate amount of time based upon convictions for assault and battery and armed robbery, respondent was deportable as alien convicted of two or more crimes involving moral turpitude where, pursuant to Massachusetts law, indeterminate sentence is sentence for maximum term imposed. *In re D- (1994, BIA) 20 I & N Dec 827.*

Dismissing INS' appeal of decision of IJ which terminated deportation proceedings against alien based on finding that assault in third degree, under §§ 707-712 of Hawaii Revised Statutes, was not crime involving moral turpitude, BIA, stating generally that where reckless conduct is element of statute, crime of assault may be, but is not per se, crime involving moral turpitude, held specifically that assault in third degree under Hawaii Revised Statutes §§ 707-712 was not crime involving moral turpitude within meaning of *8 USCS § 1251* [redesignated 1227] (a)(2)(A)(ii), where offense was similar to simple assault. In re Fualaau (1996, BIA) I & N Interim Dec No 3285.

Although state court does not have power to enter order banishing alien from United States and does not have power to deport individual from United States as condition of probation for conviction of first degree sexual assault order that alien would go to jail for period of his suspended sentence if he returned to this country was not facially invalid where alien represented to court that he intended to return to his native country and agreed to condition of probation that he not return to United States. *State v Karan (1987, RI) 525 A2d 933.*

52. Bigamy

Bigamy was crime involving moral turpitude, and alien who had admitted bigamy within five years before his entry was subject to deportation. *Gonzalez-Martinez v Landon (1953, CA9 Cal) 203 F2d 196,* cert den *(1953) 345 US 998, 97 L Ed 1405, 73 S Ct 1140.*

53. Bribery

Crime of bribing participant of amateur sports is crime which, in light of contemporary standards inherently involves moral turpitude. *United States ex rel. Sollazzo v Esperdy (1961, CA2 NY) 285 F2d 341,* cert den *(1961) 366 US 905, 6 L Ed 2d 204, 81 S Ct 1049.*

54. Counterfeiting

Counterfeiting or passing one-cent, two-cent, three-cent or five-cent pieces in violation of *18 USCS § 282* was not crime involving moral turpitude. *United States ex rel. Giglio v Neelly (1953, CA7 Ill) 208 F2d 337.*

Conviction of possessing counterfeit money "with intent to defraud" under *18 USCS § 472* involves crime of "moral turpitude" under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *Lozano--Giron v Immigration & Naturalization Service (1974, CA7) 506 F2d 1073.*

Crime having as element intent to defraud is clearly crime involving moral turpitude, and conviction of dealing with counterfeit obligations in violation of *18 USCS § 473* was deportable offense under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *Winestock v Immigration & Naturalization Service (1978, CA9) 576 F2d 234.*

55. Forgery and related offenses

Forgery was crime which involved moral turpitude. *United States ex rel. Robinson v Day (1931, CA2 NY) 51 F2d 1022.*

Uttering forged bank check, and forgery of endorsement on check, were crimes involving moral turpitude. *Baer v Norene (1935, CA9 Or) 79 F2d 340.*

56. Embezzlement

Embezzlement committed in Belgium was crime involving moral turpitude. *The Washington (1937, DC NY) 19 F Supp 719.*

57. Fraud and related offenses

Withholding and concealing assets by alien from his trustee in bankruptcy was crime which involved moral turpitude. *United States ex rel. Medich v Burmaster (1928, CA8 Minn) 24 F2d 57.*

Obtaining money by means of confidence game was crime involving moral turpitude under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4), where numerous Illinois cases had defined crime as one involving "fraudulent scheme" and crime necessarily involved act of cheating or swindling. *Rukavina v Immigration & Naturalization Service (1962, CA7) 303 F2d 645.*

Alien is excludable under *8 USCS § 1182* for having been convicted of crime involving moral turpitude, where he was convicted by Canadian court of conspiracy to affect public market price of stock by deceit, falsehood, or other fraudulent means with intent to defraud. *McNaughton v Immigration & Naturalization Service (1980, CA9) 612 F2d 457.*

Where alien was convicted of three counts of mail fraud, each of which was perpetrated against different victim on different date and at different location, these convictions did not arise from single scheme of criminal enterprise and, thus, alien was deportable because he had been convicted of two crimes of moral turpitude. *Balogun v INS (1994, CA1) 31 F3d 8.*

Encumbering mortgage property, "designing and intending to defraud," in violation of California statute, was crime involving moral turpitude, despite fact that debt was subsequently paid. *United States ex rel. Millard v Tuttle (1930, DC La) 46 F2d 342.*

One who performed act with intent to defraud government is guilty of act of moral turpitude, regardless of whether there was law prohibitory thereof.

United States ex rel. Berlandi v Reimer (1939, DC NY) 30 F Supp 767, affd (1940, CA2 NY) *113 F2d 429.*

Conspiracy to defraud United States in violation of *18 USCS § 371* by impeding, obstructing, and attempting to defeat lawful functions of agency of United States was crime involving moral turpitude. *In re E-- (1961, BIA) 9 I & N Dec 421.*

58. --False statements and perjury

Perjury committed by making false statements and verified for naturalization constituted crime involving moral turpitude. *United States ex rel. Karpay v Uhl (1934, CA2 NY) 70 F2d 792,* cert den *(1934) 293 US 573, 79 L Ed 671, 55 S Ct 85.*

Offense of willfully and knowingly making false statement in passport application with intent to obtain issuance of passport contrary to *18 USCS § 1542* was clearly fraud on United States and involved moral "turpitude" within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *Bisaillon v Hogan (1958, CA9 Hawaii) 257 F2d 435,* cert den *(1958) 358 US 872, 3 L Ed 2d 104, 79 S Ct 112.*

The crime of making false statements is a crime of moral turpitude when the elements of materiality and knowledge are shown. *Zaitona v INS (1993, CA6) 9 F3d 432.*

BIA did not err in making order of deportation pursuant to pre-1990 version of *8 USCS § 1251* [redesignated 1227] (a)(5) against alien based on his conviction for making false statement under penalty of perjury in violation of *18 USCS § 1546* since deportation proceeding was commenced prior to 1990 and Congress specifically stated in amendment to § 1251 [redesignated 1227] that it does not apply to deportation proceedings begun before March 1, 1991. *Attul v INS (1995, CA5) 42 F3d 958,* cert den (1995, US) *132 L Ed 2d 809, 115 S Ct 2555.*

Perjury is crime involving moral turpitude, and alien convicted of violating former *18 USC § 231* (now codified as *18 USCS § 1621),* general perjury statute, had been convicted of crime involving moral turpitude. *United States v Carrollo (1939, DC Mo) 30 F Supp 3.*

Admittedly perjurious statement made and sworn to in foreign country before Vice Consul of United States by naturalized citizen who had lost his citizenship by expatriation was crime involving moral turpitude and could serve as basis of deportation, regardless of whether perjurious statement was offense involving moral turpitude in country in which it was committed. *United States ex rel. Cumberbatch v Shaughnessy (1953, DC NY) 117 F Supp 152.*

Crime of abetting nonimmigrant visitor "to make a false and fraudulent statement" in application for extension of stay, resulting in alien's conviction under *18 USCS § 1001,* was not crime involving moral turpitude. *In re Espinosa (1962, BIA) 10 I & N Dec 98.*

Conviction of offense of making false statement in acquisition of firearm from licensed dealer in violation of *18 USCS § 922*(a)(6) was conviction of crime involving moral turpitude. *In re Acosta (1973, BIA) 14 I & N Dec 338.*

59. --Bad checks

Plea of guilty to issuing second check for same debt without sufficient funds in bank to meet same involved moral turpitude, though plea was induced by advice of pretended lawyer and insufficiency of funds was caused by fraudulent cashing of first check after representation of holder that he had lost same. *United States ex rel. Portada v Day (1926, DC NY) 16 F2d 328.*

District Court will find that alien's conviction for bad check charge is crime involving moral turpitude since Nebraska statute upon which conviction is based requires intent to defraud to sustain conviction; thus, alien convicted of

this crime who was sentenced to 1 year imprisonment may properly be deported pursuant to *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *Ijoma v INS (1995, DC Neb) 875 F Supp 625,* affd, habeas corpus dismissed (1996, CA8) *1996 US App LEXIS 1545.*

Conviction for drawing and delivering worthless check in violation of provision of Virgin Islands Code is not conviction of crime involving moral turpitude. *In re Colbourne (1969, BIA) 13 I & N Dec 319.*

Crime of passing worthless check requires proof of guilty knowledge defined as intent to defraud, and is therefore crime involving moral turpitude. *In re Logan (1980, BIA) 17 I & N Dec 367.*

60. Larceny, theft, and related offenses

Conviction of possession of stolen mail under *18 USCS § 1708* constitutes conviction of crime involving moral turpitude. *Okoroha v Immigration & Naturalization Service (1983, CA8) 715 F2d 380.*

Larceny of money by alien from his mother constituted crime involving moral turpitude. *United States ex rel. Parenti v Martineau (1930, DC Conn) 50 F2d 902.*

Theft is crime involving moral turpitude. *United States ex rel. Rizzio v Kenney (1931, DC Conn) 50 F2d 418.*

Larceny, forgery, use of the mails in schemes to defraud, and crimes involving fraud were crimes involving moral turpitude. *Ponzi v Ward (1934, DC Mass) 7 F Supp 736.*

Aliens who pled guilty to theft and conversion of United States government funds committed crimes of moral turpitude within the meaning of *8 USCS § 1251* [redesignated 1227] (a)(2)(A)(i)-(ii). *United States v Concepcion (1992, ED NY) 795 F Supp 1262.*

Conviction of crime of willfully and feloniously receiving stolen goods and knowing them to be stolen was conviction of crime involving moral turpitude. *In re Z---- (1956, BIA) 7 I & N Dec 253.*

Imprisoned in Massachusetts for indeterminate amount of time based upon convictions for assault and battery and armed robbery, respondent was deportable as alien convicted of two or more crimes involving moral turpitude where, pursuant to Massachusetts law, indeterminate sentence is sentence for maximum term imposed. *In re D- (1994, BIA) 20 I & N Dec 827.*

61. --Petit larceny

Conviction for stealing $ 15, and sentence to one year in jail, constituted crime which involved moral turpitude, though defined as petit larceny and misdemeanor by state statutes. *Tillinghast v Edmead (1929, CA1 Mass) 31 F2d 81.*

Though petit larceny was crime involving moral turpitude, one, who was convicted and sentenced to 60 days in jail, but placed on probation, and whose probation order was continued by subsequent order conditional on one-year jail sentence, was not subject to deportation, the court being without jurisdiction to make later order. *Wilson v Carr (1930, CA9 Cal) 41 F2d 704.*

Crime of larceny is in general category of crimes involving moral turpitude in ordinary acceptance, and theft of dozen golf balls was crime involving moral turpitude for purposes of deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *Pino v Nicolls (1954, CA1 Mass) 215 F2d 237,* revd on other grounds *(1955) 349 US 901, 99 L Ed 1239, 75 S Ct 576.*

Alien convicted at age 18 of petit larceny was deportable for conviction of crime involving moral turpitude where state court could have treated him as juvenile offender but elected instead to try him as adult. *Morasch v Immigration & Naturalization Service (1966, CA9 Or) 363 F2d 30.*

Petty larceny was offense which involved moral turpitude. *United States ex rel. Patricola v Karnuth (1935, DC NY) 9 F Supp 961.*

Crime of petty larceny involved moral turpitude, but alien, 61 years of age, would not be deported where he had resided continuously in United States since age 2, had been convicted of petty larceny when he was 17, and had been committed to juvenile reformatory rather than sentenced to prison or penitentiary for this offense. *Tutrone v Shaughnessy (1958, DC NY) 160 F Supp 433.*

62. --Burglary

Crime of breaking and entering building at night time with intent to commit larceny, universally known as burglary, was crime which involved moral turpitude. *Tahir v Lehmann (1959, DC Ohio) 171 F Supp 589,* affd (1959, CA6 Ohio) *264 F2d 892,* cert den *(1959) 361 US 876, 4 L Ed 2d 114, 80 S Ct 139.*

Breaking and entering with intent to commit larceny was crime involving moral turpitude within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) since moral turpitude inhered in criminal intent and larceny was crime involving moral turpitude in Massachusetts. *In re L---- (1955, BIA) 6 I & N Dec 666.*

63. Murder and manslaughter

Manslaughter and counterfeiting involved moral turpitude, and where there were separate convictions of two offenses, alien was twice convicted, though visit abroad intervened between two convictions. *United States ex rel. Allessio v Day (1930, CA2 NY) 42 F2d 217.*

Manslaughter conviction in Hungary, where degrees of manslaughter were not recognized, was crime involving moral turpitude where record indicated that alien, during altercation with another over destruction of fence, attacked other party with knife, as result of which victim died. *Pillisz v Smith (1931, CA7 Ill) 46 F2d 769.*

Murders of two persons were both crimes involving moral turpitude. *Fong Haw Tan v Phelan (1947, CA9 Cal) 162 F2d 663,* revd on other grounds *(1948) 333 US 6, 92 L Ed 433, 68 S Ct 374.*

BIA properly rejected alien's request for "bright-line" rule that conviction for involuntary manslaughter can never be considered crime involving moral turpitude; whether particular crime involves moral turpitude depends on elements of statute upon which conviction is based rather than characterization of crime itself. *Franklin v INS (1995, CA8) 72 F3d 571,* reh, en banc, den (1996, CA8) *1996 US App LEXIS 2092* and cert den (1996, US) *136 L Ed 2d 59, 117 S Ct 105.*

Manslaughter in second degree did not involve moral turpitude where alien's daughter was shot to death by accidental discharge of pistol over which alien and his wife was struggling during quarrel. *United States ex rel. Mongiovi v Karnuth (1929, DC NY) 30 F2d 825.*

Moral turpitude was found in first degree manslaughter conviction where it appeared from record that alien shot his father-in-law with revolver while in heat of passion and as result of quarrel. *United States ex rel. Sollano v Doak (1933, DC NY) 5 F Supp 561,* affd (1933, CA2 NY) *68 F2d 1019.*

Involuntary manslaughter through negligent or reckless operation of automobile, which resulted in death of another, did not involve moral turpitude. *In re Schiano Di Cola (1934, DC RI) 7 F Supp 194.*

Homicide did not involve moral turpitude where crime was unaccompanied by vicious motive or corrupt mind and where it did not appear from judgment rendered by Spanish court that act in question was one of baseness, vileness, or depravity. *Vidal y Planas v Landon (1952, DC Cal) 104 F Supp 384.*

Conviction of alien for manslaughter under Alaska statute which makes no distinction between voluntary and involuntary manslaughter must, in light of fact that burden is upon Service, be considered to be conviction for involuntary manslaughter, which crime does not involve moral turpitude. *In re Lopez (1971, BIA) 13 I & N Dec 725.*

Vehicular manslaughter in second degree is not crime involving moral turpitude within meaning of INA § 241(a)(4) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(4)]; it is crime which is based on completely unintentional conduct common to criminal negligence, in contrast to those crimes meant to be included within breadth of statute, such as those crimes involving some form of evil intent. *People v Montilla (1987, Sup) 134 Misc 2d 868, 513 NYS2d 338.*

64. Sex offenses

Consensual sodomy is crime of moral turpitude within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *Velez-Lozano v Immigration & Naturalization Service (1972) 150 US App DC 214, 463 F2d 1305.*

Conviction of mature male alien of offense of touching boy under 16 years with sexual intent was conviction of crime involving moral turpitude. *Marinelli v Ryan (1961, CA2 Conn) 285 F2d 474.*

Alien's conviction for incest in first degree for having intercourse with his 11-year-old stepdaughter in violation of Washington state law did amount to crime involving moral turpitude and was properly basis of order of deportation against alien. *Gonzalez-Alvarado v INS (1994, CA9) 39 F3d 245, 94 CDOS 8464, 94* Daily Journal DAR 15627.

Massachusetts crime of "carnal abuse" involved moral turpitude. *Pino v Nicolls (1954, DC Mass) 119 F Supp 122,* affd (1954, CA1 Mass) *215 F2d 237,* revd on other grounds *(1955) 349 US 901, 99 L Ed 1239, 75 S Ct 576.*

Simple fornication is not crime involving immoral turpitude within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *In re R---- (1954, BIA) 6 I & N Dec 444.*

Conviction of indecent assault in violation of law of Connecticut was conviction of crime involving moral turpitude. *In re Z---- (1956, BIA) 7 I & N Dec 253.*

Conviction for oral sex perversion under California penal code was conviction for crime involving moral turpitude under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *In re Leyva (1977, BIA) 16 I & N Dec 118.*

Determination of whether crime involves moral turpitude must be confined to alien's record of conviction, and thus IJ erred in considering alien's husband's record of conviction for purpose of determining underlying crime of which alien was convicted of aiding and abetting; nowhere did alien's record of conviction relate alien's crime of aiding and abetting to specific sexual offense of which husband was convicted, and in fact, statute under which alien was convicted specifically excluded sexual abuse offenses, and case was remanded to IJ to give INS opportunity to provide further evidence from alien's record of conviction regarding nature of crime of which alien was convicted. *In re Short (1989, BIA) 20 I & N Dec 136.*

Although state court does not have power to enter order banishing alien from United States and does not have power to deport individual from United States as condition of probation for conviction of first degree sexual assault order that alien would go to jail for period of his suspended sentence if he returned to this country was not facially invalid where alien represented to court that he intended to return to his native country and agreed to condition of probation that he not return to United States. *State v Karan (1987, RI) 525 A2d 933.*

Sexual crimes are considered to involve moral turpitude; defendant alien in deportation proceeding, who has plead guilty to second degree sexual assault and been sentenced to 2 1/2 years, must be deported. *People v Pozo (1985, Colo App) 712 P2d 1044,* revd on other grounds, en banc (1987, Colo) *746 P2d 523.*

65. --Lewd conduct

Lewdness under Massachusetts statute involved moral turpitude. *Lane ex rel. Cronin v Tillinghast (1930, CA1 Mass) 38 F2d 231.*

Alien convicted under Massachusetts statute of being lewd, wanton and lascivious person in speech and behavior was convicted of crime involving moral turpitude. *Fitzgerald ex rel. Miceli v Landon (1956, CA1 Mass) 238 F2d 864.*

Alien was not deportable despite his conviction of "open lewdness," since New Jersey statute in question was rehabilitative in purpose, and since sentence was imposed but suspended in order to assure alien's participation in psychiatric treatment. *Holzapfel v Wyrsch (1958, CA3 NJ) 259 F2d 890.*

Conviction of lewd and lascivious conduct by public and indecent exposure in violation of Wisconsin law was not conviction of crime involving moral turpitude where statute in question did not require specific intent, criminal intent or any intent whatsoever. *In re Mueller (1965, BIA) 11 I & N Dec 268.*

66. --Prostitution

Alien convicted under New York statute providing that one who "with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned,. . . . Frequents or loiters about any public place soliciting men for the purpose of committing a crime against nature or lewdness;. . . shall be deemed to have committed the offense of disorderly conduct:" was deportable as one having been convicted of crime involving moral turpitude. *Babouris v Esperdy (1959, CA2 NY) 269 F2d 621,* cert den *(1960) 362 US 913, 4 L Ed 2d 620, 80 S Ct 662.*

Offering to secure person for purposes of prostitution in violation of Florida statute and city ordinance, and letting or renting rooms with knowledge that rooms were to be used for purpose of lewdness, assignation, or prostitution, in violation of city ordinance, were crimes involving moral turpitude. *In re Lambert (1965, BIA) 11 I & N Dec 340.*

67. --Statutory rape

Rape on female under age of consent involved moral turpitude. *Bendel v Nagle (1927, CA9 Cal) 17 F2d 719, 57 ALR 1129.*

Conviction under indictment which charged common law rape, statutory rape, and contributing to delinquency of female child, involved moral turpitude. *Ng Sui Wing v United States (1931, CA7 Ill) 46 F2d 755.*

Petitioner's conviction under Minnesota law of crime of statutory rape was conviction "involving moral turpitude" within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) despite fact that Minnesota statutory rape statute did not require criminal intent, since evidence adduced in state proceedings showed that petitioner knew his victim was 16 years of age and that he was aggressor. *Marciano v Immigration & Naturalization Service (1971, CA8) 450 F2d 1022, 23 ALR Fed 466,* cert den *(1972) 405 US 997, 31 L Ed 2d 466, 92 S Ct 1260.*

Wisconsin crime of sexual intercourse with child under age 18 was equivalent of statutory rape or carnal knowledge and such crime involved moral turpitude, notwithstanding absence of mens rea or criminal intent in statutory definition of crime. *In re Dingena (1966, BIA) 11 I & N Dec 723.*

68. Tax offenses

Wilfully attempting to evade payment of income tax by filing false and fraudulent returns was crime involving moral turpitude. *Costello v Immigration & Naturalization Service (1962, CA2) 311 F2d 343,* revd on other grounds *(1964) 376 US 120, 11 L Ed 2d 559, 84 S Ct 580.*

Willful attempt to evade payment of tax did not involve moral turpitude, although characterized by former § 145(b) of Internal Revenue Code as felony. *United States v Carrollo (1939, DC Mo) 30 F Supp 3.*

Income tax evasion was crime involving moral turpitude. *Chanan Din Khan v Barber (1957, DC Cal) 147 F Supp 771,* affd (1958, CA9 Cal) *253 F2d 547,* cert den *(1958) 357 US 920, 2 L Ed 2d 1364, 78 S Ct 1361.*

69. --Evasion of liquor tax

Conspiracy to defraud United States of taxes on distilled spirits is "crime involving moral turpitude" within meaning of immigration act making two convictions of such crime grounds for deporting alien. *Jordan v De George (1951) 341 US 223, 95 L Ed 886, 71 S Ct 703,* reh den *(1951) 341 US 956, 95 L Ed 1377, 71 S Ct 1011.*

Offense which involved fraud or dishonesty involved moral turpitude, and conviction of smuggling liquor with intent to defraud United States of tariff was such offense and warranted deportation of alien for commission of such crime within five years after entry. *Guarneri v Kessler (1938, CA5 La) 98 F2d 580,* cert den *(1938) 305 US 648, 83 L Ed 419, 59 S Ct 229.*

Concealing distilled spirits with intent to defraud United States of revenue was crime involving moral turpitude. *United States ex rel. Berlandi v Reimer (1940, CA2 NY) 113 F2d 429.*

Crime of engaging in business of distiller of alcohol with intent to defraud United States of tax on spirits distilled involved moral turpitude. *Maita v Haff (1940, CA9 Cal) 116 F2d 337.*

Conviction of alien for conspiring to defraud United States by carrying on business of wholesale liquor dealer while willfully failing to pay special tax required to be paid by wholesale liquor dealers was conviction for crime involving moral turpitude. *United States ex rel. Carrollo v Bode (1953, CA8 Mo) 204 F2d 220,* cert den *(1953) 346 US 857, 98 L Ed 370, 74 S Ct 73.*

70. Weapons offenses

Conviction of carrying concealed weapons and conviction for violation of Harrison Anti-Narcotic Act did not involve moral turpitude. *United States ex rel. Andreacchi v Curran (1926, DC NY) 38 F2d 498.*

Carrying concealed and deadly weapon with intent to use it against person of another in violation of state law is crime involving moral turpitude. *In re S---- (1959, BIA) 8 I & N Dec 344.*

INA § 241(a)(2)(C) [*8 USCS § 1251* [redesignated 1227] (a)(2)(C)], relating to convictions for certain firearms offenses, represents the enactment of a new statutory provision that completely supersedes all former versions of that deportation ground and is not limited regarding its applicability to convictions which predated its enactment. *In re Chow (1993, BIA) 20 I & N Dec 647,* affd without op (1993, CA5 La) *9 F3d 1547,* reported in full (1993, CA5) *12 F3d 34.*

71. Miscellaneous

Alien did not commit crime which involved moral turpitude where he re-entered or attempted to re-enter United States after having been deported without having been duly admitted and inspected, and recommendation of judge against deportation was of no effect. *Rodriguez v Campbell (1925, CA5 Tex) 8 F2d 983.*

Conviction for possessing jimmy under circumstances evidencing intent to use and employ it in commission of some crime unknown was insufficient to justify deportation, for failure to show that crime involved "moral turpitude." *United States ex rel. Guarino v Uhl (1939, CA2 NY) 107 F2d 399.*

Child beating was crime involving moral turpitude within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *Guerrero De Nodahl v Immigration & Naturalization Service (1969, CA9) 407 F2d 1405.*

Structuring financial transactions with domestic financial institutions to avoid currency report requirements, in violation of *31 USCS §§ 5324*(a)(3), 5322(b), is not a crime involving moral turpitude, and thus an alien who pled guilty to violating these provisions is not deportable under INA § 241(a)(2)(A)(i) [*8 USCS § 1251* [redesignated 1227] (a)(2)(A)(i)]; intent to defraud is neither explicit in the statutory definition, nor implicit in the nature of the crime, which does not involve the use of false statements or counterfeit documents, and does not result in the defendant obtaining anything from the Government. *Goldeshtein v INS (1993, CA9 Wash) 8 F3d 645, 93 CDOS 7593, 93* Daily Journal DAR 12967.

Because spousal abuse is an act of baseness or depravity contrary to accepted moral standards, and willfulness is one of its elements, it constitutes a crime of moral turpitude. *Grageda v United States INS (1993, CA9 Cal) 12 F3d 919, 93 CDOS 9668, 93* Daily Journal DAR 16593.

The crime of being an accessory after the fact to murder is a crime involving moral turpitude; the respondent had pled guilty to an indictment charging him with intentionally assisting the principal in avoiding detention, trial, and punishment, knowing that the principal had intentionally murdered another human being. *Cabral v INS (1994, CA1) 15 F3d 193.*

Court of Appeals will review de novo BIA's conclusion that conviction under Washington state statute forbidding sexual intercourse with stepchild under 18 years of age amounts to crime involving moral turpitude. *Gonzalez-Alvarado v INS (1994, CA9) 39 F3d 245, 94 CDOS 8464, 94* Daily Journal DAR 15627.

Alien's conviction for criminal mischief in second degree, as defined by Revised Code of Washington, may not be considered crime involving moral turpitude, since statute does not require depravity or fraud to sustain conviction, and since conviction could be obtained against individual who committed destructive acts solely as result of poor judgment. *Rodriguez-Herrera v INS (1995, CA9) 52 F3d 238, 95 CDOS 2474.*

Mailing letter concerning lottery and mailing obscene letter, both in violation of *18 USCS § 336,* were not crimes involving moral turpitude. *United States v Carrollo (1939, DC Mo) 30 F Supp 3.*

Commission of common law crime of escape did not necessarily involve moral turpitude. *United States ex rel. Manzella v Zimmerman (1947, DC Pa) 71 F Supp 534.*

Conviction under *8 USCS § 1324* involves moral turpitude comparable to making false statement and court accordingly has authority to grant recommendation against deportation is entirely matter of judicial discretion, and court denies recommendation where pre-sentence report strongly suggests that alien was previously involved in smuggling on numerous occasions. *United States v Raghunandan (1984, WD NY) 587 F Supp 423.*

Encouraging illegal alien to enter U.S. unlawfully, in violation of *8 USCS § 1324*(a)(1)(D), does not constitute crime involving moral turpitude within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *United States v Sucki (1990, ED NY) 748 F Supp 66.*

Conviction of mayhem, as defined by Rhode Island statute, was conviction of crime involving moral turpitude where statute specifically required that act be

done "voluntarily, maliciously or of purpose." *In re Santoro (1966, BIA) 11 I & N Dec 607.*

Conviction under *18 USCS § 1071* of knowingly harboring and concealing person for whose arrest warrant has been issued is conviction of crime involving moral turpitude. *In re Sloan (1966, BIA) 12 I & N Dec 840.*

Unlawful sale and unlawful possession of LSD in violation of *21 USCS §§ 331*(q)(2) and 331(q)(3) was not crime involving moral turpitude, since, as regulatory legislation, intent was nowhere mentioned in defining prohibited act. *In re Abreu-Semino (1968, BIA) 12 I & N Dec 775.*

Following amendments made by IRCA, alien may be convicted under INA § 274(a) [*8 USCS § 1324*(a)] irrespective of whether he or she possessed specific intent to assist aliens in unlawfully entering U.S., and thus statute resembles strict liability offense more than intent-oriented criminal law; since fraud or evil intent is not inherent in conviction under § 274(a), it does not constitute crime involving moral turpitude under § 241(a)(4) [§ 1251 [redesignated 1227] former subsection (a)(4)]. Re Tiwari (1989, BIA) I & N Interim Dec. No. 3099.

In absence of fraud and evil intent, violations of immigration laws are not ordinarily regarded as involving moral turpitude, and thus conviction under INA § 274(a) [*8 USCS § 1324*(a)] does not render alien deportable under § 241(a)(4) [§ 1251 [redesignated 1227] former subsection (a)(4)], since conviction is not of common law crime but of regulatory offense of unlawfully bringing aliens into and transporting aliens within U.S. Re Tiwari (1989, BIA) I & N Interim Dec. No. 3099.

Anyone who willfully opened place, including place for unlawful sale of intoxicating liquor, for conducting business which was positively forbidden and made punishable by law as felony was guilty of offense which involved moral turpitude. *Rousseau v Weedin (1922, 9 Wash) 284 F 565.*

3. What Constitutes Requisite Conviction

72. Generally

The INS may base a deportability determination in part on a crime used to support a previous deportability finding, but as to which deportability was waived under INA § 212(c) [*8 USCS § 1182*(c)], because waiver does not expunge a prior conviction; thus, in the case of an alien charged with deportability under former INA § 241(a)(4) [former *8 USCS § 1251* [redesignated 1227] former subsection (a)(4)], regarding conviction of two crimes involving moral turpitude, the IJ properly relied on a previous conviction for which deportability had been waived, as well as the alien's present conviction of petty theft, in finding the alien deportable. *Molina-Amezcua v INS (1993, CA9) 6 F3d 646, 93 CDOS 7300, 93* Daily Journal DAR 12424.

A criminal conviction may not be considered by an immigration judge until it is final; For purposes of the immigration laws, an alien's conviction is final once the alien has been convicted by a court of competent jurisdiction and exhausted the direct appeals to which he or she is entitled, and thus, an alien's conviction was final where he had exhausted the direct appeals to which he was entitled. *Grageda v United States INS (1993, CA9 Cal) 12 F3d 919, 93 CDOS 9668, 93* Daily Journal DAR 16593.

Denial of petitioner's motion to reopen deportation proceedings was remanded to immigration judge to further consider motion and enter new decision which explained decision where immigration judge had failed to provide explanation of his decision; when motion is denied and reasons for such denial are either unidentified or not fully explained, alien is deprived of fair opportunity to contest that determination on appeal and BIA is unable to fulfill its

responsibility of review of immigration judge's denial of motion in light of arguments advanced on appeal. *In re M.P. (1994, BIA) 20 I & N Dec 786.*

BIA declines to reverse or modify its holding in Matter of Ozkok (BIA 1988), which stated that BIA may consider alien's criminal conviction "final" for purposes of determining deportability where right of appeal of conviction remains so long as right of appeal is limited to issues other than guilt or innocence. In re Chairez-Castaneda (1995, BIA) I & N Interim Dec No 3248.

73. Court-martial conviction

Conviction of alien by court-martial while alien was serving in U.S. Army did not constitute such conviction within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) as to authorize his deportation. *Gubbels v Hoy (1958, CA9 Cal) 261 F2d 952.*

Contrary to earlier authority, general court martial conviction may be basis for deportation of alien under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) as, from administrative prospective, it is no longer impossible for court martial to comply with clemency subsections of statute, from prospective of guaranteeing defendant scrupulously fair trial and affording him full range of rights, today's military justice system compares favorably with federal justice system, as well as most enlightened of state systems, and thus, in appropriate case, military judge has authority to recommend, should he choose to do so, against deportation of alien convicted by court martial. *United States v Berumen (1987, ACMR) 24 MJ 737.*

74. Foreign conviction

Alien's conviction by French criminal court while serving overseas as member of United States Army could not serve as basis for his deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4), since French court lacked authority to make finding recommendation against deportation pursuant to *8 USCS § 1251* [redesignated 1227] (b). *In re Gian (1965, BIA) 11 I & N Dec 242.*

75. Conviction under youthful offender laws

Alien was not deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) for first offense conviction, in 1914 at age of 17, of petit larceny where, under youth offender statutes, similar first offender of age 16 or 17 would be adjudged youthful offender on petit larceny charge in state courts, rather than one "convicted" of crime. *Tutrone v Shaughnessy (1958, DC NY) 160 F Supp 433.*

76. Plea of nolo contendere

Deportation pursuant to INA § 241(a)(4) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(4)] could be based on alien's convictions of 2 petty property crimes involving moral turpitude, notwithstanding that convictions were entered on pleas of nolo contendere, and that Texas statute provided that legal effect of plea of nolo contendere was same as that of plea of guilty, but could not be used against defendant as admission in any civil suit based upon or growing out of act upon which criminal prosecution was based, because: (1) consequences which state chooses to attach to conviction in its courts for purposes of its own law do not control consequences to be given conviction in deportation proceeding, which is function of federal law; and (2) deportation proceeding does not constitute proceeding "based upon or growing out of act upon which criminal prosecution is based," within meaning of Texas statute. *Yazdchi v Immigration & Naturalization Service (1989, CA5) 878 F2d 166,* cert den *(1989) 493 US 978, 107 L Ed 2d 507, 110 S Ct 505.*

Plea of nolo contendere is final and constitutes conviction within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *In re Logan (1980, BIA) 17 I & N Dec 367.*

77. Effect of probation or suspension

Alien's state court conviction of crime was conviction within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4), even though conviction was followed by suspended sentence and probation, and alien was deportable under § 1251 [redesignated 1227] former subsection (a)(4). *Velez-Lozano v Immigration & Naturalization Service (1972) 150 US App DC 214, 463 F2d 1305.*

Conviction in California followed by suspended sentence and placement on probation remained conviction within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *Wood v Hoy (1959, CA9 Cal) 266 F2d 825.*

Dispositional order following ascertainment of guilt has sufficient finality to support finding of deportability under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) where trial judge suspends or refrains from pronouncing judgment and places alien concerned on probation. *In re Amesquita (1977, BIA) 16 I & N Dec 318.*

Alien is outside scope of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) on ground that he was not sentenced to confinement for year or more where court suspends imposition of sentence and places alien on probation. *Mariam v United States (1978, Dist Col App) 385 A2d 776.*

78. Effect of revocation, expungement, or vacation

Conviction cannot be used as basis for deportation where court, within its discretion and jurisdiction, vacates plea of non vult together with judgment of conviction, and subsequently dismisses indictment; original judgment is as much nullity as if grand jury had never returned indictment. *Sawkow v INS (1963, CA3) 314 F2d 34.*

Permanent resident's expunged misdemeanor conviction was grounds for his deportation, under *8 USCS § 1227*(a)(2)(C), as state statute under which conviction was expunged retained certain consequences of conviction after expungement, and conviction did not fall into any exception to general rule that expunged conviction remained conviction for purposes of deportation. *Ramirez-Castro v INS (2002, CA9 Cal) 287 F3d 1172, 2002 CDOS 3536, 2002* Daily Journal DAR 4501.

Conviction in Massachusetts for crime involving moral turpitude was not of sufficient finality so that it could be used to sustain deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) where convictions resulted in suspended sentence and, after completion of period of probation, sentence was revoked and complaint dismissed. *In re G---- (1956, BIA) 7 I & N Dec 171.*

Alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) as twice convicted alien, even though justice of peace issued order vacating judgment of conviction of alien for malicious destruction of property, where such action was beyond jurisdiction of justice court. *In re H-- (1961, BIA) 9 I & N Dec 460.*

Alien's conviction in California of petty theft which was later expunged under provision of California Penal Code was not "conviction" of crime for purposes of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *In re Ibarra-Obando (1966, BIA) 12 I & N Dec 576.*

4. Time Limits, Sentence, Confinement, and Number of Convictions

79. Five-year limitation

Commission of crime which involved moral turpitude within United States subsequent to five years after original lawful entry was not ground for exclusion. *Nagle v Lim Foon (1931, CA9 Cal) 48 F2d 51.*

Alien is rendered deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) by committing crime involving moral turpitude within five years after entry whether or not conviction for such crime occurs within five-year period. *In re A---- (1955, BIA) 6 I & N Dec 684.*

80. --What constitutes requisite entry

Alien resident of United States who served as seaman on vessel which was lost and who, upon being rescued, was taken to foreign port from which he returned to United States did not in consequence come within operation of statute providing for deportation of aliens convicted of crime committed within 5 years after entry to United States, since such return to United States did not constitute "entry" within the statute. *Delgadillo v Carmichael (1947) 332 US 388, 92 L Ed 17, 68 S Ct 10.*

Person who was born national of United States in Philippine Islands, who came to United States prior to Philippine Independence Act of 1934, and who was sentenced to imprisonment in 1941 and 1950 for crimes involving moral turpitude could not be deported under predecessor provision to *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) as alien who committed such crimes "after entry," no technical "entry" having been made by him. *Barber v Gonzales (1954) 347 US 637, 98 L Ed 1009, 74 S Ct 822.*

Where alien, after living in United States for eleven years, and not having been naturalized, went to Cuba for few days, his return constituted "entry," and crime committed within five years warranted deportation. *Guarneri v Kessler (1938, CA5 La) 98 F2d 580,* cert den *(1938) 305 US 648, 83 L Ed 419, 59 S Ct 229.*

Person born in Philippine Island, who was convicted of felony in United States in 1942 and in 1952 left United States for trips to Mexico, was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) since each return to United States from Mexico in 1952 constituted "entry." *Resurreccion-Talavera v Barber (1956, CA9 Cal) 231 F2d 524.*

Where trip to Mexico made by resident alien petitioner was casual, and brief excursion but not innocent, in that he was attempting to use self-help to avenge robbing of his person, this factor alone could not cause petitioner's return to United States to constitute "entry" within *8 USCS § 1251* [redesignated 1227] former subsection (a)(4), and petitioner could not be deported after his conviction for uttering forged instrument, where other factors pointed remarkedly to conclusion that the petitioner did not intend by trip to Mexico to interrupt his status as resident alien. *Yanez-Jacquez v Immigration & Naturalization Service (1971, CA5) 440 F2d 701.*

Permanent resident alien's "entry" into United States was established under *8 USCS § 1101* for purposes of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) where he went to Colombia intending to marry native, bringing $ 2100 in American currency with knowledge that Colombian authorities would allow neither removal of large denomination of local currency nor exchange of Colombian for American currency upon his departure, he stayed 27 days, and re-entered United States. *Lozano--Giron v Immigration & Naturalization Service (1974, CA7) 506 F2d 1073.*

Alien's one thousand mile trip to interior Mexico and return to United States following one month's absence constituted "entry" under *8 USCS § 1101* and he was thereby deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) for committing manslaughter, for which he was convicted within 5 months after his return to United States. *Munoz--Casarez v Immigration &*

Naturalization Service (1975, CA9) 511 F2d 947.

Because the Fleuti exception to the entry doctrine is expressly limited to lawful permanent residents, an illegal alien's return to the U.S., without inspection and by means of a smuggler, following a 3-day trip to Mexico to visit her sick parents, constituted an "entry" within the meaning of INA § 101(a)(13) [*8 USCS § 1101*(a)(13)], and thus the alien was deportable under INA § 241(a)(2)(A)(i) [*8 USCS § 1251* [redesignated 1227] (a)(2)(A)(i)] as an alien convicted of a crime involving moral turpitude committed within 5 years of entry and sentenced to prison for one or more years, where although she initially entered the U.S. in 1975, she made the 3-day trip in 1979, committed welfare fraud between 1981 and 1986, and upon conviction was sentenced to 2 years in prison. *Mendoza v INS (1994, CA9) 16 F3d 335, 94 CDOS 905, 94* Daily Journal DAR 1551.

Re-entry of alien after visit to foreign country, no matter how brief, was entry, and alien could have been deported for crime committed three years after two-day visit to Canada, although not interrupting 25-year residence in United States. *United States ex rel. Siegel v Reimer (1938, DC NY) 23 F Supp 643,* affd (1938, CA2 NY) *97 F2d 1020.*

The Fleuti doctrine, pursuant to which a lawful permanent resident's return to the U.S. from a "brief, casual, and innocent" departure abroad does not constitute an "entry," does not apply to aliens granted temporary resident status under the SAW program, INA § 210 [*8 USCS § 1160];* thus, a temporary resident who was convicted of voluntary manslaughter and aggravated assault, crimes which were committed less than 1 month after his return to the U.S. from a trip to Mexico of less than 24 hours duration, could be charged with deportability under INA § 212(a)(4) [*8 USCS § 1182* former subsection (a)(4)] as an alien convicted of a crime involving moral turpitude committed within 5 years after entry. *In re Chavez-Calderon (1993, BIA) 20 I & N Dec 744.*

81. Sentence and confinement requirements

Actual confinement is not necessary to sustain charge under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4), allowing deportation of alien convicted of crime involving moral turpitude within 5 years of entry who is either sentenced to confinement or confined therefor. *In re M---- (1954, BIA) 6 I & N Dec 346.*

82. --What constitutes sentence

Alien was sentenced within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4), even though sentence was suspended in whole and alien was placed on probation without any supervision. *Velez-Lozano v Immigration & Naturalization Service (1972) 150 US App DC 214, 463 F2d 1305.*

Alien, who, having entered United States in 1955, was convicted in New York in 1956 on plea of guilty of assault, second degree, for which he was given suspended sentence with probation for 5 years was not sentenced to confinement within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) and was not deportable. *In re V---- (1957, BIA) 7 I & N Dec 577.*

Alien was sentenced within meaning of first part of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) where alien pleaded guilty to second degree burglary, was granted probation, and had imposition of sentence suspended, and where four years later, on evidence of violation of probation but without express revocation or termination of previous order, court ordered that alien be punished by term of 1-15 years in state prison and that execution of sentence be suspended. *In re C----P---- (1959, BIA) 8 I & N Dec 504.*

83. --Sentence of one year or more

Alien who had been sentenced to one year in jail for crime involving moral turpitude was deportable, although, by reason of California statute permitting deduction for good time and work performed, he was actually incarcerated for less than one year. *Burr v Edgar (1961, CA9 Cal) 292 F2d 593.*

Length of time spent in prison is not decisive element, but rather fact that alien upon conviction has been sentenced to term of one year or more, and there was no requirement that immigration service wait until alien had actually completed year in prison before proceeding for deportation order. *Roccaforte v Mulcahey (1958, DC Mass) 169 F Supp 360,* affd (1958, CA1 Mass) *262 F2d 957.*

Deportability under second clause of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) relating to twice convicted aliens does not depend upon length of sentence or confinement imposed on alien following conviction, and order of deportation based thereon is not invalidated because conviction resulted in sentence of less than one year, suspended sentence, probation, or mere fine. *In re P---- (1959, BIA) 8 I & N Dec 424.*

Requirement in *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) that alien who has been convicted of crime involving moral turpitude within five years after entry must be sentenced to confinement or confined for year or more was not satisfied where alien who had served in excess of one year under original sentence of 1 1/2 to 15 years was awarded new trial by state court following which he was placed on probation for ten months, since time served by alien under original sentence did not constitute confinement, and, for purposes of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4), alien had not been "confined" unless his incarceration had been pursuant to existing sentence to confinement. *In re H-- (1961, BIA) 9 I & N Dec 380.*

Where alien is convicted of aggravated robbery and receives sentence to confinement totaling 12 years, but thereafter sentence is voided and alien resentenced to 3 months confinement and 5 years probation, sentence does not constitute sentence to confinement for year or more under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *In re Martin (1982, BIA) 18 I & N Dec 226.*

Where period of incarceration is less than one year, one conviction within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) will not suffice as predicate for deportation, and this is equally true if more than one crime arises out of single scheme of criminal misconduct. *People v Griffith (1979) 99 Misc 2d 273, 415 NYS2d 961.*

84. ----Indeterminate sentence

Alien who was convicted of crime involving moral turpitude and sentenced to indeterminate term, maximum of which was ten years, could be deported under provisions in *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) even though his actual period of confinement was less than one year. *Petsche v Clingan (1960, CA10 Colo) 273 F2d 688.*

Petitioner, who was found capable of rehabilitation and therefore under New York law received indeterminate sentence of up to three years, was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) where he served more than one year under indeterminate sentence, even though youth found incorrigible who would be sentenced to less than one year maximum sentence of petit larceny would not be deportable. *Brett v Immigration & Naturalization Service (1967, CA2) 386 F2d 439,* cert den *(1968) 392 US 935, 20 L Ed 2d 1394, 88 S Ct 2304.*

Since indeterminate sentence is sentence for maximum term, respondent's indeterminate sentence to imprisonment in state institution for women for

offense punishable under applicable state law by imprisonment from 6 months to 14 years was sentence to confinement for year or more within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *In re Ohnhauser (1964, BIA) 10 I & N Dec 501.*

85. ----Commuted, suspended, or deferred sentence

Suspension of 3 year sentence of imprisonment and placing alien on probation for 2 years constitutes sentence to confinement for year or more for purposes of *8 USCS § 1251* [redesignated 1227] . *Okoroha v Immigration & Naturalization Service (1983, CA8) 715 F2d 380.*

Alien who pleaded guilty to crime involving moral turpitude and was sentenced to one-year jail term which was suspended was subject to deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *United States ex rel. Fells v Garfinkel (1957, DC Pa) 158 F Supp 524,* affd (1958, CA3 Pa) *251 F2d 846.*

Alien whose sentence to confinement for period of not less than two nor more than five years, as result of conviction of crime involving immoral turpitude within five years after entry, was wholly suspended, was deportable under § 1251 [redesignated 1227] former subsection (a)(4). *In re M---- (1954, BIA) 6 I & N Dec 346.*

Deportability under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) for crime committed within five years after entry was not established where sentence for such crime had been commuted by executive action to period of less than one year. *In re J---- (1955, BIA) 6 I & N Dec 562.*

State judge's order specifically decreeing alien guilty of attempted grand larceny is sufficient to evidence deportability although sentencing was deferred pursuant to state statute which permits placing criminal defendant on probation following guilty plea, where such deferred sentence is subject to appeal and result of such appeal would be res judicata as to any subsequent appeal on merits, and where, even if charges against defendant are dismissed after probation has been successfully concluded, prior guilty finding can be used for other state purposes. *In re Westman (1979, BIA) 17 I & N Dec 50.*

86. --Prison or correctional institution requirement

Conviction of alien upon plea of guilty to unlawful entry with intent to commit larceny could not serve as part of basis for alien's deportation, even though such crime involved moral turpitude, where alien had been committed to House of Refuge for Juvenile Offenders rather than given prison sentence. *United States ex rel. Cerami v Uhl (1935, CA2 NY) 78 F2d 698.*

"Prison or corrective institution" as described by *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) includes county jail. *Burr v Immigration & Naturalization Service (1965, CA9) 350 F2d 87,* cert den *(1966) 383 US 915, 15 L Ed 2d 669, 86 S Ct 905.*

Commitment of respondent to state hospital under state's sex offenders statute was not sentence to confinement in prison or corrective institution within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *In re M---- (1959, BIA) 8 I & N Dec 256.*

Sentence of respondent, 22 years of age, as result of conviction of crime involving moral turpitude, to indeterminate term at reformatory, rather than state prison, was sentence to confinement within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *In re Goodalle (1967, BIA) 12 I & N Dec 106.*

87. Two-conviction provision

Unless alien demonstrates prejudice by lack of counsel during deportation

proceedings, denial of due process will not be found; alien fails to demonstrate such prejudice by his contention that attorney would have bolstered his petition by raising issues other than those raised by petitioner, where new legal arguments were raised by counsel in appeal proceedings and that attorney would have prevented alien's rap sheet from being admitted into evidence, where (1) alien admitted committing offenses listed or rap sheet; (2) attorney would have presented evidence establishing that alien's 2 convictions arose out of same criminal scheme; and (3) it was established that alien had been convicted of third crime. *Trench v Immigration & Naturalization Service (1986, CA10) 783 F2d 181,* cert den *(1986) 479 US 961, 93 L Ed 2d 403, 107 S Ct 457.*

A prior criminal conviction for which an alien was previously granted INA § 212(c) [*8 USCS § 1182*(c)] relief from deportation can be combined with a subsequent conviction to establish deportability under INA § 241(a)(2)(A)(ii) [*8 USCS § 1251* [redesignated 1227] (a)(2)(A)(ii)], regarding conviction of 2 crimes involving moral turpitude, because a grant of § 212(c) [§ 1182(c)] relief does not constitute a pardon or expungement of the conviction, and merely waives the finding, rather than the basis, of deportability. *Molenda v INS (1993, CA5) 998 F2d 291.*

Alien is subject to deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4), where alien is convicted for passing worthless check, and 1 1/2 years later is convicted for unrelated offense involving interference with law enforcement officer. *In re Logan (1980, BIA) 17 I & N Dec 367.*

88. --Entry between convictions

Manslaughter and counterfeiting involved moral turpitude, and where there were separate convictions of two offenses, alien was twice convicted, though visit abroad intervened between two convictions. *United States ex rel. Allessio v Day (1930, CA2 NY) 42 F2d 217.*

Alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) for conviction of two crimes involving moral turpitude after entry, even though he had been convicted only once since he last entered United States, where alien was not admissible to United States at time of last entry because of existence of earlier conviction. *In re Medina (1976, BIA) 15 I & N Dec 611.*

89. --What constitutes requisite lack of single scheme

As used in *8 USCS § 1251* [redesignated 1227] former subsection (a)(4), word "scheme" implies specific, more or less articulated and coherent plan or program of future action, and not vague, indeterminate expectation to repeat prior criminal modus operandi; evidence of similarity of two crimes in terms of intent, motive, purpose, techniques, similarity of victims and like may often be significant on issue of existence of "single scheme," but it does not have that conclusive significance so that it could, by itself, outweigh other overwhelming evidence that two crimes were unrelated. *Nason v INS (1968, CA2) 394 F2d 223, 19 ALR Fed 591,* cert den *(1968) 393 US 830, 21 L Ed 2d 101, 89 S Ct 98.*

To constitute "single scheme" within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4), providing for deportation of alien convicted of two crimes involving moral turpitude not arising out of single scheme of criminal misconduct, scheme must take place at one time and there must be no substantial interruption that would allow participant to disassociate himself from his enterprise and reflect on what he has done. *Pacheco v Immigration & Naturalization Service (1976, CA1) 546 F2d 448,* cert den *(1977) 430 US 985, 52 L Ed 2d 380, 97 S Ct 1683.*

Lawful permanent resident could not be deported under *8 USCS § 1251*

[redesignated 1227] former subsection (a)(4) where 2 robberies of same bank, which occurred within 2 days of each other, were conceived and planned by defendant at same time, and thus arose out of single scheme of criminal misconduct. *Gonzalez-Sandoval v United States INS (1990, CA9) 910 F2d 614.*

In interpreting the phrase "single scheme of criminal misconduct" under former INA § 241(a)(4) [former *8 USCS § 1251* [redesignated 1227] former subsection (a)(4)], the Tenth Circuit has adopted the "single criminal episode" test applied by the BIA in Re Adetiba, I & N Interim Dec No 3177, and the First and Fifth Circuits, rather than the "common plan or intent" test followed by the Third and Ninth Circuits. *Thanh Huu Nguyen v INS (1993, CA10) 991 F2d 621.*

Natural and reasonable meaning of "a single scheme of criminal misconduct" of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) is that when alien has performed act which, in and of itself, constitutes complete, individual and distinct crime, he then becomes deportable when he again commits such act, provided he is convicted of both, and it is immaterial that one may follow the other closely, even immediately, in point of time and that they may be similar in character or that each distinct and separate crime is part of overall plan of criminal misconduct. *In re D---- (1954, BIA) 5 I & N Dec 728.*

The "single scheme" language of INA § 241(a)(2)(A)(ii), which provides that an alien is deportable if convicted, at any time after entry, of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, refers to acts which, although separate crimes in and of themselves, were performed in furtherance of a single criminal episode, such as where one crime constitutes a lesser offense of another or where two crimes flow from, and are the natural consequence of, a single act of criminal misconduct; when an alien performs an act which constitutes a complete, individual, and distinct crime, he or she is deportable when he or she again commits such an act, even though one may closely follow the other, be similar in character, and even be part of an overall plan of criminal misconduct. *In re Adetiba (1992, BIA) 20 I & N Dec 506.*

90. ----Burden of proof

Government, in seeking to deport alien on ground of conviction of two crimes involving moral turpitude, has burden of establishing not only commission of crimes but also that they were ones "not arising out of single scheme of criminal conduct." *Wood v Hoy (1959, CA9 Cal) 266 F2d 825.*

It was just as much burden of United States to establish that two crimes committed by alien did not arise out of single course of criminal misconduct as it was to prove that alien was convicted of two crimes. *Sawkow v INS (1963, CA3) 314 F2d 34.*

91. ----Fraud and related offenses

Alien was properly deported under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) as having been convicted of two crimes not arising out of single scheme of criminal misconduct where alien had been convicted of crimes involving two periods of mail fraud activity separated by interval of over nine months, notwithstanding alien's assertion that he had, at time he commenced his criminal activity, harbored general intention or expectation that he would repeat crime at some indefinite time in future. *Nason v INS (1968, CA2) 394 F2d 223, 19 ALR Fed 591,* cert den *(1968) 393 US 830, 21 L Ed 2d 101, 89 S Ct 98.*

In the Fifth Circuit, the appropriate legal standard to apply is the BIA's interpretation of "single scheme:" when an alien performs an act that in and of itself constitutes a complete, individual, and distinct crime, he or she is deportable under INA § 241(a)(2)(A)(ii) [*8 USCS § 1251* [redesignated 1227]

(a)(2)(A)(ii)] when he or she again commits such an act, even though one may closely follow the other, be similar in character, and even be part of an overall plan of criminal misconduct; thus, an alien who was convicted on two separate counts of forgery, the first for using a false identity to complete a credit application at a furniture store and the second for presenting a delivery receipt with a forged signature to take delivery of the furniture, is deportable on the basis of his conviction of two crimes involving moral turpitude. *Animashaun v INS (1993, CA5) 990 F2d 234,* reh den (1993, CA5) *1993 US App LEXIS 14504* and cert den *(1993) 510 US 995, 126 L Ed 2d 458, 114 S Ct 557.*

False statements made one week apart to obtain unemployment compensation, resulting in conviction on two counts under state law, constituted "single scheme of criminal misconduct" exempting alien from deportability under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *In re F----G---- (1959, BIA) 8 I & N Dec 447.*

Under 8 USCS § 1251 [redesignated 1227] former subsection (a)(4), alien's convictions do not arise out of single scheme, where first conviction is for passing worthless check and second conviction, 1 1/2 years later, is for interference with law enforcement officer. *In re Logan (1980, BIA) 17 I & N Dec 367.*

92. ----Larceny and related offenses

Conclusion that crimes of alien did not involve single scheme of criminal misconduct was supported by evidence where two break-ins by alien were separated in time by two-day interval and alien testified that he was drunk on occasion of first break-in, that he was drinking on next day, and that he remembered getting drunk again on third day, when second break-in took place. *Pacheco v Immigration & Naturalization Service (1976, CA1) 546 F2d 448,* cert den *(1977) 430 US 985, 52 L Ed 2d 380, 97 S Ct 1683.*

Alien's convictions of theft of pistol and theft of automobile did not arise out of single scheme of criminal misconduct within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) where those two offenses were committed five months apart and there was no connection between them. *Gubbels v Del Guercio (1957, DC Cal) 152 F Supp 277,* revd on other grounds (1958, CA9 Cal) *261 F2d 952.*

Larcenies of which alien had been convicted, and which were relied upon by government for his deportation, arose out of single scheme of criminal misconduct, and order directing alien's deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) was invalid where indictment and alien's convictions thereunder demonstrated that alien had engaged in single criminal plan and that all of alien's acts and transactions described in indictment were closely connected together constituting parts of one scheme and plan. *Jeronimo v Murff (1957, DC NY) 157 F Supp 808.*

Committing three separate and distinct acts of robbery upon three individuals at separate times and for sole purpose of depriving these individuals of their possessions and attempt to do similar act upon fourth individual did not constitute single scheme of criminal misconduct within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *In re A---- (1953, BIA) 5 I & N Dec 470.*

Offense of grand larceny in second degree and 12 counts of forgery in second degree, for which at time of plea of guilty, court promised defendant that he would receive sentence of 11 months on each count with all sentences to run concurrently, were not crimes arising out of single scheme of criminal misconduct; finding 13 crimes did not arise out of single scheme, however, does not bar granting of 13 Recommendation Against Deportation (RAD) to preclude INS

from using any of these convictions as grounds for deportation, although in particular case, considering number and nature of these convictions, it would be abuse of discretion to grant RAD. *People v Griffith (1979) 99 Misc 2d 273, 415 NYS2d 961.*

93. ----Sex offenses

Crimes of committing "an indecent assault and battery on a child under the age of fourteen" and of being "a lewd, wanton and lascivious person in speech or behavior" do not necessarily arise out of single scheme of criminal misconduct, and alien convicted in single trial, under Massachusetts law, of both crimes was deportable in absence of any showing on record that both crimes had arisen from single scheme of criminal misconduct. *Fitzgerald ex rel. Miceli v Landon (1956, CA1 Mass) 238 F2d 864.*

Substantial evidence to support conclusion that alien had been convicted of offenses involving moral turpitude which did not arise out of single scheme of criminal misconduct and that alien was deportable under *8 USCS § 1251* [redesignated 1227] (a) existed, where record showed that alien had been found guilty and convicted in Pennsylvania state court of commission of crimes involving offenses against two female minors on separate dates. *Glaros v Immigration & Naturalization Service (1969, CA5) 416 F2d 441.*

Fact that alien charged with being deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) as person convicted of two crimes involving moral turpitude, received one conviction, under single charge, of two counts of oral copulation committed on different dates with person under 16, was of no significance in light of clear statutory language stating that alien may be deported if convicted of two crimes, regardless of whether convictions were obtained in single trial; evidence offered by alien that crimes were part of single scheme of criminal misconduct because they resulted from ongoing relationship with minor girlfriend was insufficient to rebut presumption of separate crimes. *Leon-Hernandez v U.S. INS (1991, CA9) 926 F2d 902, 91 CDOS 1394, 91* Daily Journal DAR 2241.

Convictions on same date and in same court of crime of lewdness over period of three months and crime of indecent assault and battery of child under age of fourteen on given date within same three-month period, both in violation of Massachusetts law, were convictions of two crimes involving moral turpitude not arising out of single scheme of criminal misconduct. *In re M---- (1956, BIA) 7 I & N Dec 144.*

94. ----Tax offenses

Alien's convictions under two-count indictment charging alien with willfully attempting to evade his income tax for years 1946 and 1947 did not arise out of single scheme of criminal misconduct within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) where evidence required on each count of indictment was necessarily different, and referred to acts occurring year apart, and such fact, alone, was persuasive that two unrelated crimes were charged. *Chanan Din Khan v Barber (1958, CA9 Cal) 253 F2d 547,* cert den *(1958) 357 US 920, 2 L Ed 2d 1364, 78 S Ct 1361.*

Alien's convictions for income tax evasion for years 1948 and 1949 did not arise out of single scheme of criminal misconduct within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) where acts constituting commission of two crimes were separated by substantial interval of time and there were no additional facts to support inference that two crimes were related. *Costello v Immigration & Naturalization Service (1962, CA2) 311 F2d 343,* revd on other grounds *(1964) 376 US 120, 11 L Ed 2d 559, 84 S Ct 580.*

United States did not carry its burden of proof that liquor law violations did not arise out of single scheme of criminal misconduct, though several acts charged as offenses were separated as to time of commission. *Zito v Moutal (1959, DC Ill) 174 F Supp 531.*

Conviction of alien for having failed in two successive years to pay federal occupational tax required for sale of liquor in connection with his operation of restaurant was conviction "arising out of a single scheme of criminal misconduct." *Barrese v Ryan (1962, DC Conn) 203 F Supp 880.*

E. Security and Related Grounds [*8 USCS § 1227*(a)(4)]

95. Generally

Provisions of *8 USCS § 1251* [redesignated 1227] former subsection (a)(6) authorizing deportation of member of Communist party or of affiliate are constitutional. *Schleich v Butterfield (1958, CA6 Mich) 252 F2d 191,* cert den *(1958) 358 US 814, 3 L Ed 2d 57, 79 S Ct 20.*

96. Anarchy

Alien at time of his entry may not be anarchist, and therefore may be entitled to enter, but if, at any time after his entry, he is found advocating or teaching anarchy, he may be deported; philosophical anarchist, teaching anarchy, was liable to deportation although he did not believe in destruction of life or property or overthrow of government by force and violence. *Lopez v Howe (1919, 2 NY) 259 F 401, 12 ALR 192,* app dismd *(1920) 254 US 613, 65 L Ed 438, 41 S Ct 63.*

97. Membership in communist party

Support, or even demonstrated knowledge, of Communist Party's advocacy of violence is not prerequisite to deportation under predecessor to *8 USCS § 1251* [redesignated 1227] former subsection (a)(6)(C) allowing deportation of alien who is member of Communist Party, and it is enough that alien joined Party, aware that he was joining organization known as Communist Party which operated as distinct and active political organization, and that he did so of his own free will. *Galvan v Press (1954) 347 US 522, 98 L Ed 911, 74 S Ct 737,* reh den *(1954) 348 US 852, 99 L Ed 671, 75 S Ct 17.*

Finding that alien was member of Communist Party, so as to be deportable under predecessor to *8 USCS § 1251* [redesignated 1227] former subsection (a)(6), was supported by evidence showing that alien was asked to join party by man he assumed to be organizer, that he attended number of meetings, that he did not apply for citizenship because he feared his party membership would become known to authorities, and that he had been active in, and officer of, organization required to register with Attorney General as "Communist-front" organization, record not showing relationship to party so nominal as not to make alien "member" within terms of provision. *Galvan v Press (1954) 347 US 522, 98 L Ed 911, 74 S Ct 737,* reh den *(1954) 348 US 852, 99 L Ed 671, 75 S Ct 17.*

To warrant deportation of alien under predecessor to *8 USCS § 1251* [redesignated 1227] former subsection (a)(6)(C), there must be substantial basis for finding that alien committed himself to Communist Party in consciousness that he was joining organization known as Communist Party which operated as distinct and active political organization. *Rowoldt v Perfetto (1957) 355 US 115, 2 L Ed 2d 140, 78 S Ct 180.*

Deportation of alien under predecessor to *8 USCS § 1251* [redesignated 1227] former subsection (a)(6)(C) allowing deportation of member of Communist Party was not warranted by proof that for period for less than one year and at time

more than 15 years prior to deportation proceedings, alien was member of Communist Party and that during his period of Party membership he was employed in Communist bookstore, where alien asserted that he joined Party in order to fight for his daily needs, and there was nothing to show that his membership might not have been wholly devoid of any political implications, or that he was paid for his work in Communist bookstore or that store was not bona fide bookshop. *Rowoldt v Perfetto (1957) 355 US 115, 2 L Ed 2d 140, 78 S Ct 180.*

Alien was not deportable under predecessor to *8 USCS § 1251* [redesignated 1227] former subsection (a)(6)(C), allowing deportation of members of Communist Party, where, after leaving Communist Party, he departed from United States, abandoning all rights of residence under his prior entry, two years later was admitted as quota immigrant, had continuously resided in United States except for one-day visit to Mexico, and never rejoined Communist Party at time of or following his second admission to United States. *Bonetti v Rogers (1958) 356 US 691, 2 L Ed 2d 1087, 78 S Ct 976.*

Alien was deportable on grounds of membership in Communist Party within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(6)(C) if he was aware that he was joining organization known as Communist Party which operated as distinct and active and political organization, or if he had "meaningful association" with that Party; absence of personal advocacy of violent overthrow of government is not by itself bar to deportability on account of membership in Communist Party, under *8 USCS § 1251* [redesignated 1227] former subsection (a)(6)(C). *Gastelum-Quinones v Kennedy (1963) 374 US 469, 10 L Ed 2d 1013, 83 S Ct 1819.*

Ultimate burden in cases involving deportation from membership in Communist Party is on government. *Gastelum-Quinones v Kennedy (1963) 374 US 469, 10 L Ed 2d 1013, 83 S Ct 1819.*

In proceedings to deport alien from membership in Communist Party within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(6)(C), satisfaction of government's burden as to ultimate fact of "meaningful association" with Party by evidence of activities instead of by direct evidence of awareness of Party's distinct and active political nature must be based upon evidence of activities sufficient to give substantial awareness to inference of alien's awareness of Party's political aspect. *Gastelum-Quinones v Kennedy (1963) 374 US 469, 10 L Ed 2d 1013, 83 S Ct 1819.*

Order deporting alien for membership in Communist Party within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(6)(C) was not supported by substantial evidence where testimony of government witnesses established only that alien between either late 1948 or 1949 and end of 1950 or early 1951 was dues-paying member of club of Communist Party and that he attended about 15 meetings of his Party Club, one executive meeting of group, and one area Party Convention. *Gastelum-Quinones v Kennedy (1963) 374 US 469, 10 L Ed 2d 1013, 83 S Ct 1819.*

Filipino who had status of national of United States when he came to United States in 1926 and who was considered as if he were alien for certain limited purposes upon proclamation of Philippine Independence on July 4, 1946, was not such alien when he was member of Communist Party in 1938 and 1939 as would permit his deportation, as to be deportable he must have been alien at same time that he was Communist Party member. *Mangaoang v Boyd (1953, CA9 Wash) 205 F2d 553,* cert den *(1953) 346 US 876, 98 L Ed 384, 74 S Ct 129.*

Alien's former membership, from 1937 to 1939, in Communist Party of Tunisia, which membership had terminated prior to his admission to United States in 1948, was not ground for his deportation. *Berrebi v Crossman (1953, CA5 Tex) 208 F2d 498.*

Evidence was sufficient to establish alien's Communist Party membership for purposes of deportation, where government witnesses testified that alien attended at least 150 closed Party meetings, had his name on Party membership rolls, was organizer in recruiting young people and informers for Communist cause, and attended high-level conferences with district officers in which he related his activities and received instructions, and where there was no testimony that alien ever left Party and alien did not testify or introduce any evidence to show that his relationship to Party was merely nominal rather than substantial. *Schleich v Butterfield (1958, CA6 Mich) 252 F2d 191,* cert den *(1958) 358 US 814, 3 L Ed 2d 57, 79 S Ct 20.*

Evidence sufficiently showed that alien was Communist Party member for purposes of deportation where uncontradicted testimony of witness was that she had attended over 100 closed Communist Party meetings with alien, that she had issued Communist Party membership card to alien and collected dues from her during same period, that alien had served as "educational director" and later as group leader in Communist Party club, and that alien had on various occasions acted as chairman of club's meetings and had taught classes on Marxism and Leninism. *Wellman v Butterfield (1958, CA6 Mich) 253 F2d 932.*

Alien was Party member for purposes of deportation where testimony showed that he was dues-paying, card-carrying member of Party for at least two years, during which he attended 30 to 35 Party meetings and once or twice per month went to office of weekly trade union newspaper which was Communist-controlled and considered to be Communist Party "setup," participated in discussions with members of Communist Party which were held in back room at newspaper office, and was said to be member of "top fraction" of Party, but declined to take stand to refute testimony concerning association with Communist Party. *Niukkanen v McAlexander (1959, CA9 Or) 265 F2d 825,* affd *(1960) 362 US 390, 4 L Ed 2d 816, 80 S Ct 799,* reh den *(1960) 363 US 817, 4 L Ed 2d 1157, 80 S Ct 1245.*

It is not sufficient to prove, under *8 USCS § 1251* [redesignated 1227] former subsection (a)(6)(C), merely that alien has been member of Communist Party, but it must be shown in addition that alien was aware of distinct and active political nature of party and had meaningful association with party. *Title v Immigration & Naturalization Service (1963, CA9) 322 F2d 21.*

Alien, who was first admitted for permanent residence to United States in 1937 and left United States in 1944 and was readmitted in 1945 as returning alien resident, could be deported upon finding that he had been member of Communist Party in 1937 and 1938. *United States ex rel. Belfrage v Kenton (1955, DC NY) 131 F Supp 576,* affd (1955, CA2 NY) *224 F2d 803.*

Alien's meaningful association with Communist Party was established by testimony that alien was present at numerous closed Communist Party meetings at which he spoke and reported on his activities on waterfront as party member, in general was active working member of that unit, and had party membership book. *Grubisich v Esperdy (1959, DC NY) 175 F Supp 445.*

Alien was meaningfully associated with Communist Party where during time of active membership in Communist Party, alien was member of Greek faction of party in Detroit and at one time was its secretary. *Politis v Sahli (1961, ED Mich) 193 F Supp 842.*

Alien was deportable on charge of membership in Communist Party "after entry" where she was lawfully admitted for permanent residence in 1929, was member of Communist Party in 1938-1939, and last entered United States in 1947 with reentry permit after six-month trip abroad. *In re H---- (1958, BIA) 8 I & N Dec 122.*

Charge that alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(6) as being member of Communist Party after entry was

properly based on earlier entry, and there was no abandonment of prior residence so as to require dismissal of charge where alien reentered United States as quota immigrant after overnight's absence in Canada. *In re C---- (1960, BIA) 8 I & N Dec 549.*

Deportability of alien under *8 USCS § 1251* [redesignated 1227] former subsection (a)(6) as member of Communist Party after entry was established with relation to alien's 1923 entry where alien lawfully entered United States for permanent residence in 1923, reentered illegally in 1932, and last entered in 1945 as member of armed forces. *In re C---- (1960, BIA) 8 I & N Dec 577.*

To sustain charge of deportability under *8 USCS § 1251* [redesignated 1227] former subsection (a)(6), ultimate burden of proof rests with, and requires, Government to overcome possibility that membership in Communist Party was devoid of political implications, since unexplained voluntary membership and activity therein over period of time does not justify inference of awareness of political nature thereof. *In re Paul (1963, BIA) 10 I & N Dec 431.*

98. Affiliation with communist party

Alien was affiliated with Communist Party and was deportable where it was shown that alien had been selling Communist newspaper, that he was in sympathy with form of government in Russia and was willing to support any movement to overthrow government of United States by force in order to substitute Russian form of government, that, although he was not member of Communist Party, he sympathized with Party's aim and joined organization indirectly associated with Party, and that he contributed money to Communist Party whenever he was able. *Wolck v Weedin (1932, CA9 Wash) 58 F2d 928.*

Affiliation with Communist Party was established for purposes of alien's deportability under *8 USCS § 1251* [redesignated 1227] former subsection (a)(6)(C) where evidence showed that alien's actions on behalf of Communist Party were solely to advance cause of that Party and revealed systematic and persistent attempt to champion and obtain champions for Communist Party and that he worked publicly to this end, even though government did not establish existence of status of mutual recognition between alien and Party that alien could be relied upon to cooperate with Party on fairly permanent basis. *In re J---- (1955, BIA) 6 I & N Dec 496.*

99. Advocating world communism

Alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(6)(D) as advocate of economic, international, and governmental doctrines of world communism, where alien admitted that she held belief in revolutionary movement, purpose of which was to establish communist totalitarian dictatorship in at least United States through medium of movement controlled and coordinated internationally. *In re J---- (1953, BIA) 5 I & N Dec 509.*

100. Advocating overthrow of government

Membership in organization advocating overthrow of government by force was ground for deportation. *Murdoch v Clark (1931, CA1 RI) 53 F2d 155.*

Mere personal abstention from violence, or even from violent language, did not secure immunity from deportation for alien where result of gentlest and most guarded speech was to advocate or teach eventual overthrow of government, even though alien entertained opinion that time was not yet ripe. *United States ex rel. Georgian v Uhl (1921, 2 NY) 271 F 676,* cert den *(1921) 256 US 701, 65 L Ed 1178, 41 S Ct 623.*

101. Advocating or teaching subversion

Deportation of alien, under predecessor to *8 USCS § 1251* [redesignated 1227] former subsection (a)(6), for advocating or teaching unlawful destruction of property, was proper where, in connection with organization to which alien belonged, he had been actively engaged in distributing to others literature published and issued under sanction of that organization, in which literature there were expressions directly and unmistakably inculcating unlawful destruction of property. *Guiney v Bonham (1919, 9 Or) 261 F 582, 8 ALR 1282.*

102. Membership in miscellaneous organizations

Deportation of alien for membership in Socialist Workers Party was improper where there was no substantial evidence that Socialist Workers Party advocated or taught by its "declaration of principles and constitution" violent or forceful overthrow of U.S. Government, nor any showing that there was party line within organization which advocated or taught such overthrow. *Scythes v Webb (1962, CA7) 307 F2d 905.*

In spite of fact that INS had dropped deportation charges against aliens for membership in Popular Front for Liberation of Palestine (PFLP) in violation of former *8 USCS § 1251* [redesignated 1227] former subsections (a)(6)(D), (F)(iii), (G)(5), and (H), choosing instead to charge aliens with "routine" status violations, individual aliens had standing to challenge constitutionality of cited provisions, since charges were not dropped because they were considered inapplicable but for tactical reasons, challenged statute was regulatory and proscriptive in nature and penalty for noncompliance was high, aliens fell within class of persons whose conduct statute proscribed and against whom Government had already instituted proceedings under challenged provisions, and Government refused to disavow future use of challenged provisions; but Arab-American organization lacked standing on basis of declaration that organization had members who would support PFLP and held PFLP views which they would advocate, since organization did not allege that members had been charged with violating challenged provisions, were members of PFLP, or wished to become members of PFLP, and receipt by members of two pro-PFLP publications did not prove that members were subject to deportation under challenged provisions. *American-Arab Anti-Discrimination Committee v Nelson (1991, CA9 Cal) 940 F2d 445, 91 CDOS 5979, 91* Daily Journal DAR 9691.

First Amendment challenges to former *8 USCS § 1251* [redesignated 1227] former subsections (a)(6)(D), (F)(iii), (G)(5), and (H), brought by aliens against whom deportation charges under cited provisions, as alleged members of Popular Front for Liberation of Palestine (PFLP), had been dropped by INS, were not ripe for review, because sketchy record did not show whether aliens were actually members of PFLP or what specific acts INS alleged aliens to have committed in violation of challenged provisions, and court lacked benefit of INS' interpretation of challenged provisions in prior cases, to which court would give substantial deference; aliens would not suffer sufficient hardship from delay in resolution of claims to justify present exercise of jurisdiction, since aliens charged and found deportable for violation of challenged provisions would have opportunity to present constitutional challenges to court. *American-Arab Anti-Discrimination Committee v Nelson (1991, CA9 Cal) 940 F2d 445, 91 CDOS 5979, 91* Daily Journal DAR 9691.

Holtzman Amendment *(8 USCS § 1227*(a)(4)(D)) does not require government to prove misrepresentation or fraud. *Tittjung v Reno (1999, CA7) 199 F3d 393.*

Deportation order was sustained where alien was national secretary of National Miners' Union that was affiliated with Trade Union Unity League, it being matter of common knowledge that latter organization was party which was opposed to organized government and favored overthrow of government by force.

United States ex rel. Boric v Marshall (1933, DC Pa) 4 F Supp 965, app dismd (1933, CA3 Pa) *67 F2d 1020,* cert dismd *(1934) 290 US 709, 78 L Ed 609, 54 S Ct 371.*

Applications for declaratory and injunctive relief against INS and State Department with regard to Socialist Workers Party (SWP) as proscribed organization is without basis where INS removed SWP from list of proscribed organizations and has made no change in non-proscribed status; where no case is pending and INS has not taken adverse action on basis of SWP membership there is no justiciable issue presented to court and declaration that SWP membership can never be relevant cannot be granted; there is no controversy of concrete sort justifying declaratory or injunctive relief against State Department where there is no evidence of SWP membership being used as basis for denial of visa to foreigner. *Socialist Workers Party v Attorney Gen. of United States (1986, SD NY) 642 F Supp 1357.*

Alien was not deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(6) because of his membership, after entry, in Nazi Party. *In re B---- (1953, BIA) 5 I & N Dec 255.*

Membership in defunct organization may be grounds for deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(6), allowing deportation for membership in subversive organizations, despite use of present tense in subparagraphs of § 1251 [redesignated 1227] (a)(6). *In re L-- (1960, BIA) 9 I & N Dec 14.*

F. Nonimmigrant with Defects in Status [*8 USCS § 1227*(a)(1)(C)]

103. Failure to maintain status

Alien, who had received proper legal notice of proposed change in visa status from that of permanent resident to that of non-immigrant employee of foreign government, by her silence waived various options available and was properly found to have abandoned her status as permanent resident and was subject to deportation upon termination of her employment by foreign government. *Nauck v Immigration & Naturalization Service (1973, CA2) 475 F2d 1008.*

Soundest method for analyzing claim of estoppel against government in immigration case is to inquire as to whether government's action was in error, and if complaining party reacted to error whether action was intended or could reasonably have been intended to reduce reliance, such misconduct required to have induced petitioner to act in way that he would otherwise not have; immigration judge, in finding non-immigrant alien and spouse deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(9) for failing to maintain non-immigrant status under *8 USCS § 1101*(a)(15)(F), denied petitioner fair hearing by failing to admit evidence of estoppel defense, and committed error of law under *8 USCS § 1252*(d) by excluding evidence, on basis of relevance, that INS official told employer that nonimmigrant alien in question was authorized for work and could be employed, and that employer told alien such information, who relied on it in accepting employment. *Akbarin v Immigration & Naturalization Service (1982, CA1) 669 F2d 839.*

Failure of nonimmigrant student to attend school due to his suspension by school constitutes ground for deportation. *Mortazavi v Immigration & Naturalization Service (1983, CA4) 719 F2d 86.*

Alien, who was admitted as first preference quota immigrant as husband of United States citizen, was not subject to deportation, though his marriage (to woman he accidentally met after he was in United States), was retroactively annulled by state court judgment. *Ciani v Adkins (1954, DC Tex) 126 F Supp 828.*

Alien was deportable under *8 USCS § 1251* [redesignated 1227] former

subsection (a)(9) where alien was admitted as H-2 temporary worker but became unemployed before expiration of permit and did not obtain reemployment and recertification within 60-days grace period granted by Service. *In re Liburd (1976, BIA) 15 I & N Dec 769.*

104. --Criminal conduct

Alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(9) as failing to maintain status in which admitted, where alien's imprisonment, following arrest and conviction of disorderly conduct, during period for which he was admitted was inconsistent with and not essential to continuation of his status as nonimmigrant visitor for pleasure, even though such conviction was not one which could form basis for exclusion or deportation. *In re A---- (1955, BIA) 6 I & N Dec 762.*

Nonimmigrant student's conviction for offense of residing where drug laws were violated and resultant 20-day incarceration did not constitute failure to maintain nonimmigrant status under *8 USCS § 1251* [redesignated 1227] former subsection (a)(9) where her criminal conduct did not meaningfully disrupt pursuit of her studies. *In re Murat-Khan (1973, BIA) 14 I & N Dec 465.*

105. Failure to comply with conditions of status

Alien born in China who entered United States as nonimmigrant crewman authorized to remain in United States for as long as his ship remained in port, not to exceed 29 days, was subject to deportation where unrefuted exhibits showed that he had remained in United States continuously since such date and possessed no authority to do so. *Shu Fuk Cheung v Immigration & Naturalization Service (1973, CA8) 476 F2d 1180.*

Alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(9) for failing to comply with conditions of status, where substantial deviation from authorized training conditions and program established by petition on behalf of industrial trainee admitted under *8 USCS § 1101*(a)(15)(H)(iii) violated that status. *In re Okamoto (1964, BIA) 10 I & N Dec 456.*

Alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(9) for failure to comply with conditions of her nonimmigrant admission where she proceeded to continental United States after having obtained nonimmigrant waiver for temporary admission to Virgin Islands. *In re King (1968, BIA) 12 I & N Dec 824.*

In deportation hearing involving alien whose conditional permanent resident status has been terminated pursuant to INA § 216(b)(1) [*8 USCS § 1186a*(b)(1)], INS bears burden of demonstrating by preponderance of evidence that conditions for termination of conditional status described in INA § 216(b)(1)(A) [*8 USCS § 1186a*(b)(1)(A)] have been met; INS met burden of proving that alien's conditional permanent resident status was terminated under INA § 216(b)(1)(A)(ii) [*8 USCS § 1186a*(b)(1)(A)(ii)] by introducing certified copy of divorce decree, and established (1) by preponderance of evidence that before second anniversary of alien's obtaining conditional permanent resident status, alien's qualifying marriage had been judicially terminated other than through death of alien's spouse, and thus (2) alien's deportability under INA § 241(a)(9)(B) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(9)(B)]. *In re Lemhammad (1991, BIA) 20 I & N Dec 316.*

106. --Criminal conduct

Nonimmigrant visitor for pleasure was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(9) where her commission and conviction

of crime of stealing, even though not incarcerated as result thereof, constituted failure to comply with conditions of nonimmigrant status. *In re Neely (1966, BIA) 11 I & N Dec 864* (ovrld in part on other grounds by *In re Urpi-Sancho (1970, BIA) 13 I & N Dec 641).*

Nonimmigrant student was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(9) for failure to comply with conditions of nonimmigrant status under which admitted, where his 23-day incarceration resulting from conviction of crimes of profanity in public and breach of peace was inconsistent with purpose for which he was admitted and constituted violation of his nonimmigrant student status, incarceration having meaningful interrupted pursuit of his academic studies. *In re Mehta (1973, BIA) 14 I & N Dec 451.*

107. --Unauthorized employment

Alien student may be deported for failure to comply with conditions of nonimmigrant student status, in violation of *8 USCS § 1251* [redesignated 1227] former subsection (a)(9) where student has been working up to 40 hours per week without any employment authorization from Immigration and Naturalization Service, although 8 CFR § 214.2(F)(6) provides that nonimmigrant student, while school is in session, may work up to 20 hours per week with authorization of Service. *Tashnizi v Immigration & Naturalization Service (1978, CA5) 585 F2d 781, 4 Fed Rules Evid Serv 324.*

Alien was properly found deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(9) where he entered country on non-immigrant student visa and, without seeking permission from Immigration and Naturalization Service, purchased fleet of ice cream trucks which he leased to individuals who sold ice cream on streets, and which he stocked daily with ice cream, in return for percentage of sales plus truck rental charges, since his participation in day-to-day operation of business, although he drove trucks only in emergencies, constituted self-employment, in violation of regulations governing student visas (8 CFR § 214.2(f)(6)), rather than mere investment activity permitted for students. *Wettasinghe v United States Dep't of Justice, Immigration & Naturalization Service (1983, CA6) 702 F2d 641.*

Foreign exchange physician remaining in United States after end of residency programs and engaging in employment not authorized by Immigration and Naturalization Service is deportable; denial to exchange visitors of opportunity to apply for suspension of deportation as extreme hardship is not unconstitutional. *Newton v Immigration & Naturalization Service (1984, CA6) 736 F2d 336.*

Acceptance of unauthorized employment in violation of nonimmigrant student status renders aliens deportable under INA § 241(a)(9) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(9)]; aliens were properly found deportable because of their failure to comply with decision of District Director denying request to work when aliens accepted employment without authorization of INS; noncompliance was established both by admission and documentary evidence. *Olaniyan v District Director, Immigration & Naturalization Service (1986, CA10) 796 F2d 373.*

Alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(9) for failing to comply with conditions of admission status where he had been admitted as nonimmigrant temporary visitor for pleasure under *8 USCS § 1101*(a)(15)(B), but obtained social security card, registered for employment, and testified that he intended to work in United States, even though he had not actually engaged in employment. *In re B---- (1954, BIA) 6 I & N Dec 234.*

Alien visitor was deportable under *8 USCS § 1251* [redesignated 1227] former

subsection (a)(9) for failing to comply with conditions of employment, where he took employment, which was both impermissible and inconsistent with his status as nonimmigrant visitor. *In re S---- (1960, BIA) 8 I & N Dec 574.*

Nonimmigrant student was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(9) for failing to comply with conditions of changed status, where she violated her nonimmigrant status by accepting part-time employment without having applied for permission to do so as required by applicable regulations. *In re Garvey (1964, BIA) 10 I & N Dec 519.*

Temporary visitor for pleasure was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(9) where he failed to comply with conditions of his nonimmigrant status by accepting unauthorized gainful employment in United States. *In re Wong (1966, BIA) 11 I & N Dec 704.*

Nonimmigrant spouse of student was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(9) where she failed to comply with conditions of her nonimmigrant status by accepting employment. *In re Boroumand (1969, BIA) 13 I & N Dec 306.*

Nonimmigrant visitor for pleasure who accepted employment thereby failed to comply with conditions of his status and was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(9). *In re Martinez (1970, BIA) 13 I & N Dec 483,* affd (1970, CA2) *433 F2d 635.*

Engaging in unauthorized employment constitutes failure to maintain status for which admission was allowed within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(9), and may result in deportation. *Pinilla v Board of Review (1978) 155 NJ Super 307, 382 A2d 921.*

108. --Student status

Alien student may be deported for failure to comply with conditions of nonimmigrant student status, in violation of *8 USCS § 1251* [redesignated 1227] former subsection (a)(9) where student has been working up to 40 hours per week without any employment authorization from Immigration and Naturalization Service, although 8 CFR § 214.2(F)(6) provides that nonimmigrant student, while school is in session, may work up to 20 hours per week with authorization of Service. *Tashnizi v Immigration & Naturalization Service (1978, CA5) 585 F2d 781, 4 Fed Rules Evid Serv 324.*

Deportation of alien is not justified under *8 USCS § 1251* [redesignated 1227] former subsection (a)(9), and *8 USCS § 1101*(a)(15)(F)(i) on ground that alien was not complying with conditions of his status requiring full course of study where, although because of academic and other difficulties alien did slip below twelve credit level, he attended school full-time, twelve months per year, and accumulated credits at pace far in excess of even new twelve credit regulation. *Mashi v Immigration & Naturalization Service (1978, CA5) 585 F2d 1309.*

One of qualifications for being classified as nonimmigrant alien student is attending institution approved by Attorney General, and failure to comply with such condition of status will result in deportation; thus, failure of alien student to attend school admitted to attend will result in deportation although student had intention to attend such school at time he was admitted. *Shoja v Immigration & Naturalization Service (1982, CA5) 679 F2d 447.*

Nonimmigrant student was properly found deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(9) for transferring to another college without prior approval of Immigration and Naturalization Service and for engaging in part-time employment, since both violations are substantial rather than technical and he admitted violations of conditions of status. *Ghorbani v Immigration & Naturalization Service (1982, CA9) 686 F2d 784.*

Alien was properly found deportable under *8 USCS § 1251* [redesignated 1227]

former subsection (a)(9) where he entered country on non-immigrant student visa and, without seeking permission from Immigration and Naturalization Service, purchased fleet of ice cream trucks which he leased to individuals who sold ice cream on streets, and which he stocked daily with ice cream, in return for percentage of sales plus truck rental charges, since his participation in day-to-day operation of business, although he drove trucks only in emergencies, constituted self-employment, in violation of regulations governing student visas (8 CFR § 214.2(f)(6)), rather than mere investment activity permitted for students. *Wettasinghe v United States Dep't of Justice, Immigration & Naturalization Service (1983, CA6) 702 F2d 641.*

Alien admitted as employee of foreign ambassador failed to maintain nonimmigrant status by leaving employment of ambassador and commencing course of college study in United States; government is not estopped from asserting that alien failed to maintain her status even though alien allegedly relied on misinformation given by government employee in concluding that she could attend college without violating her nonimmigrant status. *Wellington v Immigration & Naturalization Service (1983, CA8) 710 F2d 1357.*

An alien's admission that he had not attended school on a full-time basis was sufficient to establish his violation of nonimmigrant student status and thus his deportability under former INA § 241(a)(9) [former *8 USCS § 1251* [redesignated 1227] former subsection (a)(9)], now INA § 241(a)(1)(C) [*8 USCS § 1251* [redesignated 1227] (a)(1)(C)]. *Khano v INS (1993, CA7) 999 F2d 1203.*

To assist in identifying those Iranian students in United States who are not in compliance with terms of their entry visas and who thus would be subject to deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(9), 8 CFR § 214.5(a) may require that each Iranian student present evidence from school of enrollment of either payment of fees or waiver of payment of fees for current semester, and waiver will be presumed if school allows student who has not paid all fees, to continue with his studies, even though ultimate payment of fees is not intended to be waived by school; waiver arises where school permits alien to register and attend classes for 2 successive semesters, even though required fees have not been paid, where alien continues with his studies, and no evidence is offered that school does not consider alien to be student in good standing. *In re Sedghi (1980, BIA) 17 I & N Dec 358.*

Nonimmigrant student who transfers to school other than which he is authorized to attend without securing permission from Service breaches condition of status and is deportable even if acting in good faith. *In re Yazdani (1981, BIA) 17 I & N Dec 626.*

G. Involvement with Controlled Substances [*8 USCS § 1227*(a)(2)(B)]

1. In General

109. Generally

Language of *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), governing deportation of alien for involvement with narcotic drugs or marihuana, is mandatory; once Attorney General orders proceeding commenced, immigration judge must order deportation if evidence supports finding under section. *Guan Chow Tok v Immigration & Naturalization Service (1976, CA2) 538 F2d 36.*

8 USCS § 1251 [redesignated 1227] former subsection (a)(11) extends broadly to any violation of or conspiracy to violate any law or regulation relating to illicit possession of or traffic in narcotic drugs or marijuana, or any law or regulation governing or controlling sale, exchange, dispensing, or giving away of those substances, and nothing in legislative history suggests Congress

intended to limit broad scope of this language; alien would be deportable where he had pleaded guilty to violating Oregon statute which made it unlawful to "furnish" narcotic or dangerous drug. *Forstner v Immigration & Naturalization Service (1978, CA9) 579 F2d 506,* cert den *(1979) 439 US 1071, 59 L Ed 2d 36, 99 S Ct 841.*

In hearing on petition for review of BIA decision upholding order of deportation under INA § 241(a)(11) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(11)], alien cannot collaterally attack legitimacy of underlying criminal convictions. *Brown v United States Immigration & Naturalization Service (1988, CA5) 856 F2d 728.*

Alien is subject to deportation if convicted of drug crime under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) and, as condition of supervised release under *18 USCS § 3583*(d), court may provide that alien be turned over to INS for deportation proceedings; thus, District Court could not order that alien, present in U.S. under amnesty and convicted of narcotics offense, be deported, but Court of Appeals amended judgment to read that alien be surrendered to immigration official for deportation in accordance with procedures provided by INA. *United States v Ramirez (1991, CA1 RI) 948 F2d 66.*

INA § 241(a)(2)(B)(ii) [*8 USCS § 1251* [redesignated 1227] (a)(2)(B)(ii)] reaches alien drug abusers who have not been convicted of a controlled substance offense, while subsection (i) reaches all aliens convicted of controlled substance violations, including the use of drugs. *Flores-Arellano v INS (1993, CA9) 5 F3d 360, 93 CDOS 6880, 93* Daily Journal DAR 11758.

Amendments made to *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) by Anti-Drug Abuse Act of 1986 significantly broadened types of offenses which jeopardize alien's status and render alien convicted of being "under influence" of phencyclidine (PCP) deportable. Re Hernandez-Ponce (1988, BIA) I & N Interim Dec No 3055ec.

Trial court did not abuse its discretion by granting immigrant's motion to withdraw guilty plea to charge of delivering cocaine on ground that at time plea was entered, immigrant did not know that deportation would result pursuant to INA § 241(a)(11) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(11)] because of conviction. *People v Kadadu (1988) 169 Mich App 278, 425 NW2d 784.*

110. Constitutionality

8 USCS § 1251 [redesignated 1227] former subsection (a)(11) providing for deportation of alien who "has been convicted of a violation of any law or regulation relating to the illicit traffic in narcotic drugs," is not unconstitutional by reason of ex post facto clause of Constitution. *Swartz v Rogers (1958) 103 US App DC 1, 254 F2d 338,* cert den *(1958) 357 US 928, 2 L Ed 2d 1372, 78 S Ct 1373.*

Deportation under *11 USCS § 1251* [redesignated 1227] for narcotics violation does not deny alien equal protection under laws as guaranteed by Fifth Amendment, although citizen who is convicted of marijuana offense suffers only criminal sanction established by local statute, while alien also faces automatic deportation, in view of plenary authority of Congress over national policy for entry and deportation. *Anwo v Immigration & Naturalization Service (1979) 197 US App DC 121, 607 F2d 435.*

Deportation of alien under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) on basis of foreign conviction for possession of marijuana is not unconstitutional. *Brice v Pickett (1975, CA9 Cal) 515 F2d 153.*

Resident alien's contention that *8 USCS § 1251* [redesignated 1227] , which provides for deportation of narcotics addicts or of those convicted of possession of narcotics, violates due process clause of Fifth Amendment could

not be sustained, even though statute seems to be both underinclusive and overinclusive; validity of distinctions drawn by Congress with respect to deportability is not proper subject for judicial concern. *Oliver v United States Dep't of Justice, Immigration & Naturalization Service (1975, CA2) 517 F2d 426,* cert den *(1976) 423 US 1056, 46 L Ed 2d 646, 96 S Ct 789.*

Distinction between narcotics offenders and other offenders with respect to mandatory deportation under *8 USCS § 1251* [redesignated 1227] has reasonable basis and is not denial of equal protection of law. *Guan Chow Tok v Immigration & Naturalization Service (1976, CA2) 538 F2d 36.*

Deportation proceedings are not criminal prosecutions, and thus deportation of alien under INA § 241(a)(11) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(11)] following criminal conviction in state court does not constitute double jeopardy. *Brown v United States Immigration & Naturalization Service (1988, CA5) 856 F2d 728.*

111. Retroactivity

Even though in 1925 when alien was convicted of federal offense relating to illicit traffic in narcotic drugs, there was no statute making that offense ground for deportation, he was deportable under Immigration and Nationality Act of 1952 *(8 USCS § 1251* [redesignated 1227] former subsections (a)(11), and (d)), which provides for deportation of any alien who at any time has been convicted of such offense. *Mulcahey v Catalanotte (1957) 353 US 692, 1 L Ed 2d 1127, 77 S Ct 1025,* reh den *(1957) 354 US 943, 1 L Ed 2d 1541, 77 S Ct 1391.*

Alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) for conviction in 1934 of federal narcotics offense, notwithstanding that under deportation legislation which was in effect at time he committed offense, crime which he had committed was not deportable offense. *United States ex rel. Bruno v Sweet (1956, CA8 Mo) 235 F2d 801.*

8 USCS § 1251 [redesignated 1227] former subsection (a)(11) governing deportation of alien for involvement with narcotic drugs or marihuana is retroactive as well as prospective in application. *Tugade v Hoy (1959, CA9 Cal) 265 F2d 63.*

As to alien, born in Hungary, who became Canadian citizen in 1955 and was convicted there in 1956 of illegally possessing marijuana, and who was admitted to United States in 1959, aforementioned conviction was, by virtue of retroactive effect of the 1960 amendment to *8 USCS § 1182* former subsection (a)(11), ground for deportation. *Gardos v Immigration & Naturalization Service (1963, CA2) 324 F2d 179.*

112. Drug addiction

Order of commitment entered by United States District Court which found alien to be addict under provisions of Narcotic Addict Rehabilitation Act *(42 USCS §§ 3401* et seq.) would be admissible in deportation proceeding under *8 USCS § 1251* [redesignated 1227] and would not be barred by *42 USCS § 3419* because deportation actions and civil and not criminal in nature; addiction established for Narcotic Addict Rehabilitation Act purposes should, however, constitute in deportation cases at most no more than prima facie case subject to refutation by alien. *McJunkin v Immigration & Naturalization Service (1978, CA9) 579 F2d 533.*

8 USCS § 1227(a)(2)(B)(ii), which makes drug addiction grounds for deportation, does not require conviction. *Hernaez v INS (2001, CA9) 244 F3d 752, 2001* Daily Journal DAR 3035.

Alien's pre-hearing statement, later repudiated, was insufficient to establish deportability as narcotics drug addict under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) where two doctors expressed

opinion that alien was not confirmed drug addict and evidence was otherwise lacking to show that he was "addict" as distinguished from mere "user." *In re F----S----C---- (1958, BIA) 8 I & N Dec 108.*

113. Procedural matters

Referral of aliens, convicted of conspiracy to possess cocaine with intent to distribute and possession of cocaine with intent to distribute, to INS for possible deportation as part of court's judgment and commitment orders does not constitute sentence beyond statutory limits of *21 USCS § 841*(b)(1)(A), as persons convicted of violations of narcotics laws may be subject to deportation under INA § 241(a)(11) [USCS § 1251 [redesignated 1227] former subsection (a)(11)] even if trial court makes no recommendation at all. *United States v Richardson (1985, CA11 Fla) 764 F2d 1514, 18 Fed Rules Evid Serv 1161,* cert den *(1985) 474 US 952, 88 L Ed 2d 303, 106 S Ct 320.*

In proceedings where alien ordered deported by reason of felony conviction of unlawful possession of narcotic drug for sale, and request for deferred action status under OI 242.1(a)(22), as redesignated, to defer indefinitely departure from United States, District Court has no jurisdiction to review decision of INS district director not to recommend that regional commissioner grant alien deferred action status, since OI provision operates merely for convenience of INS and is not intended to confer any benefit upon aliens. *Romeiro De Silva v Smith (1985, CA9 Ariz) 773 F2d 1021.*

BIA's decision denying asylum and withholding of deportation to alien convicted of drug offenses pursuant to INA § 243(h)(2)(B) [*8 USCS § 1253*(h)(2)(B)] is entitled to considerable deference; BIA did not err in ruling that petitioner constituted danger to community, or that convictions for possession of heroin with intent to distribute and for conspiracy to aid and abet distribution of heroin were particularly serious crimes; BIA need not determine alien's eligibility for asylum and withholding of deportation once it determines that alien is ineligible for such relief. *Mahini v Immigration & Naturalization Serv. (1986, CA9) 779 F2d 1419.*

BIA did not act arbitrarily or capriciously in deciding that alien's crime was not outweighed by showing of unusual outstanding equities where there was sufficient evidence to support BIA's interpretation; equities presented by alien's family ties and relatively long residence in U.S. are substantial but insufficient to overcome commission of serious drug crime, immigration laws reflect strong Congressional policy against lenient treatment of drug trafficking offenders and insufficient time had elapsed since alien's release from custody to persuade BIA that alien was genuinely rehabilitated. *Blackwood v Immigration & Naturalization Service (1986, CA11) 803 F2d 1165.*

Opportunity to be heard is root requirement of due process; thus, since INS allows appeal from IJ's deportation order and appellant and appellee are allowed to file briefs, alien, who was found deportable under former *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), and who proceeded pro se to file appeal with BIA, was denied due process, where, due to administrative error, INS failed to give alien notice of briefing schedule before BIA, alien did not file brief, and BIA dismissed appeal on basis of INS brief. *Chike v INS (1991, CA5) 948 F2d 961.*

Where alien pled guilty to distribution of cocaine in exchange for promise from U.S. Attorney that he would recommend to INS that it not commence deportation proceedings against alien as result of this conviction, alien's due process rights were not violated when INS sought to deport him on basis of conviction, since INS was not bound by U.S. Attorney's recommendation. *Camacho-Bordes v INS (1994, CA8) 33 F3d 26.*

Federal courts have jurisdiction under *28 USCS § 2241* to grant writs of habeas corpus to aliens when those aliens are in custody in violation of Constitution or laws or treaties of *United States. Henderson v INS (1998, CA2) 157 F3d 106.*

Federal court reviewing *28 USCS § 2241* habeas corpus petition does not have subject matter jurisdiction over claim challenging determination by INS that is discretionary, rather than statutory or constitutional. *Sol v INS (2001, CA2 NY) 274 F3d 648.*

Federal court may vacate criminal conviction pursuant to common law writ of audita querela only if writ permits defendant to raise legal objection not cognizable under existing federal post-conviction remedies; thus Court properly denied alien's motion to vacate conviction of conspiracy to distribute cocaine by such writ because alien's arguments would be cognizable in proceeding under *28 USCS § 2255. United States v Ayala (1990, App DC) 282 US App DC 266, 894 F2d 425.*

INS detainer served on alien in prison for drug conviction may not be removed in habeas corpus proceeding as alien is not in custody of INS; since sentenced inmate cannot be deported while imprisoned, INS may not consider release or custody of alien until after his release from prison; INA § 242(a) [*8 USCS § 1252*(a)] is not triggered until person is subject to deportation and in custody of Attorney General; alien has no legitimate statutory or constitutional entitlement to prison-sponsored rehabilitative programs, such as placement in community treatment center after release from which he may be denied access as result of detainer and consequently alien may not invoke any claim to prompt deportation hearing. *Fernandez-Collado v INS (1986, DC Conn) 644 F Supp 741,* affd without op (1987, CA2 Conn) *857 F2d 1461.*

One may not go behind record of conviction to determine deportability under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), allowing deportation of alien for conviction for drug offenses. *In re B---- (1953, BIA) 5 I & N Dec 479.*

In deportation proceeding under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) of alien convicted for unlawfully selling marijuana, where alien seeks waiver of conviction under *8 USCS § 1182*(c) which would permit him to return to his lawful unrelinquished domicile, waiver may not be granted subject to condition subsequent that alien not violate state or federal criminal laws for 5 years, but such relief must be either denied or unconditionally granted. *In re Przygocki (1980, BIA) 17 I & N Dec 361.*

In finding alien deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), IJ properly considered alien's criminal conviction for unlawful possession of controlled substance even though under Colorado penal code judgment and sentence were deferred, since alien had no right of appeal of finding of guilt made against him and since, in any event, time period within which alien could take appeal had lapsed. In re Chairez-Castaneda (1995, BIA) I & N Interim Dec No 3248.

114. --Assistance of counsel

Alien's appeal denying effective assistance of counsel fails where (1) alien was informed by immigration judge of right to counsel at outset of deportation hearing and provided with list of free legal services, (2) alien acknowledged his understanding of right to counsel and waived that right when he elected to proceed with hearing unrepresented; alien was not denied fair hearing by absence of counsel in his behalf where alien validly waived his right to counsel, and presence of counsel would not have affected outcome of case. *Cobourne v Immigration & Naturalization Service (1986, CA11) 779 F2d 1564, 80 ALR Fed 1.*

BIA properly refused to grant alien's motion to reopen deportation proceedings based on (1) counsel's ineffectiveness in failing to produce evidence of alien's family ties to U.S. citizens where court is unable to determine whether counsel's failure to supply missing documentation was result of attorney error or nonexistence of any such documentation; (2) counsel's ineffectiveness in failing to inform immigration judge of alien's prior military service where notwithstanding counsel's neglect in alerting IJ of alien's prior military service, BIA balanced equities of alien's military service against seriousness of narcotics violation and thus alien was not prejudiced by counsel's oversight; (3) counsel's ineffectiveness in failing both to file application for naturalization and to move for termination of deportation during pendency of application where BIA considered merits of this request and found that termination was not warranted; (4) INS violation of its operating procedures in failing to inform IJ of alien's military service and in failing to inform alien that his military service made him eligible to be naturalized where alien was not prejudiced because BIA gave full consideration to his military service, and finding based on 8 CFR § 242.7 constitutes finding on merits of request for termination of deportation proceedings. *Mantell v United States Dep't of Justice, Immigration & Naturalization Service (1986, CA5) 798 F2d 124.*

Alien's plea of guilty to narcotics charge may not be vacated where alien fails to demonstrate manifest injustice; counsel's failure to advise alien of federal deportation collateral consequences of guilty plea does not amount to ineffective assistance of counsel where attorney gave inconclusive immigration advice but did not actually misrepresent effect of plea to alien and alien cannot demonstrate prejudice from attorney's advice; trial judge has no responsibility to advise defendant of federal deportation consequences at time of taking guilty plea, and omission of this advice does not render defendant's plea involuntary. *State v Chung (1986) 210 NJ Super 427, 510 A2d 72.*

Attorney's advice to alien criminal defendant that conviction as result of guilty plea would not affect immigration status constitutes ineffective assistance of counsel. *People v Correa (1984, 1st Dist) 124 Ill App 3d 668, 80 Ill Dec 395, 465 NE2d 507,* affd *(1985) 108 Ill 2d 541, 92 Ill Dec 496, 485 NE2d 307.*

Illegal alien who pled guilty to criminal possession of controlled substance was not denied effective assistance of counsel by counsel's failure to advise alien that narcotics conviction would mandate alien's deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), because alien's illegal status alone would subject alien to deportation, regardless of disposition of criminal case. *People v Figueroa (1991, 2d Dept) 170 App Div 2d 529, 566 NYS2d 89,* app den *(1991) 78 NY2d 965, 574 NYS2d 945, 580 NE2d 417.*

2. Conviction for Drug Offense

115. Generally

Defense counsel's failure to advise alien that deportation could result from conviction following guilty plea to charge of conspiracy to possess cocaine with intent to distribute did not constitute ineffective assistance of counsel; nor did such failure render guilty plea involuntary, or require finding that conviction was obtained without due process of law. *United States v Yearwood (1988, CA4 Md) 863 F2d 6.*

Where an Immigration Judge relies on the broad language of INA § 241 (a)(1) [*8 USC § 1251* [redesignated 1227] (a)(1)] to support a finding of deportability, the decision necessarily contains an implicit finding that the alien is deportable under INA § 241(a)(11) [*8 USC § 1251* [redesignated 1227] former

subsection (a)(11)]; to permit the alien to escape the full effects of a controlled substance conviction simply because the Immigration Judge did not expressly find the alien deportable under INA § 241(a)(11) would be to elevate form over substance. *Mullen-Cofee v INS (1992, CA11) 976 F2d 1375, 6 FLW Fed C 1325, amd, reh den (1993, CA11 Fla) 986 F2d 1364, 7* FLW Fed C 189.

Court was not required to inform defendant of possibility of deportation as result of guilty plea to criminal charge, as case law indicates that deportation is collateral rather than direct consequence of guilty plea, and therefore alien's argument that his plea was involuntary must fail. *United States v Nagaro-Garbin (1987, ED Mich) 653 F Supp 586.*

Because Congress did not specifically make available waiver of deportation for aliens who had been convicted of crime involving controlled substance and thereafter received pardon for this conviction but did provide such waiver, at *8 USCS 1251* [redesignated 1227] (a)(2)(A)(iv), for aliens who were convicted of general crime but later received pardon, District Court will conclude that Congress did not intend that deportability could be waived for aliens convicted of drug-related offenses. *Eskite v District Director (1995, ED NY) 901 F Supp 530.*

There is no requirement in third clause of *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), that governing deportation of alien for conviction of narcotics violation, that conviction must have occurred after entry, and it is immaterial whether conviction occurred prior to or subsequent to last entry. *In re P---- (1954, BIA) 5 I & N Dec 651.*

Fact that individual convicted of delivery of controlled substance is married to U.S. citizen does not bar deportation. *People v Correa (1984, 1st Dist) 124 Ill App 3d 668, 80 Ill Dec 395, 465 NE2d 507,* affd *(1985) 108 Ill 2d 541, 92 Ill Dec 496, 485 NE2d 307.*

116. What constitutes requisite conviction

Term "convicted," under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), governing deportation of alien convicted for drug offense is federal question to be determined on due consideration of policy of Immigration and Nationality Act. *Will v Immigration & Naturalization Service (1971, CA7) 447 F2d 529, 26 ALR Fed 702.*

Definition of "convicted" within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), governing deportation of alien convicted for drug offense, is matter of federal law, to be interpreted in harmony with policies underlying Immigration and Nationality Act. *Aguilera-Enriquez v INS (1975, CA6) 516 F2d 565,* cert den *(1976) 423 US 1050, 46 L Ed 2d 638, 96 S Ct 776.*

BIA's summary dismissal under 8 CFR § 3.1(d)(1-a)(i) of alien's appeal of deportation order was upheld where notice of appeal simply stated that IJ violated alien's constitutional rights by failing to give full faith and credit to Rhode Island law, without explaining why alien's plea of nolo contendere to charge of possession of cocaine and subsequent deferred sentence with minimum supervision did not constitute "conviction" sufficient to trigger deportation under INA § 241(a)(11) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(11)]. *Athehortua-Vanegas v INS (1989, CA1) 876 F2d 238.*

The ordinary meaning of the phrase "any law . . . relating to a controlled substance" encompasses laws proscribing use or being under the influence of a controlled substance, and thus INA § 241(a)(2)(B)(i) [*8 USCS § 1251* [redesignated 1227] (a)(2)(B)(i)] renders deportable aliens convicted of use or being under the influence of controlled substances other than marijuana; that provision's exception for a single conviction involving possession of marijuana for personal use includes an implicit exception for a single conviction of

actual personal use of marijuana. *Flores-Arellano v INS (1993, CA9) 5 F3d 360, 93 CDOS 6880, 93* Daily Journal DAR 11758.

The Fourth Circuit has adopted the BIA's decision in *Ozkok (19 I & N Dec 546)* and affirmed the denial of a motion to reopen deportation proceeding where a "conviction" existed for immigration purposes under the 3-part test established in that decision; the state court's granting of "probation without judgment" following the alien's entry of a guilty plea to a charge of possession with intent to distribute cocaine constituted a "conviction" within the meaning of INA § 241(a)(2)(B)(i) [*8 USCS § 1251* [redesignated 1227] (a)(2)(B)(i)] where although (1) the alien's guilty plea was stricken, (2) the alien was placed on 24-months probation and ordered to pay a $ 1,500 fine, and (3) approximately 4 months later, the state court terminated the alien's probation, (1) the alien had entered a guilty plea, (2) the state court had ordered probation and a fine, and (3) if the alien had violated probation, the state court could have entered a judgment of guilt; although the state court had stricken the guilty plea, the facts supporting a finding of guilt still existed. *Yanez-Popp v INS (1993, CA4 W Va) 998 F2d 231.*

Under new test for determining when "conviction" is sufficient to support finding of deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), BIA will consider alien convicted if court has adjudicated alien guilty, or has entered formal judgment of guilt; where adjudication of guilt has been withheld, conviction will be found for immigration purposes where: (1) judge or jury has found alien guilty, or alien has entered plea of guilty or nolo contendere or has admitted sufficient facts to warrant finding of guilty; (2) judge has ordered some form of punishment, penalty, or restraint on alien's liberty to be imposed, including, but not limited to, incarceration, probation, fine, restitution, or community-based sanctions such as rehabilitation program, work-release or study-release program, revocation or suspension of driver's license, deprivation of nonessential activities or privileges, or community service; and (3) judgment or adjudication of guilt may be entered if alien violates terms of probation or fails to comply with requirements of court order, without availability of further proceedings regarding alien's guilt or innocence of original charge. Re Ozkok (1988, BIA) I & N Interim Dec No 3044.

Alien's conviction was sufficiently final to support order of deportation where alien entered guilty plea in Maryland criminal court to charge of unlawful possession with intent to distribute cocaine, and Maryland court stayed judgment and placed alien on probation for 3 years, ordering him to perform 100 hours of volunteer community service and to pay $ 1,500 fine plus court costs, where under Maryland law, violation of probation would result in automatic entry of judgment without further review of question of guilt. Re Ozkok (1988, BIA) I & N Interim Dec No 3044.

117. --Aiding and abetting

Alien's conviction of aiding and abetting distribution of cocaine, in violation of *21 USCS § 841*(a)(i) and *18 USCS § 2* constitutes conviction of law relating to traffic in narcotic drugs, within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), since aiding and abetting statute *(18 USCS § 2)* does not define separate offense but rather makes punishable as principal one who aids or abets another in commission of substantive offense. *Londono-Gomez v Immigration & Naturalization Service (1983, CA9) 699 F2d 475.*

Offense of facilitation of sale of cocaine, similar in nature to aiding and abetting sale of cocaine, constitutes crime "relating to controlled substance" within meaning of INA § 241(a)(11) [*8 USCS § 1252*(a)(11)]. *In re Del Risco (1989, BIA) 20 I & N Dec 109.*

118. --Finality

Conviction of person for narcotics offense which is followed by sentence under Youth Offenders' Act is final for purposes of deportation. *Hernandez-Valensuela v Rosenberg (1962, CA9) 304 F2d 639.*

Conviction is not final for purposes of *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) allowing deportation of alien for conviction for drug offenses, as long as direct appeal is pending, and order of deportation should be set aside, subject to further appropriate administrative proceedings when direct appellate procedures have reached stage of finality. *Will v Immigration & Naturalization Service (1971, CA7) 447 F2d 529, 26 ALR Fed 702.*

Not only "conviction" but also sentence and exhaustion of procedures for direct appeal are necessary before alien "has been convicted" of narcotics offense under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), and within federal judicial system, person has not been "convicted" of crime under that section until judgment of conviction has been entered and until procedures for direct appeal have been exhausted or waived, but once these events have occurred, alien "has been convicted" of offense for deportation purposes, and postconviction motions do not operate to negate this conclusion. *Aguilera-Enriquez v INS (1975, CA6) 516 F2d 565,* cert den *(1976) 423 US 1050, 46 L Ed 2d 638, 96 S Ct 776.*

Plea of guilty is tantamount to conviction for purposes of *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), and conviction would be no less final for purposes of that section because it might at some future time be expunged under state statute. *Forstner v Immigration & Naturalization Service (1978, CA9) 579 F2d 506,* cert den *(1979) 439 US 1071, 59 L Ed 2d 36, 99 S Ct 841.*

Conviction for narcotics or marijuana violation is final regardless of possibility of expunction. Re Ozkok (1988, BIA) I & N Interim Dec No. 3044.

Alien's conviction was sufficiently final to support order of deportation where alien entered guilty plea in Maryland criminal court to charge of unlawful possession with intent to distribute cocaine, and Maryland court stayed judgment and placed alien on probation for 3 years, ordering him to perform 100 hours of volunteer community service and to pay $ 1,500 fine plus court costs, where under Maryland law, violation of probation would result in automatic entry of judgment without further review of question of guilt. Re Ozkok (1988, BIA) I & N Interim Dec No 3044.

119. --Effect of probation or suspension

Alien was "convicted" within meaning of and deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) upon conviction in state court of criminal charge of unlawfully selling marijuana, notwithstanding that after finding of guilt by state court, state proceedings were suspended and probation was granted by state court on condition that alien serve one year in county jail. *Arrellano-Flores v Hoy (1958, CA9 Cal) 262 F2d 667,* cert den *(1960) 362 US 921, 4 L Ed 2d 740, 80 S Ct 673.*

Alien who was convicted in Texas state court for unlawful possession of marijuana was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), notwithstanding that alien was granted probation. *Gonzalez de Lara v United States (1971, CA5 Tex) 439 F2d 1316.*

Where permanent resident was found to have marijuana concealed in his belongings upon re-entry into U.S., and pursuant to Florida statute, state court withheld adjudication of guilt and imposition of sentence, but placed alien on probation for 6 months, BIA correctly determined that alien had been "convicted" within meaning of INA § 241(a)(11) [*8 USCS § 1251* [redesignated 1227] former

subsection (a)(11)]. *Chong v Immigration & Naturalization Service (1989, CA11) 890 F2d 284.*

Where alien was convicted on narcotics charge and his sentence was suspended by probation order, neither fact that court later recommended against his deportation nor that he had never been imprisoned on charge prevented deportation. *Ex parte Eng (1948, DC Cal) 77 F Supp 74.*

Alien was not convicted within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) where imposition of sentence was postponed, as contrasted with case in which imposition of sentence was suspended. *In re J---- (1957, BIA) 7 I & N Dec 580.*

Alien had been convicted for purposes of deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) where, following alien's plea of guilty in Washington State Court to charge of illegal possession of narcotic, imposition of sentence was suspended by order of court under state probation laws. *In re Johnson (1965, BIA) 11 I & N Dec 401.*

Under new test for determining when "conviction" is sufficient to support finding of deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), BIA will consider alien convicted if court has adjudicated alien guilty, or has entered formal judgment of guilt; where adjudication of guilt has been withheld, conviction will be found for immigration purposes where: (1) judge or jury has found alien guilty, or alien has entered plea of guilty or nolo contendere or has admitted sufficient facts to warrant finding of guilty; (2) judge has ordered some form of punishment, penalty, or restraint on alien's liberty to be imposed, including, but not limited to, incarceration, probation, fine, restitution, or community-based sanctions such as rehabilitation program, work-release or study-release program, revocation or suspension of driver's license, deprivation of nonessential activities or privileges, or community service; and (3) judgment or adjudication of guilt may be entered if alien violates terms of probation or fails to comply with requirements of court order, without availability of further proceedings regarding alien's guilt or innocence of original charge. Re Ozkok (1988, BIA) I & N Interim Dec No 3044.

Alien's conviction was sufficiently final to support order of deportation where alien entered guilty plea in Maryland criminal court to charge of unlawful possession with intent to distribute cocaine, and Maryland court stayed judgment and placed alien on probation for 3 years, ordering him to perform 100 hours of volunteer community service and to pay $ 1,500 fine plus court costs, where under Maryland law, violation of probation would result in automatic entry of judgment without further review of question of guilt. Re Ozkok (1988, BIA) I & N Interim Dec No 3044.

120. --Effect of setting aside conviction

Alien who, while serving in United States Armed Forces, pleaded guilty to selling marijuana in violation of Texas law could be deported under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), notwithstanding fact that Texas court had set aside his conviction and dismissed indictment against him after he had fulfilled conditions of probation. *Kolios v Immigration & Naturalization Service (1976, CA1) 532 F2d 786,* cert den *(1976) 429 US 884, 50 L Ed 2d 165, 97 S Ct 234.*

Order of state trial judge, granting respondent's motion for new trial, following conviction and sentence, in dismissing cause nolle prosequi, which for all purposes under state law set aside conviction, was effective to remove ground of respondent's deportability under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), based on such conviction, in same court, of addiction to unlawful use of narcotic drug, absent affirmative showing of lack of judicial

jurisdiction. *In re O'Sullivan (1963, BIA) 10 I & N Dec 320.*

121. --Effect of expungement

Alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) for narcotics conviction, and alien remained convicted, within meaning of deportation statute, for illegal possession of marijuana, notwithstanding that Nevada state court conviction was expunged under state legislation which provided that every defendant who had fulfilled condition of his probation could be permitted by court to withdraw his original plea of guilty or nolo contendere and enter plea of not guilty, whereupon court should dismiss indictment against defendant, who should thereafter be released from all penalties and disabilities resulting from crime for which he was convicted. *Tsimbidy-Rochu v Immigration & Naturalization Service (1969, CA9) 414 F2d 797.*

Where permanent resident was found to have marijuana concealed in his belongings upon re-entry into U.S., and pursuant to Florida statute, state court withheld adjudication of guilt and imposition of sentence, but placed alien on probation for 6 months, BIA acted correctly in not considering Florida expungement statute, because term "convicted" in INA must be interpreted in accordance with federal standards. *Chong v Immigration & Naturalization Service (1989, CA11) 890 F2d 284.*

INS violated Equal Protection Clause of U.S. Constitution where it sought to deport first-time drug offender whose conviction for possession of marijuana was expunged pursuant to Montana statute that differed in some respects from Federal First Offender Act (FFOA), since INS would not seek to deport alien convicted of this identical offense whose conviction was expunged pursuant to state statute which exactly mirrored *FFOA. Garberding v INS (1994, CA9) 30 F3d 1187, 94 CDOS 5762, 94* Daily Journal DAR 10499.

Destruction of permanent resident alien's record of conviction for felonious possession of marijuana pursuant to state statute designed to benefit convicted population at large, not just youthful offenders, had no effect on alien's deportability under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11). *In re Moeller (1976, BIA) 16 I & N Dec 65.*

Conviction for narcotics or marijuana violation is final regardless of possibility of expunction. Re Ozkok (1988, BIA) I & N Interim Dec No. 3044.

Conviction for crime involving moral turpitude cannot support deportation order if it has been expunged; INS policy is to defer institution of deportation proceedings until alien who is eligible to have conviction expunged has had reasonable opportunity to apply for expunction. Re Ozkok (1988, BIA) I & N Interim Dec No 3044.

122. ----State counterpart to federal first offense statute

Conviction which has been expunged under first offender provisions of *21 USCS § 844*(b)(1), or under state law which is counterpart of that section may not be used as basis for deportability under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11). *In re Werk (1977, BIA) 16 I & N Dec 234* (modified on other grounds in *In re Seda (1980, BIA) 17 I & N Dec 550).*

Immigration judge properly denied request to terminate deportation proceedings on ground that conviction on which alien's deportation order was based had been expunged pursuant to state statute, since statute involved was not counterpart to Federal first offender statute *(21 USCS § 814*(b)(1)) because its application was not limited to convictions of first offenders, and conviction expunged under statute could subsequently be considered for purposes of determining eligibility for other expungements as well as in certain instances in civil proceedings, thus alien's conviction was not eliminated for

purposes of deportation. *In re Forstner (1983, BIA) 18 I & N Dec 374.*

Expungement of marijuana conviction does not eliminate conviction for purposes of deportation where state statute under which conviction was expunged is not counterpart to federal first offender statute *(21 USCS § 844*(b)(1)). *In re Carrillo (1984, BIA) 19 I & N Dec 77.*

Ameliorative provisions of federal first offender statute, *18 USCS § 3607* [formerly *21 USCS § 844*(b)(1), (2)], are available only to persons found guilty of simple possession of controlled substance, and thus state statute granting first offender treatment to persons charged with drug violations more serious than simple possession, or with any crime unrelated to drug possession, does not constitute state equivalent to federal statute; accordingly, alien sentenced under Md. Code Art. 27 § 292, which extends to manufacture, distribution, and transportation into state of controlled substances, as well as simple possession, is not exempt from immigration consequences under INA § 241(a)(11) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(11)] of conviction of possession of cocaine. Re Deris (1989, BIA) I & N Int Dec No 3102.

123. ----Youthful offenders

Youth offender convicted of conspiring to possess marijuana whose conviction was expunged pursuant to *18 USCS § 5021*(a) could not be deported under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), since § 5021(a), providing for the expunging of records of youthful offenders who satisfactorily respond to treatment under the Youth Correction Act, is intended not only to relieve them of usual disabilities of criminal conviction, but also to give them second chance free of record tainted by such conviction. *Mestre Morera v United States Immigration & Naturalization Service (1972, CA1) 462 F2d 1030.*

Service motion to terminate proceedings and withdraw order directing respondent's deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) was granted where, in light of Service adoption of position that marihuana violators who are treated as youth offenders under state laws will be dealt with in same manner as such offenders under Federal law, respondent's conviction of possession of marihuana in violation of California law was subsequently expunged upon completion of youth offender treatment under Section 1772 of California Welfare and Institutions Code. *In re Andrade (1974, BIA) 14 I & N Dec 651,* mod (1985, BIA) *19 I & N Dec 270* (ovrld in part on other grounds by *In re Ozkok (1988, BIA) 19 I & N Dec 546).*

In view of Congressional objective in enacting Federal Youth Corrections Act *(18 USCS § 5005* et seq.) to rehabilitate youthful offenders and since expungement provision of that Act *(18 USCS § 5021*(b)) does not distinguish gravity of offenses for purposes of applying benefits, distinctions should not be made in application of Act's benefits in immigration cases; permanent resident alien was not deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) for conviction of conspiracy to possess marijuana with intent to distribute where such conviction had been expunged pursuant to Act, and immigration judge erred in refusing to give recognition to expungement because of gravity of offense. *In re Berker (1976, BIA) 15 I & N Dec 725.*

Sealing of alien's record of arrest in conviction of marijuana possession under California youth offender law eliminated conviction for possession of marijuana as basis for deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11). *In re Lima (1976, BIA) 15 I & N Dec 661.*

124. Conviction under federal law

Alien's conviction of conspiracy to violate *21 USCS § 174* was conviction of "a violation of any law or regulation relating to the illicit traffic in

narcotic drugs," and rendered him deportable. *Nani v Brownell (1957) 101 US App DC 112, 247 F2d 103,* cert den *(1957) 355 US 870, 2 L Ed 2d 75, 78 S Ct 119.*

Misprision of felony under *18 USCS § 4* is not itself law "relating to the elicit possession of or traffic in narcotic drugs" under *8 USCS § 1251* [redesignated 1227] (11), and holding of Board of Immigration Appeals that misprision of felony of conspiracy to possess narcotics was crime "relating to" narcotics went beyond what Congress described as grounds for deportation of alien in § 1251 [redesignated 1227] former subsection (a)(11). *Castaneda De Esper v Immigration & Naturalization Service (1977, CA6) 557 F2d 79.*

The Travel Act *(18 USCS § 1952*(a)) is a law relating to a controlled substance, and conviction thereunder constitutes grounds for deportation under INA § 241(a)(2)(B) [*8 USCS § 1251* [redesignated 1227] (a)(2)(B)] as an alien convicted of a law relating to a controlled substance, and the mere fact that the Act outlaws other forms of criminal interstate travel does not mean that it is not also, in appropriate cases, a law relating to controlled substances. *Johnson v INS (1992, CA9) 971 F2d 340, 92 CDOS 6564, 92* Daily Journal DAR 10530, 92 Daily Journal DAR 10551.

Conviction for misprision of felony is not conviction for violation of law relating to marihuana even though felony concealed is crime for which conviction would clearly fall within provisions of *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), since crime of misprision of felony is criminal offense separate and distinct from particular felony concealed, and § 1251 [redesignated 1227] former subsection (a)(11) would not be interpreted to incorporate conviction for misprision of felony into underlying offense concealed by alien. *In re Velasco (1977, BIA) 16 I & N Dec 281.*

Possession of firearm during commission of felony is offense separate and distinct from underlying felony, and, therefore, notwithstanding fact that underlying felony may be narcotic-related offense, *18 USCS § 824*(c) itself is not law relating to illicit possession of narcotic drugs, and, accordingly, alien's conviction under that statute would not give rise to his deportability under § 241(a)(11) of Immigration and Nationality Act *(8 USCS § 1251* [redesignated 1227] former subsection (a)(11)). *In re Carrillo (1978, BIA) 16 I & N Dec 625.*

125. Conviction under state law

Alien who had been found guilty by California state court of narcotic statute violation and committed to state's youth authority was subject to deportation. *Zabanazad v Rosenberg (1962, CA9 Cal) 306 F2d 861.*

Conviction of alien for possession of marijuana in state court prosecution may be noted for purposes of deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), even though conviction resulted after alien entered plea of nolo contendere. *Ruis-Rubio v Immigration & Naturalization Service (1967, CA9) 380 F2d 29,* cert den *(1967) 389 US 944, 19 L Ed 2d 302, 88 S Ct 302.*

Conviction for attempted possession of marijuana under New York law was deportable offense as relating to illicit possession of marihuana under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11). *Bronsztejn v Immigration & Naturalization Service (1975, CA2) 526 F2d 1290.*

Alien convicted for violation of state statute prohibiting planting and cultivating marijuana was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11). *In re P---- G---- (1953, BIA) 5 I & N Dec 309.*

Alien's conviction of violation of state law, for selling and delivering substance and material in lieu of narcotic after having offered to sell and furnish narcotic, did not constitute ground of deportability under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) where record of conviction was

silent as to narcotic involved, since conviction could have involved substance which though narcotic under state law was not narcotic drug within meaning of immigration laws. *In re Paulus (1965, BIA) 11 I & N Dec 274.*

Conviction of immigrant, upon guilty plea to possession of "controlled substances" under California law, may be basis for charging immigrant with deportability under *8 USCS § 1251* [redesignated 1227] for violation of law relating to narcotic drugs or marijuana, although immigrant's conviction record contains no reference to heroin or any other specific drug, since reference can be made to court transcript headed "Proceedings on Entering a Plea of Guilty" in which immigrant admitted possession of heroin, and admitted knowing it was heroin. *In re Mena (1979, BIA) 17 I & N Dec 38.*

BIA now holds that alien who has been found guilty in state court of drug-related offense and who has been accorded rehabilitative treatment pursuant to state statute will not be deportable for this offense if alien can establish that he would have been eligible for federal first offender status under *18 USCS § 3607* had he been prosecuted in federal court; to make this showing, alien must demonstrate following: (1) he is first offender; (2) he has been found guilty of simple possession of controlled substance; (3) he has not previously been accorded first offender treatment; and (4) state court entered order pursuant to state statute under which alien's criminal proceedings were defined pending successful completion of probation. In re Manrique (1995, BIA) I & N Interim Dec No 3250.

126. Conviction under foreign law

Provision of *8 USCS § 1251* [redesignated 1227] former subsection (a)(11), providing that alien be deported who has been convicted of violation of "any law or regulation" relating to illicit possession of marijuana, is applicable to foreign convictions relating to narcotics or marijuana violations. *Brice v Pickett (1975, CA9 Cal) 515 F2d 153.*

Alien convicted of possession of marijuana for sale in Denmark prior to successfully adjusting status to permanent resident of U.S., which conviction if known would have precluded alien from obtaining permanent resident status, does not have benefit of INA § 212(c) [*8 USCS § 1182*(c)] relief as eligibility under § 1182(e) requires lawful admission; alien is not entitled to § 1182(c) relief until such time as formal adjudication of unlawful procurement of status is made; 5-year statute of limitations found in INA § 246 [*8 USCS § 1256]* does not apply to bar deportation proceedings against alien regardless of method of alien's admission. *Monet v Immigration & Naturalization Service (1986, CA9) 791 F2d 752.*

Alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) as alien who had been convicted of violation of law relating to illicit possession of marijuana, where statute under which he had been convicted in Bahamas provided that knowledge of possession was relevant to offense. *In re Pasquini (1976, BIA) 15 I & N Dec 683,* affd (1977, CA5) *557 F2d 536.*

Alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) where alien was convicted of violation of Canadian statute which had been interpreted to require scienter for conviction. *In re Awadh (1976, BIA) 15 I & N Dec 775.*

Australian resident's conviction, in Australia, involving sale of Indian hemp was not for illicit sale of Indian hemp within meaning of *12 USCS § 1251* [redesignated 1227] , and does not bring him within deportability provision of such section, where Australian statute under which he was convicted does not require mens rea for conviction, but makes person strictly liable for possession

regardless of actual knowledge. *In re Davis (1979, BIA) 16 I & N Dec 748.*

H. Other Grounds

127. Noncompliance or conviction as to registration or entry documents [*8 USCS § 1227*(a)(3)]

Clear and convincing evidence that an alien was deportable existed where the alien was convicted for making false statements on his visa application as INA § 241(a)(3)(B) [*8 USCS § 1251* [redesignated 1227] (a)(3)(B)] makes such persons deportable. *Okechukwu v United States (1993, SD Tex) 825 F Supp 139.*

Each willful failure to comply with annual registration requirements of *8 USCS § 1305* constitutes separate basis of deportability under *8 USCS § 1251* [redesignated 1227] former subsection (a)(5). *In re V--R-- (1961, BIA) 9 I & N Dec 340* (ovrld in part on other grounds by *In re Bagai (1964, BIA) 10 I & N Dec 683).*

Alien deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(5) is not eligible for waiver under *8 USCS § 1182*(c) because no analogous ground of inadmissibility is enumerated in § 1182. *In re Wadud (1984, BIA) 19 I & N Dec 182.*

128. --What constitutes requisite conviction

Conviction of alien under *18 USCS § 1546,* governing criminal misconduct in regard to entry documents, was "conviction" within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(5), allowing deportation of alien who is convicted under § 1546, despite fact that alien's conviction resulted from nolo contendere plea. *Qureshi v Immigration & Naturalization Service of Dep't of Justice (1975, CA5) 519 F2d 1174.*

Conviction under *18 USCS § 371* of conspiracy to violate *18 USCS § 1546,* governing criminal misconduct in regard to entry documents, is not tantamount to conviction under *18 USCS § 1546* which is made reason for deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(5). *In re Gayo-Gayo (1965, BIA) 11 I & N Dec 46.*

129. --Exception for reasonably excusable or nonwillful noncompliance

Petitioner who fails to file address reports in accordance with *8 USCS § 1251* [redesignated 1227] former subsection (a)(5) has burden of showing that such failure was reasonably excusable or was not willful. *Bufalino v Immigration & Naturalization Service (1973, CA3) 473 F2d 728,* cert den *(1973) 412 US 928, 37 L Ed 2d 155, 93 S Ct 2751.*

In absence of definition and any indication to contrary, terms "willful" and "reasonably excusable" should be given their plain and ordinary meaning as used in context of *8 USCS § 1251* [redesignated 1227] former subsection (a)(5), allowing deportation of alien for noncompliance with requirements regarding registration under *8 USCS § 1305,* unless alien can establish that "failure was reasonably excusable or was not willful," and existence of exculpatory circumstances under *8 USCS § 1251* [redesignated 1227] former subsection (a)(5) must be established by credible evidence sufficiently persuasive to satisfy Attorney General, in exercise of his reasonable judgment, considering proof fairly and impartially. *In re B---- (1954, BIA) 5 I & N Dec 692.*

130. ----Particular circumstances

Alien had not established that failure to furnish notification of address, as required by *8 USCS § 1305,* was reasonably excusable or was not willful where he ascribed as his reason for not furnishing notification his fear of being picked

up or taken by immigration officers, and alien was thus deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(5) for noncompliance with § 1305. *In re M---- (1953, BIA) 5 I & N Dec 216.*

Alien's failure to furnish current address was not willful, and alien was not deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(5) where he had established that he either was unaware of requirement or did not know that it related to him. *In re B-- (1961, BIA) 9 I & N Dec 211.*

131. --Reentry after deportation

Liability to deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(5), allowing deportation for noncompliance or conviction in regard to registration or entry documents is not defeated merely by act of departing from United States and making new entry, but alien granted permission to reapply after having been deported under § 1251 [redesignated 1227] former subsection (a)(5) would not, upon return to United States, again become deportable on same charge by reason of his prior conduct. *In re S---- (1957, BIA) 7 I & N Dec 536.*

Alien deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(5), allowing deportation for noncompliance or conviction in regard to registration or entry documents would not again become deportable by reason of same conduct when, following departure, he was lawfully admitted for permanent residence. *In re R----G---- (1958, BIA) 8 I & N Dec 128.*

Alien deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(5) would not again become deportable when, following departure, he had been lawfully admitted for permanent residence. *In re Sanchez (1977, BIA) 16 I & N Dec 363.*

132. Becoming public charge after entry [*8 USCS § 1227*(a)(5)]

Test to be applied to determine whether alien has become public charge for purposes of deportation within reach of similar language to *8 USCS § 1251* [redesignated 1227] former subsection (a)(8) of Immigration Act of 1917 was (1) that charge for services rendered to alien must be imposed under appropriate law so that cause of action in contract lies against alien or designated relatives or friends, (2) that demand for payment was made on parties liable under law, and (3) failure to pay for charges. *In re B---- (1948, BIA) 3 I & N Dec 323.*

133. --Particular circumstances

Alien, who was convicted, after entry, of crime committed before entry and who was sentenced to imprisonment within five years, was subject to deportation as having become public charge. *Ex parte Tsunetaro MacHida (1921, DC Wash) 277 F 239.*

Citizen's alien wife and son, with re-entry permit and unexpired immigrant visa, respectively, were subject to deportation where evidence showed that citizen had been committed to institution for insane and that they were without support. *United States ex rel. Matterazza v Fogarty (1936, DC NY) 13 F Supp 403.*

Alien could not be said to be subject to deportation as having become public charge within 5 years after entry where no demand for payment of State hospital expenses was made within that time, it being noted that there was some ability to pay. *In re C---- (1946, BIA) 2 I & N Dec 538.*

Deportability under *8 USCS § 1251* [redesignated 1227] former subsection (a)(8), allowing deportation of alien who has become public charge, was not established where no demand for payment was made within 5-year period after entry, and where it was not shown that demand was unnecessary because there was

no one against whom payment could be enforced. *In re L---- (1954, BIA) 6 I & N Dec 349.*

134. Aiding unlawful entry [*8 USCS § 1227*(a)(1)(E)]

Deportation charge under section 241(a)(13) of Immigration and Nationality Act *(8 USCS § 1251* [redesignated 1227] former subsection (a)(13)), allowing deportation of alien for aiding illegal entry of other aliens, is proper, even though conduct which forms basis for charge occurred prior to effective date of Act. *In re R---- (1954, BIA) 6 I & N Dec 327.*

Provision of *8 USCS § 1251* [redesignated 1227] making deportable alien who has knowingly and for gain assisted, abetted, or aided alien to enter United States unlawfully does not require criminal conviction for such offense; alien deported for such offense is not entitled to reopening of deportation because conviction was set aside long after his deportation where his own testimony and affidavit regarding his role in bringing aliens into United States illegally constitute clear, convincing and unequivocal evidence of deportability, so that conviction is not necessary to finding of deportability. *In re Estrada (1979, BIA) 17 I & N Dec 187.*

135. --Requirement of acting for gain

Defendants were subject to deportation for violation of *8 USCS § 1251* [redesignated 1227] former subsection (a)(13), allowing deportation of alien who aids another alien's unlawful entry, where they illegally brought girl into United States and hired her for $ 20 to $ 25 per month plus board and room, and where evidence was received that going wage in area for comparable work was $ 100 plus board and room, since Congress, in putting into statute prerequisite of gain did not mean to apply peppercorn standard of contract consideration, but requirement is met if the gain is real, moneywise. *Gallegos v Hoy (1958, CA9 Cal) 262 F2d 665,* cert den *(1959) 360 US 935, 3 L Ed 2d 1547, 79 S Ct 1456.*

"For gain" requirement of *8 USCS § 1251* [redesignated 1227] former subsection (a)(13) must be established by clear and convincing evidence; such evidence was lacking and deportation order was reversed where record indicated that moneys received by alien constituted mere reimbursement for expenses in assisting aliens to illegally enter country. *Ribeiro v Immigration & Naturalization Service (1976, CA3) 531 F2d 179.*

Offense under *8 USCS § 1251* [redesignated 1227] former subsection (a)(13) would not be deemed established by reasonable, substantial and probative evidence (pursuant to *8 USCS § 1105a)* where (1) illegal aliens (not one of whom spoke or read English) made statement in English to effect that petitioner was assisting them to enter United States illegally for $ 50 each, (2) aliens testified at hearing that payment was intended to be voluntary, and (3) none of immigration officers to whom statements were made appeared at deportation hearing. *Guzman-Guzman v Immigration & Naturalization Service (1977, CA9) 559 F2d 1149.*

Actual receipt of money is not necessary to establish requirement of acting for gain; agreement to pay later constitutes gain, or anticipated gain, and is sufficient to bring alien within ambit of *8 USCS § 1251* [redesignated 1227] former subsection (a)(13); uncertainty regarding payment does not rebut finding that alien acted for gain; in absence of evidence of offsetting expenses or losses, prospect of receiving payment constitutes expectation of gain. *Sanchez-Marquez v United States Immigration & Naturalization Service (1984, CA7) 725 F2d 61, 83 ALR Fed 341,* cert den *(1984) 469 US 835, 83 L Ed 2d 69, 105 S Ct 128.*

If assistance is based on love, charity or kindness, and not for tangible

substantial financial advantage, gain requirement is not established; if payment includes expenses, to constitute gain payment received must be clearly in excess of foreseeable expenses; payment of $ 36 for gas and oil consumed on trip of over 1,000 miles does not constitute gain. *Soto-Hernandez v Immigration & Naturalization Service (1984, CA5) 726 F2d 1070, 77 ALR Fed 77.*

Charge of deportability under INA § 241(a)(13) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(13)], for aiding unlawful entry of alien is not established solely on basis of proof of alien's conviction for aiding and abetting another alien to enter United States illegally in violation of INA § 275(a) [*8 USCS § 1325*(a)], because INS must yet prove by clear and convincing evidence that alien received tangible and substantial financial benefits for such misconduct. *Hernandez-Garza v Immigration & Naturalization Service (1989, CA5) 882 F2d 945.*

Anticipation of profit, no matter how small, constitutes "gain" within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (a)(13), and alien who had knowingly assisted other aliens to enter United States in anticipation of compensation, though no money was paid at time, was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(13). *In re P---- G---- (1957, BIA) 7 I & N Dec 514.*

Payment for gasoline and promise of additional monetary compensation constituted "gain" rendering respondent deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(13) for having assisted other aliens to enter United States illegally. *In re B----G---- (1958, BIA) 8 I & N Dec 182.*

Issue of fundamental fairness is raised where INS decides to proceed against alien pursuant to INA § 241(a)(4) [§ 1251 [redesignated 1227] former subsection (a)(4)] after failing to establish "for gain" requirement of § 241(a)(13); INS policy of charging alien under § 241(a)(13), but not under § 241(a)(4), has significant consequences for alien for whom judicial recommendation against deportation has been entered pursuant to § 241(b), since such recommendation has no effect on alien found deportable under § 241(a)(13), but precludes INS from deporting alien found deportable under § 241(a)(4). Re Tiwari (1989, BIA) I & N Interim Dec. No. 3099.

INS is foreclosed from attempting to establish alien's deportability under more general ground of INA § 241(a)(4) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(4)] when it has failed to sustain charge of deportability under § 241(a)(13), which specifically addresses problem of alien smuggling; legislative history does not support position that alien who has been convicted of alien smuggling under § 274(a) [§ 1324(a)] should be found deportable under § 241(a)(4) although "for gain" requirement of § 241(a)(13) has not been met. Re Tiwari (1989, BIA) I & N Interim Dec. No. 3099.

Although proof that alien has been convicted under INA § 274(a) [*8 USCS § 1324*(a)] materially lessens Government's burden of proof with respect to § 241(a)(13) [§ 1251 [redesignated 1227] former subsection (a)(13)] charge of deportability, conviction under § 274(a) does not constitute prima facie evidence of alien's deportability under § 241(a)(13), since that provision requires additional showing that alien acted "for gain" in assisting aliens to enter U.S. illegally; thus, order terminating deportation proceedings under § 241(a)(13) was affirmed where there was no clear evidence in record that alien received tangible substantial financial advantage because of participation in conspiracy to smuggle aliens into U.S., or that alien actually anticipated gain for role in conspiracy. Re Tiwari (1989, BIA) I & N Interim Dec. No. 3099.

In deportation proceedings, INS bears burden of proving alien's deportability by clear, unequivocal, and convincing evidence, and must show by same standard that alien acted "for gain" in order to sustain charge under INA § 241(a)(13);

"for gain" requirement is not met if alien who assists other aliens in entering U.S. is merely paid expenses, although alien's anticipation of profit sufficiently establishes "for gain" requirement, notwithstanding that no money is ever actually received. Re Tiwari (1989, BIA) I & N Interim Dec. No. 3099.

136. --Requisite acts of aid

Transporting within United States for gain aliens known to be illegally within United States did not bring alien within provisions of *8 USCS § 1251* [redesignated 1227] former subsection (a)(13) where it was established that alien did not know transported aliens until after they were in United States, did not aid or assist them in entering, and was not party to any prearranged plan for bringing them to United States. *In re I---- M---- (1957, BIA) 7 I & N Dec 389.*

Deportability was established under *8 USCS § 1251* [redesignated 1227] former subsection (a)(13), notwithstanding respondent did not accompany illegal aliens into United States, where, in scheming with aliens in Mexico, he instructed them where to cross border undetected, told them where to go upon reaching United States, and arranged for accomplice to drive respondent's truck to Texas to meet them. *In re Vargas-Banuelos (1971, BIA) 13 I & N Dec 810.*

137. --Five-year limitation

Alien was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(13), where he had originally entered United States illegally in August, 1965, had voluntarily departed from United States in May, 1966, had legally reentered United States in June, 1966, and had accepted money for assisting five aliens to illegally enter United States in September, 1970; privilege of legally entering United States in 1966 did not carry with it retroactive legality as to alien's prior illegal residence, and acts committed in September, 1970, occurred within 5 years of "entry" in June, 1966. *Martinez--Martinez v Immigration & Naturalization Service (1973, CA5) 480 F2d 117,* cert den *(1973) 414 US 1066, 38 L Ed 2d 471, 94 S Ct 573.*

Plain language of *8 USCS § 1160*(a)(4) extends travel and employment rights enjoyed by permanent legal residents to aliens holding lawful temporary resident status under Special Agricultural Workers (SAW) program; thus, "Fleuti" doctrine, which provides that alien's return to U.S. following brief, casual and innocent departure is not entry for purposes of deportability under former *8 USCS § 1251*(a)(1)(E)(i), extends to lawful temporary residents in SAW program. *Aguilera-Medina v INS (1998, CA9) 137 F3d 1401, 98 CDOS 1658, 98* Daily Journal DAR 2337.

138. --Evidence

Properly admitted evidence at alien's deportation hearing consisting of criminal complaint charging alien with aiding and abetting aliens to enter United States at time or place not designated by immigration officers, in violation of *8 USCS § 1325* and his prior guilty plea were adequate to support deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(13). *Larios-Mendez v Immigration & Naturalization Service (1979, CA9) 597 F2d 144.*

139. --Miscellaneous

Resident alien's expunction of conviction for aiding and assisting alien to enter United States in violation of *8 USCS § 1325,* which expunction was entered under *18 USCS § 5021,* does not remove evidentiary support for finding that the resident alien is deportable. *Sanchez-Marquez v United States Immigration & Naturalization Service (1984, CA7) 725 F2d 61, 83 ALR Fed 341,* cert den *(1984)*

469 US 835, 83 L Ed 2d 69, 105 S Ct 128.

Plain language of *8 USCS § 1160*(a)(4) extends travel and employment rights enjoyed by permanent legal residents to aliens holding lawful temporary resident status under Special Agricultural Workers (SAW) program; thus, "Fleuti" doctrine, which provides that alien's return to U.S. following brief, casual and innocent departure is not entry for purposes of deportability under former *8 USCS § 1251*(a)(1)(E)(i), extends to lawful temporary residents in SAW program. *Aguilera-Medina v INS (1998, CA9) 137 F3d 1401, 98 CDOS 1658, 98* Daily Journal DAR 2337.

Illegally transporting aliens *(8 USCS § 1324*(a)) falls within definition of "aggravated felony" for purposes of sentence enhancement; in *8 USCS § 1101*(a)(43)(N), parenthetical "(relating to alien smuggling)" acts only to describe, not to limit, "offenses described" in *8 USCS § 1324*(a)(1)(A) or (2). *United States v Monjaras-Castaneda (1999, CA5 Tex) 190 F3d 320,* reh den (1999, CA5 Tex) *1999 US App LEXIS 30735.*

Alien, who was deported on charge of having aided aliens to enter United States unlawfully and in whose case Congress, with full knowledge of these facts, authorized re-entry by private bill, did not become deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(13) by reason of his prior misconduct. *In re J---- (1954, BIA) 6 I & N Dec 287.*

140. Conviction for weapons offense [*8 USCS § 1227*(a)(2)(C)]

Alien's conviction for violation of Texas firearms statute was valid ground for deportation order under *8 USCS § 1251* [redesignated 1227] former subsection (a)(14), notwithstanding Texas statute expunging conviction. *Gutierrez--Rubio v Immigration & Naturalization Service (1972, CA5) 453 F2d 1243,* cert den *(1972) 408 US 926, 33 L Ed 2d 337, 92 S Ct 2506.*

Alien who was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(14) for possession of sawed-off shotgun was not entitled to discretionary relief under *8 USCS § 1182*(c), the discretionary relief provision of the exclusion statute, because Congress may have decided not to accord same discretion as applies in exclusion cases because it found a public policy advantage in deporting entire class of aliens convicted of sawed-off shotgun and machine gun offenses; Congress' withholding discretion from INS to grant relief from deportation for firearms offenses involving machine guns and sawed-off shotguns does not violate equal protection component of due process rights under Fifth Amendment because deportation for firearms offenses is a rational means to achieve legitimate purpose of deterring possession of forbidden weapons by aliens. *Cabasug v Immigration & Naturalization Service (1988, CA9) 837 F2d 880,* amd on other grounds, reh den, en banc (1988, CA9) *847 F2d 1321.*

Finding of deportability for weapons offense under INA § 241(a)(14) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(14)] can be based upon conviction under state statute prohibiting possession of sawed-off shotgun. *Alleyne v United States Immigration & Naturalization Service (1989, CA3) 879 F2d 1177.*

INA § 241(a)(2)(C) [*8 USCS § 1251* [redesignated 1227] (a)(2)(C)], which applies to proceedings for which notice was provided to the alien on or after March 1, 1991, completely superseded all former versions of legislation dealing with deportation for firearm offenses. *Chow v INS (1993, CA5) 12 F3d 34.*

Although at time of alien's convictions for offenses related to explosive materials only related ground for deportation was for crime of moral turpitude from which alien had received Judicial Recommendation Against Deportation (JRAD), INS was not prohibited from deporting alien based on these convictions following its addition in 1990 of other grounds for deportation involving criminal acts. *United States v Yacoubian (1994, CA9 Cal) 24 F3d 1, 94 CDOS 3315,*

94 Daily Journal DAR 6307.

Lawful permanent resident who, while in his car, angrily waved gun at another driver who was threatening him with baseball bat, and who was convicted in state court of felonious assault, possession of firearm in commission of felony, and carrying pistol in vehicle, was properly ordered deported under INA § 241(a)(2)(C) [*8 USCS § 1251*(a)(2)(C)], notwithstanding that that provision was enacted two years after his conviction, where effective date provision in Immigration Act of 1990 explicitly provides for application of new provision to facts occurring before date of enactment, and U.S. Supreme Court has repeatedly upheld application of new immigration law to past criminal conduct; Congress's decision to allow application of new statute only in deportation proceedings for which notice was provided to alien after March 1, 1991 was arguably based on desire not to disturb pending proceedings, and thus there was no equal protection violation in fact that alien who engaged in same criminal conduct at same time as alien in case at bar, but received notice of deportation before March 1, 1991, would not be deportable. *Hamama v INS (1996, CA6) 78 F3d 233, 1996 FED App 78P.*

Court of appeals has jurisdiction to consider collateral attack on underlying deportation order issued against alien who was convicted of being felon in possession of firearm. *United States v Arce-Hernandez (1998, CA9 Cal) 163 F3d 559, 98 CDOS 8955, 98* Daily Journal DAR 12547.

Wide-ranging text of *8 USCS § 1227*(a)(2)(C) evinces expansive purpose, namely to render deportable those aliens that commit firearms offenses of any type. *Hall v United States INS (1999, CA4) 167 F3d 852.*

8 USCS § 1227(a)(2)(C) encompasses conviction for violation of *18 USCS § 922*(a)(6), which makes it unlawful for any person in connection with acquisition or attempted acquisition of firearm knowingly to make any false or fictitious oral or written statement. *Hall v United States INS (1999, CA4) 167 F3d 852.*

For purposes of *8 USCS § 1227*(a)(2)(C), possession means both actual and constructive possession. *Aybar-Alejo v INS (2000, CA1) 230 F3d 487.*

Congress intended, in *8 USCS § 1227*(a)(2)(A), to embrace entire panoply of firearms offenses. *Valerio-Ochoa v INS (2001, CA9) 241 F3d 1092, 2001 CDOS 1377, 2001 Daily Journal DAR 1727, amd (2001, CA9) 2001 US App LEXIS 7508.*

In 8 USCS § 1227(a)(2)(A), Congress intended to include both "pure" firearms offenses and other crimes in which firearm was employed; thus, statute includes listed firearms offenses regardless of whether another crime was committed. *Valerio-Ochoa v INS (2001, CA9) 241 F3d 1092, 2001 CDOS 1377, 2001 Daily Journal DAR 1727, amd (2001, CA9) 2001 US App LEXIS 7508.*

The right of Haitian Service Organizations to impart information or otherwise exercise their own First Amendment rights did not depend on whether Haitians detained at Guantanamo Bay and determined to have colorable claims for asylum had an independent right to counsel. *Haitian Ctrs. Council v Sale (1993, ED NY) 823 F Supp 1028.*

Conviction of unlawful possession of unregistered sawed-off shotgun in violation of federal statute *(26 USCS §§ 5841* and 5851) upon plea of nolo contendere, constitutes ground of deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(14). *In re Rodriguez (1974, BIA) 14 I & N Dec 706.*

The sentence enhancement provision of § 12022(a) of the California Penal Code, which allows for the imposition of an additional and consecutive term of imprisonment upon a person convicted of a felony where any one of the principals of the felony was armed with a firearm, does not create a separate offense, but rather imposes additional punishment, and therefore an alien convicted of five counts of attempted murder in the second degree whose sentence was enhanced pursuant to § 12022(a) was not convicted of a firearm offense and was not

deportable under INA § 241(a)(2)(C) [*8 USCS § 1251* [redesignated 1227] (a)(2)(C)], as an alien convicted at any time after entry of a firearm violation. *In re Rodriguez-Cortes (1992, BIA) 20 I & N Dec 587.*

A lawful permanent resident convicted of two counts of attempted criminal possession of a weapon under state law was not deportable on the basis of those convictions as a conviction for an attempted firearms offense will not support a charge of deportability under INA § 241(a)(2)(C) [*8 USCS § 1251* [redesignated 1227] (a)(2)(C)]. *In re Hou (1992, BIA) 20 I & N Dec 513.*

An alien convicted, pursuant to a guilty plea, of assault in the third degree under § 9A.36.031(1)(f) of the Revised Code of Washington was not convicted of a firearms offense for purposes of INA § 241(a)(2)(C) [*8 USCS § 1251* [redesignated 1227] (a)(2)(C)], as, although the criminal information stated that he used a pistol in committing the assault, no element of the crime to which he pled related to the use of any weapon. *In re Perez-Contreras (1992, BIA) 20 I & N Dec 615.*

A conviction under *18 USCS § 924*(c)(1) for use of a firearm during a drug trafficking crime is a conviction for immigration purposes because it creates a distinct offense separate from the underlying offenses, rather than merely enhancing the penalty for those offenses; thus, an alien convicted under *18 USCS § 924*(c)(1) was rendered deportable under INA § 241(a)(2)(C) [*8 USCS § 1251* [redesignated 1227] (a)(2)(C)] as an alien convicted of a firearms violation. *In re K.L. (1993, BIA) 20 I & N Dec 654.*

An alien convicted under *18 USCS § 924*(c)(1) for use of a firearm during a drug trafficking crime was clearly deportable under INA § 241(a)(2)(C) [*8 USCS § 1251* [redesignated 1227] (a)(2)(C)] as an alien convicted of a firearms violation as the requirements for a conviction under *18 USCS § 924*(c)(1) clearly establish that the use or carriage of a weapon is an integral element of the crime. *In re K.L. (1993, BIA) 20 I & N Dec 654.*

An alien convicted of armed burglary and robbery with a firearm under §§ 810.02 and 812.13 of the Florida Statutes was convicted of firearm offenses for the purposes of INA § 241(a)(2)(C) [*8 USCS § 1251* [redesignated 1227] (a)(2)(C)] where the use of a firearm elevated the crimes to first degree felonies, triggering a mandatory minimum sentence, and was thus an essential element of the crimes. *In re P.F. (1993, BIA) 20 I & N Dec 661.*

There is no magic in the word "enhancement;" rather, the use and effect of an enhancement statute in a particular case must be examined, and the fact that the firearms element in a conviction record originated from an "enhancement" statute cannot function as a bright-line test to exculpate an alien from deportability under INA § 241(a)(2)(C) [*8 USCS § 1251* [redesignated 1227] (a)(2)(C)]. *In re Lopez-Amaro (1993, BIA) 20 I & N Dec 668.*

Where the firearms element has become an element of the substantive offense, the fact that the firearms element of the conviction came from an "enhancement" statute is irrelevant, and thus, where the firearms violation was deemed to be an element of an alien's conviction for murder with a firearm, it is properly considered a firearms conviction under INA § 241(a)(2)(C) [*8 USCS § 1251* [redesignated 1227] (a)(2)(C)]. *In re Lopez-Amaro (1993, BIA) 20 I & N Dec 668.*

141. Assisting Nazi governments [*8 USCS § 1227*(a)(4)(D)]

Provisions of *8 USCS §§ 1251* [redesignated 1227] former subsection (a)(19) and 1253(h)(2)(A), added by 1978 amendment, and withdrawing eligibility for stays of deportation from members of Nazi governments of Europe who had persecuted or participated in persecution of persons because of their race, religion, national origin, or political opinion, are not unconstitutional either on grounds of vagueness of word "persecution," since term has wide usage and

understanding, or on grounds that 1978 amendment is bill of attainder and ex post facto law because it withdraws basis for stays of deportation, since deportation is not penal in nature and constitutional prohibition against ex post facto laws and bills of attainder do not apply to deportation statutes, which may be amended to apply retroactively. *Artukovic v Immigration & Naturalization Service (1982, CA9) 693 F2d 894* (superseded by statute on other grounds as stated in *McMullen v Immigration & Naturalization Service (1986, CA9) 788 F2d 591).*

In proceedings where alien was found deportable for assisting Nazis in political persecution, alien was given adequate notice that evidence surrounding execution of villagers would be used as basis for seeking deportation, where alien knew incident would be basis for some INS charges, even if government disclaimed any reliance on that evidence to support INA § 241(a)(19) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(19)] charge, and where government's disclaimer caused alien no prejudice. *Maikovskis v Immigration & Naturalization Service (1985, CA2) 773 F2d 435,* cert den *(1986) 476 US 1182, 91 L Ed 2d 544, 106 S Ct 2915.*

Holtzman amendments directed at Nazi war criminals which in essence eliminate Attorney General's power to grant such persons discretionary relief are not prohibited bill of attainder as deportation is not punishment; legislation furthers nonpunitive purpose of protecting citizenry from persons harmful to public good and there is little indication in legislative record of any Congressional intent to use Holtzman amendment to punish, rather Congress' goals were a reaffirmation of commitment to human rights; Nazi war criminals are not a class of persons entitled to enhanced scrutiny under equal protection clause and therefore system of excluding and deporting such persons is not denial of equal protection of laws. *Linnas v INS (1986, CA2) 790 F2d 1024,* cert den *(1986) 479 US 995, 93 L Ed 2d 600, 107 S Ct 600,* reh den *(1987) 479 US 1070, 93 L Ed 2d 1012, 107 S Ct 964.*

Alien is collaterally estopped from relitigating in deportation proceedings facts which were established in denaturalization proceedings and showed alien's activities in Nazi concentration camps in pre-war Germany, where alien's willful misrepresentation regarding his presence at 2 concentration camps was litigated in denaturalization proceedings and was ground for deportation. *Schellong v U.S. Immigration & Naturalization Service (1986, CA7) 805 F2d 655, 91 ALR Fed 747,* cert den *(1987) 481 US 1004, 95 L Ed 2d 199, 107 S Ct 1624,* reh den *(1987) 482 US 921, 96 L Ed 2d 687, 107 S Ct 3199.*

Holtzman Amendment *(8 USCS § 1251* [redesignated 1227] former subsection (a)(19)) was intended to close undesirable loophole which had not mandated exclusion or deportation of aliens who were involved in Nazi persecution; construction of term "persecution" is intended to be consistent with administrative and judicial case law developed in interpreting other persecution provisions contained in immigration laws; persecution because of political opinion includes persecution of Communists; alien's motivations and intent for participating in persecution are irrelevant; alien deportable under Holtzman Amendment is statutorily ineligible for suspension of deportation under *8 USCS § 1254. In re Laipenieks (1983, BIA) 18 I & N Dec 433,* revd on other grounds (1985, CA9) *750 F2d 1427.*

Prisoner of war of Nazis who was forced to serve upon penalty of death as concentration camp guard is deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(19) for assisting Nazis in persecuting others even if actions were involuntary and he personally harbored no racial or religious prejudice against Jews; objective effect of alien's actions, not his motivation and intent, controls in determining whether he assisted in persecution within

meaning of *8 USCS § 1251* [redesignated 1227] (a)(19). *In re Fedorenko (1984, BIA) 19 I & N Dec 57.*

Alien is deportable under INA § 241(a)(19) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(19)] where (1) alien assisted Nazis by his duties as guard to prevent prisoners' escape from concentration camp and by his supervision and training of camp prison guards; (2) record established that persecution was systematic and ongoing at concentration camp and alien was aware of it, despite lack of specific evidence that alien engaged in acts of brutality against prisoners; (3) persecution was on basis of prisoners' religious or political beliefs, despite absence of evidence that alien had either religious or political motivations for his actions; and (4) alien was clearly under direction of, or in association with, Nazi government of Germany; INA § 241(a)(19) [*8 USCS § 1251* [redesignated 1227] (a)(19)] is not unconstitutional ex post facto law or bill of attainder. *In re Kulle (1985, BIA) 19 I & N Dec 318,* affd (1987, CA7) *825 F2d 1188,* cert den *(1988) 484 US 1042, 98 L Ed 2d 860, 108 S Ct 773.*

142. --Evidence and burden of proof

In proceedings where alien found deportable under INA § 241(a)(19) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(19)], INS not required to prove alien's own personal motivation, or that alien identified self with Nazis' philosophy; however, INS must prove by clear, unequivocal, and convincing evidence that persecution, in which alien participated, was undertaken because of political opinion held by those persecuted. *Maikovskis v Immigration & Naturalization Service (1985, CA2) 773 F2d 435,* cert den *(1986) 476 US 1182, 91 L Ed 2d 544, 106 S Ct 2915.*

Alien is properly deported under INA § 241(a)(19) [*8 USCS § 1251* [redesignated 1227] former subsection (a)(19) because of evidence that alien was present at place of persecution, Gross-Rosen concentration camp, and assistance in persecution may be inferred from circumstances; incarcerations, forced labor, cruel and inhuman treatment and arbitrary and severe punishment are sufficient to rise to level of persecution; once fact of forced labor is established, remaining proof is routinely satisfied; tagging of prisoners along racial, national or religious lines creates strong presumption of persecution because of race, religion, national origin or political opinion. *Kulle v Immigration & Naturalization Service (1987, CA7) 825 F2d 1188,* cert den *(1988) 484 US 1042, 98 L Ed 2d 860, 108 S Ct 773.*

Prior denaturalization judgment did not collaterally estop relitigation of facts necessary to finding that immigrant was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (a)(19) for allegedly participating in persecution of Jews during Nazi occupation of Lithuania because finding that immigrant participated in persecution of Jews was not necessary to prior judgment denaturalizing immigrant under *8 USCS § 1451*(a) for concealment of material fact that immigrant was mayor of Kaunas, Lithuania during occupation, and not "office clerk" as immigrant represented in application for U.S. citizenship. *Palciauskas v U.S. INS (1991, CA11) 939 F2d 963.*

143. Conviction for aggravated felony [*8 USCS § 1227*(a)(2)(A)(iii)]

The INS properly characterized an alien's state conviction for attempted sexual abuse of a child as an "aggravated felony" where INA § 101(a)(43) [*8 USCS § 1101*(a)(43)] defines an aggravated felony as, among other things, any crime of violence, as defined in *18 USCS § 16,* for which the term of imprisonment imposed, regardless of any suspension thereof, is at least 5 years, and: (1) attempted sexual abuse of a child constitutes a crime of violence because a child is incapable of consent, and thus there is always a substantial risk that

physical force will be used to ensure the child's compliance; and (2) the alien was sentenced to an indeterminate sentence not to exceed 5 years, and although his sentence was suspended with 36-months probation on the condition that the alien serve 1 year, with possible release after 3 months, the statute requires that the suspension itself be disregarded, and thus the conditions enabling that suspension must also be disregarded. *United States v Reyes-Castro (1993, CA10 Utah) 13 F3d 377.*

In determining whether alien is deportable based on his conviction of aggravated felony under "crime of violence" provision of *8 USCS § 1101*(a)(43), INS may consider longest possible term of imprisonment of indeterminate sentence to determine whether term of imprisonment of at least five years has been imposed. *Nguyen v INS (1995, CA10) 53 F3d 310.*

BIA properly concluded that alien's conviction for attempted lewd assault constituted crime of violence such that it amounted to aggravated felony, since Florida statute upon which conviction was based included provision for substantial risk of physical force against victim. *Ramsey v INS (1995, CA11) 55 F3d 580, 9* FLW Fed C 195.

To determine whether particular conviction amounts to crime of violence such that it may be considered aggravated felony, Court must look to statutory definition of crime rather than actions that led to conviction. *Ramsey v INS (1995, CA11) 55 F3d 580, 9* FLW Fed C 195.

Any alien, including legal, permanent resident alien, who is convicted of aggravated felony at any time after admission to this country is deportable under *8 USCS § 1227*(a)(2)(A)(iii). *Park v INS (2001, CA9 Cal) 241 F3d 1186, 2001 CDOS 1839, 2001* Daily Journal DAR 2369.

Driving while intoxicated is not crime of violence, and therefore, is not aggravated felony; consequently, alien convicted thereof is not subject to removal under *8 USCS § 1227*(a)(2)(A)(iii). *Bazan-Reyes v INS (2001, CA7) 256 F3d 600.*

Meaning of phrase "sexual abuse of a minor" is matter of federal law; however, to determine whether alien was convicted of sexual abuse, court must look to elements of offense of his state conviction. *Mugalli v Ashcroft (2001, CA2 NY) 258 F3d 52.*

State sentencing enhancement statute which applied to defendant due to previous drunk driving convictions does not convert underlying drunk driving offense into crime of violence or aggravated felony that can constitute basis for removal as aggravated felon under *8 USCS § 1227*(a)(2)(A)(iii). *Montiel-Barraza v INS (2002, CA9) 275 F3d 1178, 2002 CDOS 424.*

Judicial review is not precluded by *8 USCS § 1252*(a)(2)(C) where alien claims that her prior criminal conviction does not qualify as aggravated felony as defined in *8 USCS § 1101*(a)(43)(M)(i), and that she therefore cannot be deported pursuant to *8 USCS § 1227*(a)(2)(A)(iii). *Valansi v Ashcroft (2002, CA3) 278 F3d 203.*

A conviction under *18 USCS § 924*(c)(1) for use of a firearm during a drug trafficking crime is a conviction for immigration purposes because it creates a distinct offense separate from the underlying offenses, rather than merely enhancing the penalty for those offenses; thus, an alien convicted under *18 USCS § 924*(c)(1) was rendered deportable under INA § 241(a)(2)(A)(iii) [*8 USCS § 1251* [redesignated 1227] (a)(2)(A)(iii)] as an alien convicted of an aggravated felony. *In re K.L. (1993, BIA) 20 I & N Dec 654.*

An alien's conviction for use of a firearm during a drug trafficking crime, by its terms, involved the unlawful distribution of a controlled substance, which establishes that the conviction was a conviction for an aggravated felony within the meaning of INA § 241(a)(2)(A)(iii) [*8 USCS § 1251* [redesignated 1227]

(a)(2)(A)(iii)]. *In re K.L. (1993, BIA) 20 I & N Dec 654.*

Immigration judge properly denied respondent's application for asylum and withholding of deportation, noting that respondent's convictions for armed robbery, assault and battery and other assault offenses were aggravated felonies under *8 USCS 1101*(a)(43) in that they were crimes of violence for which respondent had sentence imposed of 5 years or more, and noting that such convictions for aggravated felonies also were for particularly serious crimes. *In re D- (1994, BIA) 20 I & N Dec 827.*

Under plain language of *8 USCS § 1101*(a)(43)(F), which defines aggravated felony as crime of violence for which term of imprisonment is at least one year, there is no requirement that offense actually have been felony, as that term is conventionally understood; thus, alien subject to deportability under *8 USCS § 1227*(a)(2)(A)(iii) as convicted aggravated felon need only have been convicted of crime of violence for which term of imprisonment was at least one year. *Wireko v Reno (2000, CA4) 211 F3d 833.*

III. PARDONS [*8 USCS § 1227*(a)(2)(A)(4)]

144. Constitutionality

Immigration and Nationality Act *(8 USCS § 1101* et seq.) is not unconstitutional for reason that those convicted of crime after its enactment may, under *8 USCS § 1251* [redesignated 1227] former subsection (b), petition court in which convicted for recommendation against their deportation which, if made, is mandatory upon attorney general, while those convicted before its enactment had no opportunity to apply for such recommendation. *United States ex rel. Circella v Sahli (1954, CA7 Ill) 216 F2d 33,* cert den *(1955) 348 US 964, 99 L Ed 752, 75 S Ct 525.*

145. Construction

8 USCS § 1251 [redesignated 1227] former subsection (b) announces federal standard for determination of what constitutes first entry of judgment or passing of sentence; while it may be assumed that in many or even most cases that standard incorporates and adopts relevant state law, it does not do so where sole basis for vacation and re-entry of judgment of conviction is to repair omission to make statutory recommendation against deportation permitted by the subsection. *United States ex rel. Piperkoff v Esperdy (1959, CA2 NY) 267 F2d 72.*

146. Executive pardons

A foreign pardon, in and of itself, does not wipe out an alien's foreign conviction or relieve him from the disabilities that flow therefrom. *Mullen-Cofee v INS (1992, CA11) 976 F2d 1375, 6 FLW Fed C 1325, amd, reh den (1993, CA11 Fla) 986 F2d 1364, 7* FLW Fed C 189.

Respondent's full and unconditional pardon by Governor of State of California for his narcotics conviction was ineffective under *8 USCS § 1251* [redesignated 1227] former subsection (b) to immunize him from deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(11) on ground of his narcotics violation, nor did it remove narcotics ground of inadmissibility under *8 USCS § 1182* former subsection (a)(23). *In re Lee (1967, BIA) 12 I & N Dec 335.*

Automatic pardon granted to first offender never previously convicted of felony upon completion of sentence under provisions of Louisiana State Constitution does not satisfy pardon requirements of *8 USCS § 1251* [redesignated 1227] former subsection (b)(1) so as to exempt conviction from serving as basis of deportability under § 1251 [redesignated 1227] (a)(4) because: (1) pardon is

not "full" because it does not restore alien to former status of innocence; (2) pardon is not "unconditional" because specifically conditioned upon completion of sentence; and (3) pardon is not "executive" pardon because neither granted by Governor of Louisiana nor issued by otherwise constitutionally-recognized executive body, but rather granted automatically by operation of law. *In re Nolan (1988, BIA) 19 I & N Dec 539, 101 ALR Fed 657.*

147. --Who may issue

Alien was subject to deportation as one convicted abroad prior to entry of crime involving moral turpitude, even though he received legislative or executive pardon from foreign government. *In re G---- (1953, BIA) 5 I & N Dec 129.*

By limiting benefit of *8 USCS § 1251* [redesignated 1227] former subsection (b) to presidential and gubernatorial pardons only, Congress manifested express intention to grant exemption from deportation only to those aliens who had obtained executive pardon; legislative pardon was ineffective to prevent deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4). *In re R---- (1954, BIA) 5 I & N Dec 612.*

Unconditional pardon granted by State board under constitutional provision designating such board as supreme pardoning authority of State was effective pardon meeting test of *8 USCS § 1251* [redesignated 1227] former subsection (b) that it be granted by Governor of State or U.S. President. *In re D---- (1957, BIA) 7 I & N Dec 476.*

Full and unconditional pardon granted alien by Mayor of first-class city in Nebraska for violation of city ordinance was effective pardon within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (b), which prevents deportation where President of U.S. or Governor of State pardons offense for which alien is deportable, since Nebraska law designates mayor of first-class city as supreme pardoning authority in regard to conviction under city ordinance. *In re C----R---- (1958, BIA) 8 I & N Dec 59.*

General amnesty and pardon proclaimed by former United States High Commissioner for Germany relating to convictions and sentences imposed by United States Military Government Courts was unconditional executive pardon within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (b). *In re K-- (1961, BIA) 9 I & N Dec 336.*

148. --Requisite that pardon be full and unconditional

Conditional pardon by Governor of any state, whether it contain condition precedent or condition subsequent, is ineffective to prevent deportation under *8 USCS § 1251* [redesignated 1227] former subsection (a)(4) providing for deportation of aliens convicted of crimes involving moral turpitude. *In re C---- (1954, BIA) 5 I & N Dec 630.*

Pardon issued by governor which specified that its purpose was "to prevent deportation" was effective under *8 USCS § 1251* [redesignated 1227] former subsection (b) as full and unconditional. *In re L---- (1954, BIA) 6 I & N Dec 355.*

Pardon restoring civil rights issued by Governor of Wisconsin subsequent to amendment of State law providing for automatic restoration of civil rights upon completion of sentence was not full and unconditional pardon within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (b). *In re R---- (1960, BIA) 8 I & N Dec 677.*

Automatic pardon granted to first offender never previously convicted of felony upon completion of sentence under provisions of Louisiana State Constitution does not satisfy pardon requirements of *8 USCS § 1251* [redesignated

1227] former subsection (b)(1) so as to exempt conviction from serving as basis of deportability under § 1251 [redesignated 1227] former subsection (a)(4) because: (1) pardon is not "full" because it does not restore alien to former status of innocence; (2) pardon is not "unconditional" because specifically conditioned upon completion of sentence; and (3) pardon is not "executive" pardon because neither granted by Governor of Louisiana nor issued by otherwise constitutionally-recognized executive body, but rather granted automatically by operation of law. *In re Nolan (1988, BIA) 19 I & N Dec 539, 101 ALR Fed 657.*

IV. WAIVER BASED ON FAMILY RELATIONSHIPS [*8 USCS § 1227*(a)(1)(H)]

149. Generally

Section 241(f) of Immigration and Nationality Act as enacted in 1961 *(8 USC § 1251* [redesignated 1227] former subsection (f)), which saves from deportation alien who has certain close familial relationship to United States citizen or lawful permanent resident, is merely codification, with no substantive change, of analogous provision in § 7 of 1957 amendment of Act (71 Stat 640). *Immigration & Naturalization Service v Errico (1966) 385 US 214, 17 L Ed 2d 318, 87 S Ct 473.*

Judicial review by Court of Appeals of denial of waiver of deportation under *8 USCS § 1251* [redesignated 1227] former subsection (f)(1) by Board of Immigration Appeals is restricted to issue of whether Board abused its discretion and thereby acted arbitrarily or capriciously; fact that BIA erroneously considered alien's original fraudulent act of misrepresenting his marital status in gaining entry to United States when statute for relief from deportation only applies to cases of fraudulent entry was harmless where alien had committed separate fraudulent act in attempting to procure entry of his wife into United States by means of second, sham marriage. *Liwanag v INS (1989, CA5) 872 F2d 685,* reh den, en banc (1989, CA5) *878 F2d 1435.*

IJ erred in not considering alien's application for suspension of deportation on merits, where application was submitted after both sides had rested, but before IJ rendered decision, and under 8 CFR § 242.22, IJ must render decision before alien may make motion to reopen. *Zamora-Morel v INS (1990, CA5) 905 F2d 833.*

The denial of her children's applications for discretionary relief from deportation under INA § 212(k) [*8 USCS § 1182*(k)], and of the mother's application for a waiver of deportation under former INA § 241(f) [*8 USCS § 1251* [redesignated 1227] former subsection (f)] (now INA § 241(a)(1)(H) [*8 USCS § 1251* [redesignated 1227] (a)(1)(H)]), was affirmed, where the mother's knowledge of her children's ineligibility for immigrant visas (because their father, through whom they were all claiming status, had fraudulently obtained lawful permanent resident status in the U.S.) was imputed to the children, and their resulting ineligibility for § 212(k) [§ 1182(k)] waivers eliminated the predicate for the mother's relief under former § 241(f) [§ 1251 [redesignated 1227] former subsection (f)], since she then had no children who were lawful permanent residents in the U.S. *Senica v INS (1994, CA9) 16 F3d 1013, 94 CDOS 1101, 94* Daily Journal DAR 1880.

Pursuant to INA § 212(c) *(8 USCS § 1182*(c)), BIA may waive deportation of alien who has been lawful permanent resident for 7 years and who is being deported for certain specified reasons, including criminal conviction. *Varela-Blanco v INS (1994, CA8) 18 F3d 584.*

Waiver of deportation pursuant to INA § 212(c) *(8 USCS § 1182*(c)) is within BIA's discretion. *Varela-Blanco v INS (1994, CA8) 18 F3d 584.*

In exercising its discretion to waive deportation of alien, BIA considers

following favorable factors: (1) family ties within United States (2) residence of long duration in this country, (3) evidence of hardship to respondent and her family if deportation occurs, (4) service in this country's armed forces, (5) history of employment, (6) existence of property or business ties, (7) evidence of value and service to community, (8) proof of genuine rehabilitation if criminal record exists, and (9) other evidence attesting to alien's good character; BIA also considers following adverse factors: (1) nature and underlying circumstances of deportation ground at issue, (2) any additional significant violations of United States immigration laws, (3) existence of criminal record and, if so, its nature, recency, and seriousness, and (4) other evidence of bad character or undesirability. *Varela-Blanco v INS (1994, CA8) 18 F3d 584.*

Court of appeals will find that BIA acted arbitrarily or capriciously if it made decision regarding waiver of deportation without rational explanation, departed inexplicably from established policy, or discriminated invidiously against particular race or group. *Varela-Blanco v INS (1994, CA8) 18 F3d 584.*

150. Purpose

Section 241(f) of Immigration and Nationality Act *(8 USC § 1251* [redesignated 1227] former subsection (f)), which saves from deportation alien who has certain close familial relationship to United States citizen or lawful permanent resident, is designed to accomplish humanitarian result by preventing breaking up of families composed in part at least of American citizens. *Immigration & Naturalization Service v Errico (1966) 385 US 214, 17 L Ed 2d 318, 87 S Ct 473.*

Congressional intent in enacting *8 USCS § 1251* [redesignated 1227] former subsection (f) was to unite families and preserve family ties. *United States v Palmer (1972, CA9 Cal) 458 F2d 663.*

Alien whose wife and United States citizen child reside in alien's own country is not entitled to stay in United States because purpose of *8 USCS § 1251* [redesignated 1227] former subsection (f) is to promote family unity. *Chung Wook Myung v District Director of United States Immigration & Naturalization Service (1972, CA9) 468 F2d 627.*

Fundamental purpose in enacting statute barring deportation of aliens who have gained admission by fraud or misrepresentation if effect thereof would be to separate families composed in part of American citizens or lawful permanent residents *(8 USCS § 1251* [redesignated 1227] former subsection (f)) is humanitarian desire to keep family units together. *Lai Haw Wong v Immigration & Naturalization Service (1973, CA9) 474 F2d 739.*

Congress enacted former *8 USCS § 1251*(f) as humanitarian measure to ease plight of aliens who had entered country by fraud but who had close family ties with U.S. citizens or permanent resident aliens, and provision was intended to keep families united by relaxing some of rigorous provisions of existing law. *Persaud v Immigration & Naturalization Service (1976, CA3) 537 F2d 776.*

Congress, in enacting *8 USCS § 1251* [redesignated 1227] former subsection (f) was intent upon granting relief to limited classes of aliens whose fraud was of such nature that it was more than counterbalanced by after-acquired family ties; it did not intend to arm dishonest alien seeking admission to our country with sword by which he could avoid numerous substantive grounds for exclusion unrelated to fraud, which are set forth in § 212(a) of Immigration and Nationality Act *(8 USCS § 1182*(a). *Cobian-Hernandez v Immigration & Naturalization Service (1978, CA7) 587 F2d 872, 48 ALR Fed 275.*

Purpose of authorizing Board of Immigration Appeals (BIA) to grant waiver of deportation under *8 USCS § 241*(f)(1) is to unite families in instances where immigrant who has relative who is United States citizen or permanent resident in

United States obtains entry into United States by fraud, however, proof of alien's family ties is not dispositive of issue; thus, where alien committed separate fraud, apart from procurement of his or her own entry into United States, in his attempt to procure entry of his wife into United States by means of second, sham marriage, BIA did not abuse its discretion in considering alien's subsequent misrepresentation in obtaining entry for his spouse into United States as additional factor which weighed against granting waiver of deportation, despite fact that alien also had child who was United States citizen by virtue of his being born in United States. *Liwanag v INS (1989, CA5) 872 F2d 685,* reh den, en banc (1989, CA5) *878 F2d 1435.*

Intent of Congress in enacting *8 USCS § 1251* [redesignated 1227] former subsection (f) was humanitarian desire to unite families and preserve family ties; fundamental purpose for such legislation was to forestall deportation where it would break up family composed in part of United States citizens or lawful permanent residents. *In re Da Lomba (1978, BIA) 16 I & N Dec 616* (superseded by statute on other grounds as stated in *Dallo v Immigration & Naturalization Service (1985, CA6 Mich) 765 F2d 581).*

151. Construction

Section 241(f) of Immigration and Nationality Act *(8 USC § 1251* [redesignated 1227] former subsection (f)) cannot be applied with strict literalness. *Immigration & Naturalization Service v Errico (1966) 385 US 214, 17 L Ed 2d 318, 87 S Ct 473.*

8 USCS § 1251 [redesignated 1227] former subsection (f) is to be narrowly construed. *Pereira-Barreira v United States Dep't of Justice, Immigration & Naturalization Service (1975, CA2) 523 F2d 503.*

8 USCS § 1251 [redesignated 1227] former subsection (f) is to be construed narrowly and does not apply where deportation is sought under *8 USCS § 1251* [redesignated 1227] (a)(2) on ground that alien has remained in country illegally after expiration of permission to do so. *Pereira-Barreira v United States Dep't of Justice, Immigration & Naturalization Service (1975, CA2) 523 F2d 503.*

Although applicable statutory language refers to fraudulent misrepresentations, innocent misrepresentation of status should be no less within protection of *8 USCS § 1251* [redesignated 1227] former subsection (f) than deliberate one. *In re Yuen Lan Hom (1968, SD NY) 289 F Supp 204.*

Burden of proving eligibility for waiver of deportability under INA § 241(f)(2) [*8 USCS § 1251* [redesignated 1227] former subsection (f)(2)] based upon a single offense of simple possession of 30 grams or less of marihuana, and where alien is an immediate relative of a United States citizen or permanent resident, rests with the alien; where the amount of marihuana which the alien was convicted of possessing cannot be determined from the criminal statute under which he was convicted, or the transcript from the criminal proceedings, the alien must present clear and convincing evidence independent of the conviction record to meet the burden of proving that his conviction involved less than 30 grams of marihuana. *In re Grijalva (1988, BIA) 19 I & N Dec 713.*

152. --"Parent"

Purpose of authorizing Board of Immigration Appeals (BIA) to grant waiver of deportation under *8 USCS § 241*(f)(1) is to unite families in instances where immigrant who has relative who is United States citizen or permanent resident in United States obtains entry into United States by fraud, however, proof of alien's family ties is not dispositive of issue; thus, where alien committed separate fraud, apart from procurement of his or her own entry into United

States, in his attempt to procure entry of his wife into United States by means of second, sham marriage, BIA did not abuse its discretion in considering alien's subsequent misrepresentation in obtaining entry for his spouse into United States as additional factor which weighed against granting waiver of deportation, despite fact that alien also had child who was United States citizen by virtue of his being born in United States. *Liwanag v INS (1989, CA5) 872 F2d 685,* reh den, en banc (1989, CA5) *878 F2d 1435.*

Alien who was admitted to United States as second preference immigrant under *8 USCS § 1153*(a)(2), by misrepresenting that he was unmarried son of lawful permanent resident when he was actually married at time, and who subsequently gave false testimony under oath regarding his marriage during investigation by INS, was statutorily eligible for relief of waiver of deportation under INA § 241(f)(1) [*8 USCS § 1251* [redesignated 1227] former subsection (f)(1)] where alien had illegitimate child who was U.S. citizen by virtue of birth in United States and where alien legitimated child by subsequent marriage. *Liwanag v INS (1989, CA5) 872 F2d 685,* reh den, en banc (1989, CA5) *878 F2d 1435.*

Term "parent" within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (f) does not include alien father of citizen child who is unable to prove that he has adopted child in accordance with law of his residence. *In re Johnson (1970, BIA) 13 I & N Dec 644.*

Under California law providing that issue of void marriage is legitimate, alien who fraudulently gained admission to United States through bigamous marriage to United States citizen comes within ambit of *8 USCS § 1251* [redesignated 1227] former subsection (f) as "parent" of issue of bigamous marriage. *In re Sandin-Nava (1972, BIA) 14 I & N Dec 88.*

Father of United States citizen child born in District of Columbia as result of alien's bigamous marriage to United States citizen for purpose of gaining entry to United States is not "parent" within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (f) despite alien's subsequent move to California; child was born illegitimate under law of District of Columbia and California statute which declares issue of void marriage legitimate at birth does not render legitimate a child born illegitimate elsewhere. *In re Alzona (1973, BIA) 14 I & N Dec 496.*

Aliens whose daughter had immigrated to United States as spouse of permanent resident alien and who is still resident alien herself, are "parents" within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (f). *In re Louie (1973, BIA) 14 I & N Dec 421* (ovrld in part on other grounds by *In re Raqueno (1979, BIA) 17 I & N Dec 10).*

153. Applicability

Notwithstanding that once alien qualifies under provisions of *8 USCS § 1251* [redesignated 1227] former subsection (f) he or she will not be deported, that section will not be available when its application would permit alien to avoid basis for deportation which was separate, independent, and unrelated to fraud. *Persaud v Immigration & Naturalization Service (1976, CA3) 537 F2d 776.*

8 USCS § 1251 [redesignated 1227] former subsection (f) applies only to deportation proceedings and not to exclusion proceedings. *Reyes-Cerna v Immigration & Naturalization Service (1972, ND Ill) 345 F Supp 1348.*

Alien's motion to reopen petition for writ of audita querela and to enjoin deportation proceedings was denied where alien did not establish extraordinary circumstances which would merit vacating felony conviction for importing marijuana, and government would be prejudiced if conviction was vacated because deterrent effect of consequences of criminal record and efficient enforcement of immigration laws outweighed alien's interest in circumventing legal requirements

for permanent resident status. *United States v Holder (1990, DC Puerto Rico) 741 F Supp 27,* affd (1991, CA1 Puerto Rico) *936 F2d 1, 105 ALR Fed 871.*

Provisions of *8 USCS § 1251* [redesignated 1227] former subsection (f) are limited solely to deportation proceeding and are not applicable to rescission proceeding under *8 USCS § 1256. In re Alemis (1967, BIA) 12 I & N Dec 456.*

Benefit of *8 USCS § 1251* [redesignated 1227] former subsection (f) is not available in exclusion proceedings. *In re Diaz (1975, BIA) 15 I & N Dec 488.*

8 USCS § 1251 [redesignated 1227] former subsection (f), by its terms, refers only to deportation proceedings and is therefore not applicable to rescission proceedings instituted under *8 USCS § 1256* to determine alien's eligibility for previous grant of adjustment of status. *In re Pereira (1984, BIA) 19 I & N Dec 169.*

154. Requirement that alien be otherwise admissible

Term "otherwise admissible" as used in *8 USCS § 1251* [redesignated 1227] former subsection (f) must be interpreted as requiring that alien meet only physical, mental, and moral standards for admission to United States set out in *8 USCS § 1182. Gonzalez de Moreno v United States Immigration & Naturalization Service (1974, CA5) 492 F2d 532.*

In deportation proceedings, in order for alien to establish eligibility for relief under INA § 241(f) [*8 USCS § 1251* [redesignated 1227] former subsection (f)], alien must allege and show by suitable facts or particulars that he was otherwise admissible at time of entry. *Ponce-Gonzalez v Immigration & Naturalization Service (1985, CA5) 775 F2d 1342.*

Eligibility for waiver of deportation for fraudulent entry under INA § 241(f) [*8 USCS § 1251* former subsection (f)] requires that alien be otherwise admissible to United States at time of entry, except for certain enumerated grounds of admissibility which do not include inadmissibility under INA § 212(a)(17) [*8 USCS § 1182*(a)(17)] for unlawfully seeking re-entry without permission of Attorney General after prior deportation. *In re Roman (1988, BIA) 19 I & N Dec 855.*

155. --Criminal conduct

Multiple prior deportations for crimes involving moral turpitude and illegal entry render alien not otherwise admissible within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (f); *8 USCS § 1251* [redesignated 1227] former subsection (f) speaks only of fraud or misrepresentation and words "otherwise admissible" do not wipe out separate grounds of excludability and deportability. *Hames-Herrera v Rosenberg (1972, CA9 Cal) 463 F2d 451.*

BIA erred in finding alien who had 2 U.S. citizen children ineligible for suspension of deportation under § 1251 [redesignated 1227] former subsection (f)(2), on ground that alien had 2 convictions for possession of marijuana, where INS had withdrawn allegation relating to second incident following IJ's proper determination that deferred adjudication of second charge under Texas law did not constitute conviction. *Zamora-Morel v INS (1990, CA5) 905 F2d 833.*

Alien who had gained entry to United States by fraudulently concealing prior narcotics conviction is deportable notwithstanding existence of appropriate relationship under *8 USCS § 1251* [redesignated 1227] former subsection (f); waiver of fraud provided for by *8 USCS § 1251* [redesignated 1227] former subsection (f) must not be construed as constituting waiver of substantive basis for fraud since such construction would result in situation where aliens who did not lie about their inadmissibility on such grounds could obtain only limited waiver, whereas aliens who had lied about those matters would be entitled to total waiver as matter of right. *In re Eng (1968, BIA) 12 I & N Dec 855.*

156. --Draft evasion

Alien who had during previous period of residence applied for and received Selective Service classification of IV-C as alien exempt from military service is not "otherwise admissible" within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (f). *Loos v Immigration & Naturalization Service (1969, CA7) 407 F2d 651,* cert den *(1969) 396 US 877, 24 L Ed 2d 135, 90 S Ct 150.*

Draft evasion is separate ground for inadmissibility sufficient to render inapplicable waiver of deportation provided for by *8 USCS § 1251* [redesignated 1227] former subsection (f). *Jolley v Immigration & Naturalization Service (1971, CA5) 441 F2d 1245,* cert den *(1971) 404 US 946, 30 L Ed 2d 262, 92 S Ct 302.*

157. --Quota requirements

Term "otherwise admissible" in *8 USCS § 1251* [redesignated 1227] former subsection (f) does not mean that alien in question must have complied with quota requirements, as alternative construction would strip provision of practically all meaning. *Immigration & Naturalization Service v Errico (1966) 385 US 214, 17 L Ed 2d 318, 87 S Ct 473.*

Alien whose fraud, while prosecuted as invalid documentation, actually related to concealment of quota ineligibility is protected by *8 USCS § 1251* [redesignated 1227] former subsection (f) as one otherwise admissible within meaning of statute. *Cacho v Immigration & Naturalization Service (1976, CA9) 547 F2d 1057.*

158. --Work violations

8 USCS § 1251 [redesignated 1227] former subsection (f), which modifies deportation procedure in case of existence of certain family relationships, is not effective to relieve from deportation alien who entered United States in violation of *8 USCS § 1182*(a)(14) which regulates admission of aliens seeking to enter United States for purpose of performing skilled or unskilled labor. *In re Gonzalez (1978, BIA) 16 I & N Dec 564.*

Alien is not rendered ineligible to apply for relief from deportation under § 1251 [redesignated 1227] waiver based on family relationship, as not being "otherwise admissible" due to lack of valid labor certification, where she was exempt from labor certification requirement because under age 16 when visa was issued. *In re Agustin (1979, BIA) 17 I & N Dec 14.*

159. --Other particular circumstances

The BIA erred in determining that an alien was statutorily ineligible for a waiver of deportation, as the parent of a U.S. citizen child, under former INA § 241(f) [former *8 USCS § 1251* [redesignated 1227] former subsection (f)], where the alien's sham marriage to a U.S. citizen, while still married to his first wife, did not render the alien excludable under former INA § 212(a)(9) [former *8 USCS § 1182*(a)(9)] as having admitted committing acts constituting the essential elements of a crime involving moral turpitude, because the alien thought his first marriage was invalid and thus did not intend to marry two spouses, as implicitly required by Arizona's bigamy statute. *Braun v INS (1993, CA9) 992 F2d 1016, 93 CDOS 3481, 93* Daily Journal DAR 5983.

The BIA abused its discretion in denying the alien parent of a U.S. citizen child a waiver of deportation under former INA § 241(f) [former *8 USCS § 1251* [redesignated 1227] former subsection (f)], where it erroneously considered the alien's initial fraudulent entry into the U.S., using a visa obtained on the basis of his prior sham marriage to a U.S. citizen, as an adverse factor; otherwise, the condition that rendered the alien eligible for relief would be

the very condition justifying the denial of such relief. *Braun v INS (1993, CA9) 992 F2d 1016, 93 CDOS 3481, 93* Daily Journal DAR 5983.

Marriage to U.S. citizen did not qualify alien for relief under *8 USCS § 1251* [redesignated 1227] former subsection (f) since he was not "otherwise admissible," his membership in Communist Party of foreign state preventing his coming within class of persons described in *8 USCS § 1251* [redesignated 1227] . *Langhammer v Hamilton (1961, DC Mass) 194 F Supp 854,* affd (1961, CA1 Mass) *295 F2d 642.*

Deportation of alien child of lawful permanent resident who had circumvented visa issuing process by false claim to citizenship was proper since he was not "otherwise admissible" within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (f). *United States v Osuna-Picos (1970, SD Cal) 319 F Supp 558,* revd without opinion (1971, CA9 Cal) *443 F2d 907.*

160. Requisite excludability at entry

Alien who originally entered U.S. validly as visitor for pleasure is not eligible for relief of waiver of deportability since he was not excludable at time of entry. *Salas-Velazquez v INS (1994, CA8) 34 F3d 705.*

8 USCS § 1251 [redesignated 1227] former subsection (f) only waives excludability grounds that exist at time of alien's entry into United States; where alien's fraudulent act took place after he had entered United States, when he sought adjustment of status under *8 USCS § 1255,* alien is not excludable on basis of fraud at time of entry and therefore provisions of *8 USCS § 1251* [redesignated 1227] former subsection (f) are inapplicable. *In re Connelly (1984, BIA) 19 I & N Dec 156.*

Since 8 USCS § 1251 [redesignated 1227] former subsection (f) only waives excludability grounds that exist at time of alien's entry into United States, fraudulent act in seeking adjustment of status to permanent resident after entry into United States renders waiver provision inapplicable despite birth of citizen child. *In re Connelly (1984, BIA) 19 I & N Dec 156.*

161. Requisite fraudulent intent

It is not necessary that deportation charge be brought under *8 USCS § 1182*(a)(19) in order for waiver based upon family relationship under *8 USCS § 1251* [redesignated 1227] to be operative if, in fact, immigration documentation was obtained by fraud, and, where alien admitted she entered as unmarried child and was actually married at time, but unsuccessfully defended on basis that marriage was in fact invalid, record must be remanded for receipt of evidence on issue of whether there was fraudulent intent when alien represented herself as single. *In re Agustin (1979, BIA) 17 I & N Dec 14.*

Provision saving from deportation aliens who were excludable at time of entry on basis of having procured visa or other documentation by fraud or misrepresentation, due to family relationships, forgives deportability where there has been compliance with immigrant visa requirements and entry document is invalid because of fraud; however, fraudulent misrepresentation is necessary to qualify alien for relief, and "innocent" misrepresentation, as where petitioner, rather than fraudulently concealing married status, innocently indicated he was single because she believed query referred to status on date petition was filed on her behalf, is not sufficient. *In re Raqueno (1979, BIA) 17 I & N Dec 10.*

162. Lack of knowledge of a request for waiver

Regulation (22 CFR § 42.122(d)) requiring consular officials to warn alien of marriageable age to whom visa has been issued based on status as child that he or she will be unable to enter United States upon marriage does not apply to INS

officials handling adjustment of status, and may not be raised to estop government from enforcing immigration laws. *Bae v Immigration & Naturalization Service (1983, CA8) 706 F2d 866.*

In proceedings where alien was found deportable, immigration judge did not violate 8 CFR § 242.17 by failing to inform alien of right to apply for relief from deportation under INA § 241(f) [*8 USCS § 1251* [redesignated 1227] former subsection (f)], where alien failed to satisfy burden of demonstrating apparent eligibility for relief from deportation. *Bu Roe v Immigration & Naturalization Service (1985, CA9) 771 F2d 1328.*

In deportation proceedings of alien overstaying visitor visa in violation of INA § 241(a)(2) [*8 USCS § 1251* [redesignated 1227] (a)(2)] alien's failure to request relief under INA § 241(f) [*8 USCS § 1251* [redesignated 1227] former subsection (f)] is not excused by reason of alleged ineffective counsel, where alien fails to demonstrate counsel's ineffectiveness, counsel did explain significance of waiver of notice of deportability to alien, and immigration judge made sure alien understood nature and significance of waivers involved and nature of proceedings; nor is INS estopped from deporting alien because of failure to investigate sua sponte to determine alien's eligibility for INA § 241(f) [*8 USCS § 1251* [redesignated 1227] former subsection (f)], where alien did not apply for § 241(f) relief and did not meet burden of making application for, and of offering proof of, such eligibility. *Ponce-Gonzalez v Immigration & Naturalization Service (1985, CA5) 775 F2d 1342.*

163. Effect of grant of waiver

Status acquired under *8 USCS § 1251* [redesignated 1227] former subsection (f) did not retroactively validate appellant's original illegal entry, and appellant could therefore not use date of his illegal entry to meet five year residence requirement of *8 USCS § 1427. Yik Shuen Eng v Immigration & Naturalization Service (1972, CA2 NY) 464 F2d 1265.*

Alien admitted to United States upon presentation of immigrant visa who, in subsequent deportation proceedings, was recipient of benefits of *8 USCS § 1251* [redesignated 1227] former subsection (f) was alien lawfully admitted for permanent residence. *In re Tadena (1975, BIA) 15 I & N Dec 458.*

The grant of a waiver of deportability under former INA § 241(f) [*8 USCS § 1251* [redesignated 1227] former subsection (f)] (present INA § 241(a)(1)(H) [*8 USCS § 1251* [redesignated 1227] (a)(1)(H)]) waives not only the ground for exclusion but also the underlying fraud, and thus retroactively validates the alien's initial unlawful entry. *In re Sosa-Hernandez (1993, BIA) 20 I & N Dec 758.*

164. Effect of denial of waiver on citizen child

Under 8 USCS § 1251 [redesignated 1227] former subsection (f), allegation that aliens are parents of children born in United States does not alone suffice to save aliens from deportation, since deportation of parent does not deprive child of any constitutional rights. *Cortez--Flores v Immigration & Naturalization Service (1974, CA5) 500 F2d 178.*

Infant's status as citizen and his dependence on his alien parent do not prevent deportation of alien parent. *Enciso--Cardozo v Immigration & Naturalization Service (1974, CA2) 504 F2d 1252.*

Deportation of alien husband and wife caused only incidental impact on minor child, albeit serious one, and deportation of alien parents did not contravene minor child's rights under Ninth Amendment. *Cervantes v Immigration & Naturalization Service, Dep't of Justice (1975, CA10) 510 F2d 89.*

Aliens who illegally remain in United States for birth of their citizen child

cannot thereby gain favored status over those aliens who comply with immigration laws. *Gonzalez-Cuevas v Immigration & Naturalization Service (1975, CA5) 515 F2d 1222.*

Deportation of non-immigrant visitors who had overstayed visas by five years did not deprive children of aliens, who were citizens, of any constitutional rights. *Gonzalez-Cuevas v Immigration & Naturalization Service (1975, CA5) 515 F2d 1222.*

Although not expressly required to do so by INA § 241(a)(1)(H) [*8 USCS § 1251* [redesignated 1227] (a)(1)(H)] (in contrast to INA § 244(a)(1) [*8 USCS § 1254*(a)(1)]), the BIA must consider the hardship to a U.S. citizen child that would result from deportation of the child's alien parent (along with all other relevant factors), especially where the child has grown from an infant to school age while the BIA's decision is long delayed, without explanation. *Casem v INS (1993, CA9 Cal) 8 F3d 700, 93 CDOS 8061, 93* Daily Journal DAR 13806.

Infant who sought stay of deportation order for his parents was denied such stay since court reasoned that he had not been denied due process of law or equal protection even though his parents must take him with them when they were ordered deported from the United States. *Application of Amoury (1969, SD NY) 307 F Supp 213.*

Deportation of alien mother does not result in deportation of U.S. citizen children from United States in violation of Constitution; entry into United States is matter of Congressional discretion, and Congress did not give minor children who were born in United States due to their parents' decision to reside in United States ability to confer immigration benefits on their parents. *Dimaren v Immigration & Naturalization Service (1974, SD NY) 398 F Supp 556.*

Deportation of both adult alien parents of citizen infant plaintiff did not violate due process principles; however, deportation of both alien parents of five-month-old citizen infant would constitute de facto deportation of citizen in violation of law. *Acosta v Gaffney (1976, DC NJ) 413 F Supp 827,* revd on other grounds (1977, CA3 NJ) *558 F2d 1153, 42 ALR Fed 915.*

Fact that deportation of mother would result in de facto deportation of her daughter, citizen of United States, does not nullify underlying deportation order of parent or render it arbitrary or capricious. *Pelupo De Toledo v Kiley (1977, ED NY) 436 F Supp 1090.*

165. Waiver as to particular deportation grounds

8 USCS § 1251 [redesignated 1227] former subsection (f) did not save from deportation alien who had previously been deported and then reentered United States without first having obtained permission to apply for re-entry from attorney general as required by *8 USCS § 1182*(a)(17). *De Vargas v Immigration & Naturalization Service (1968, CA5) 409 F2d 335,* cert den *(1969) 396 US 895, 24 L Ed 2d 172, 90 S Ct 192.*

Provisions of *8 USCS § 1251* [redesignated 1227] former subsection (f) were not intended by Congress to apply to those who entered United States as stowaways. *Gambino v Immigration & Naturalization Service (1970, CA2) 419 F2d 1355,* cert den *(1970) 399 US 905, 26 L Ed 2d 559, 90 S Ct 2195.*

BIA did not abuse its discretion in denying motion to reopen deportation proceedings for consideration of waiver of deportation under INA § 241(f) [*8 USCS § 1251* [redesignated 1227] former subsection (f)] where petitioner, convicted of possession of approximately 20 ounces of marijuana, was unable to demonstrate prima facie case of eligibility for relief. *Reid v Immigration & Naturalization Service (1985, CA3) 756 F2d 7.*

BIA's denial of relief under INA § 241(f)(1) [*8 USCS § 1251* [redesignated 1227] former subsection (f)(1)] was proper since (1) alien's primary family unit

will not be disrupted, (2) alien's immediate family consists of wife and self who are both in United States illegally, (3) alien is recently convicted of crime for which he can be excluded; such factors outweigh favorable factors of length of stay and stable employment record. *Hernandez-Robledo v Immigration & Naturalization Service (1985, CA9) 777 F2d 536.*

If alien is being deported for committing serious crime, he may be required to introduce heightened level of favorable evidence demonstrating unusual or outstanding equities to obtain waiver of deportation. *Varela-Blanco v INS (1994, CA8) 18 F3d 584.*

Although immigration visa was validly issued to alien on basis that she was, at time, minor child of preference immigrant, her subsequent marriage to alien prior to entry into United States removed her from that status so that her misrepresentation that at time of entry she continued to be unmarried child of preference immigrant cannot be excused under *8 USCS § 1251* [redesignated 1227] former subsection (f). *In re Iesce (1967, BIA) 12 I & N Dec 156.*

166. --Nonimmigrant with defects in status

Provisions of *8 USCS § 1251* [redesignated 1227] former subsection (f) did not operate as waiver of deportation for alien visitor for pleasure found deportable under *8 USCS § 1251* [redesignated 1227] (a)(9) for failing to comply with conditions of his nonimmigrant status, since deportation charge did not result directly from misrepresentation. *Cervantes v Immigration & Naturalization Service, Dep't of Justice (1975, CA10) 510 F2d 89.*

167. --Lack of valid documentation

Section 241(f) of Immigration and Nationality Act *(8 USC § 1251* [redesignated 1227] former subsection (f)), which provides that provisions relating to deportation of aliens who sought to procure, or procured, visas or entry into United States by fraud or misrepresentation shall not apply to alien otherwise admissible at time of entry who is spouse, parent, or child of United States citizen, is not limited in its application to situation where deportation charge is brought under § 212(a)(19) of Act *(8 USC § 1182*(a)(19)), which excludes from entry any alien who has procured visa or other documentation by fraud or by willfully misrepresenting material fact. *Immigration & Naturalization Service v Errico (1966) 385 US 214, 17 L Ed 2d 318, 87 S Ct 473.*

Deportation for entry without valid documentation of former resident alien whose alien registration card had expired is not waived by *8 USCS § 1251* [redesignated 1227] former subsection (f) since test is no longer whether alien gained entry through fraud and if so whether he was otherwise excludable but is now merely issue of what section of Immigration and Naturalization Service Act forms technical basis for alien's deportation with waiver being available under *8 USCS § 1251* [redesignated 1227] former subsection (f) only for fraud or quota evasion. *Castro-Guerrero v Immigration & Naturalization Service (1975, CA5) 515 F2d 615.*

Waiver of deportation provisions set forth in *8 USCS § 1251* [redesignated 1227] former subsection (f) were not extended to aliens charged with being deportable under *8 USCS § 1251* [redesignated 1227] (a)(1) on ground that they were excludable at time of entry under § 1182(a)(20). *Guel-Perales v Immigration & Naturalization Service (1975, CA9) 519 F2d 1372.*

Forgiveness clause of *8 USCS § 1251* [redesignated 1227] former subsection (f) is applicable where *8 USCS § 1182*(a)(19) governing misrepresentation in regard to documents and entry is only basis of alien's excludability; thus, forgiveness clause will not prevent deportation of alien who was excludable on basis of both *8 USCS § 1182*(a)(19) and (20) governing nonpossession of valid required

documents. *Escobar Ordonez v Immigration & Naturalization Service (1976, CA5) 526 F2d 969,* cert den *(1976) 426 US 938, 49 L Ed 2d 390, 96 S Ct 2655,* reh den *(1977) 430 US 923, 51 L Ed 2d 603, 97 S Ct 1343.*

Alien convicted under *18 USCS § 1546* for impersonating resident alien at time of entry and found deportable under *8 USCS § 1251* [redesignated 1227] (a)(5) governing deportation for noncompliance or conviction in regard to registration or entry documents was not entitled to waiver of deportability under *8 USCS § 1251* [redesignated 1227] former subsection (f). *De Leon v Immigration & Naturalization Service (1976, CA2) 547 F2d 142,* cert den *(1977) 434 US 841, 54 L Ed 2d 105, 98 S Ct 137.*

Section 241(f) of Immigration and Nationality Act *(8 USCS § 1251* [redesignated 1227] former subsection (f)) waives deportation for aliens who are excludable at time of entry by reason of fraud specified in § 212(a)(19) of Act *(8 USCS § 1182*(a)(19)); § 241(f) does not extend to any of grounds of excludability specified in § 212(a) other than subsection (19). *Cobian-Hernandez v Immigration & Naturalization Service (1978, CA7) 587 F2d 872, 48 ALR Fed 275.*

Alien who enters United States without labor certificate may not claim "forgiveness" exception under § 1251 [redesignated 1227] former subsection (f). *Skelly v Immigration & Naturalization Service (1980, CA10) 630 F2d 1375.*

Forgiveness provision of *8 USCS § 1251* [redesignated 1227] may not be used by alien to avoid deportation because of failure to have valid labor certificate as required by *8 USCS § 1182*(a)(14), where waiver of labor certificate was obtained by alien through his claim of marriage to U. S. citizen, when, in fact, marriage was fraudulent. *Morales-Cruz v United States (1982, CA5) 666 F2d 289.*

8 USCS § 1251 [redesignated 1227] former subsection (f) does not apply to alien who has obtained nonimmigration visitor's visa by fraud; purpose of *8 USCS § 1251* [redesignated 1227] former subsection (f) is to excuse deportability for fraud or misrepresentation so that alien need not be separated from his American citizen or resident alien parents, spouse, or children and nonimmigrant visa would not permanently facilitate reuniting of such families in United States. *In re Cadiz (1968, BIA) 12 I & N Dec 560.*

Respondent charged with deportability under *8 USCS § 1251* [redesignated 1227] (a)(1) as alien excludable at entry under *8 USCS § 1182*(a)(20) was ineligible for benefits of *8 USCS § 1251* [redesignated 1227] former subsection (f). *In re Jauregui (1975, BIA) 15 I & N Dec 485.*

Alien whose deportation is sought under *8 USCS § 1182*(a)(20) for absence of valid immigrant visa is eligible for waiver under *8 USCS § 1251* [redesignated 1227] former subsection (f) where visa invalidity results solely from alien's fraudulent acts in obtaining visa, constituting grounds for exclusion under *8 USCS § 1182*(a)(19). *In re Da Lomba (1978, BIA) 16 I & N Dec 616* (superseded by statute on other grounds as stated in *Dallo v Immigration & Naturalization Service (1985, CA6 Mich) 765 F2d 581).*

168. --Entry without inspection

Alien who enters United States without inspection so as to be deportable under *8 USCS § 1251* [redesignated 1227] (a)(2), is not saved from deportation under *8 USCS § 1251* [redesignated 1227] former subsection (f) because entry without inspection does not constitute entry into United States procured by fraud or misrepresentation. *Monarrez--Monarrez v Immigration & Naturalization Service (1972, CA9) 472 F2d 119.*

Deportation exception of *8 USCS § 1251* [redesignated 1227] former subsection (f), which is applicable only in cases of actual fraud or misrepresentation, was inapplicable where alien entered without inspection or examination and was found

deportable under *8 USCS § 1251* [redesignated 1227] (a)(1). *Mahone v Immigration & Naturalization Service (1974, CA9) 504 F2d 414,* reh den (1975, CA9) *518 F2d 554.*

Provisions of *8 USCS § 1251* [redesignated 1227] former subsection (f) did not operate as waiver of deportation for alien who entered United States without presenting herself for inspection or being inspected by immigration officer and who was thus deportable pursuant to *8 USCS § 1251* [redesignated 1227] (a)(2), since deportation charge did not result directly from misrepresentation. *Cervantes v Immigration & Naturalization Service, Dep't of Justice (1975, CA10) 510 F2d 89.*

8 USCS § 1251 [redesignated 1227] former subsection (f) does not apply where deportation is sought under *8 USCS § 1251* [redesignated 1227] (a)(2); thus, alien could properly be deported for illegal 1968 entry into United States without proper inspection notwithstanding contention that 1970 readjustment of status, procured by fraudulent documents, constituted "entry" within meaning of *8 USCS § 1251* [redesignated 1227] former subsection (f). *Pereira-Barreira v United States Dep't of Justice, Immigration & Naturalization Service (1975, CA2) 523 F2d 503.*

Alien who entered United States without making any misrepresentations, fraudulent or otherwise, because at time of illegal entry she was asleep in car in which she was riding, is not within protection of *8 USCS § 1251* [redesignated 1227] former subsection (f) notwithstanding subsequent birth to her of United States citizen child, because provisions of *8 USCS § 1251* [redesignated 1227] former subsection (f) apply only to situations involving misrepresentations to gain entry. *In re Gabouriel (1971, BIA) 13 I & N Dec 742.*

Entry without inspection does not encompass fraud which is indispensable ingredient for waiver under *8 USCS § 1251* [redesignated 1227] former subsection (f). *In re Checa (1974, BIA) 14 I & N Dec 661.*

Waiver of deportability under *8 USCS § 1251* [redesignated 1227] former subsection (f) is not available to alien charged with deportability under *8 USCS § 1251* [redesignated 1227] (a)(2) on ground of illegal entry without inspection or presence even though underlying basis for deportability is failure to fulfill marital agreement under § 1251 [redesignated 1227] (c). *In re Diniz (1975, BIA) 15 I & N Dec 447.*

169. --Sham marriages

Alien who lawfully entered United States as nonimmigrant visitor but who subsequently contracted sham marriage with citizen already common-law wife of another man in order to gain resident alien status is not protected by *8 USCS § 1251* [redesignated 1227] former subsection (f) despite his later, apparently valid marriage to another citizen, since *8 USCS § 1251* [redesignated 1227] former subsection (f) is applicable only to aliens excludable at time of entry and alien in question, whatever his subsequent misdeeds, entered under valid nonimmigrant visitor's visa and was thus not excludable at time of entry. *Ferrante v Immigration & Naturalization Service (1968, CA6) 399 F2d 98.*

Alien may be deported pursuant to *8 USCS § 1251* [redesignated 1227] (c)(1) where (1) alien married United States citizen on June 10, 1968, day before his required voluntary departure, (2) after returning to Mexico alien obtained immigrant visa to United States on basis of marriage without disclosing that divorce action was pending, and (3) marriage was annulled and dissolved by court order in Texas on June 19, 1969. *Vasquez-Mondragon v Immigration & Naturalization Service (1977, CA5) 560 F2d 1225.*

Aliens contracting sham marriages to citizens in order to avoid labor certification requirement for entry for purposes of performing skilled or

unskilled labor are not within protection of *8 USCS § 1251* [redesignated 1227] former subsection (f) despite subsequent valid marriages to other persons from which marriages United States citizen children were born. *Cobian-Hernandez v Immigration & Naturalization Service (1978, CA7) 587 F2d 872, 48 ALR Fed 275.*

In failing to reopen deportation proceedings in order to consider discretionary waiver for fraudulently admitted aliens closely related to United States citizens or permanent residence under INA § 241 [*8 USCS § 1251* [redesignated 1227]] Board of Immigration Appeals does not abuse its discretion where alien lacks equity and marries to evade immigration laws in blatant fraudulent manner and such marriage takes place after final order of deportation took effect against him. *Dallo v Immigration & Naturalization Service (1985, CA6 Mich) 765 F2d 581.*

The BIA did not exceed statutory bounds in taking the alien's willful fraud into account in denying the alien a waiver of deportation, as the parent of a U.S. citizen child, under former INA § 241(f) [former *8 USCS § 1251* [redesignated 1227] former subsection (f)]; during an interview with an INS employee concerning the alien's request that his family be allowed to come from Mexico to join him in the U.S., the alien admitted that he had previously obtained a visa based on a prior sham marriage to a U.S. citizen and had re-entered the U.S. using that visa. *Rodriguez-Barajas v INS (1993, CA7) 992 F2d 94.*

170. --Overstay

Although nonimmigrant alien's child was born in United States, benefits under *8 USCS § 1251* [redesignated 1227] former subsection (f) were not available where deportation proceedings against nonimmigrant were based upon overstay under *8 USCS § 1251* [redesignated 1227] (a)(2) rather than upon fraud. *Preux v Immigration & Naturalization Service (1973, CA10) 484 F2d 396,* cert den *(1974) 415 US 916, 39 L Ed 2d 470, 94 S Ct 1413.*

8 USCS § 1251 [redesignated 1227] former subsection (f) is not applicable to alien deported for overstaying his permitted time in United States despite subsequent birth of citizen child where alien's initial entry was result of fraud since such fraud would be irrelevant to issue of overstay which is deportable offense in itself. *Milande v Immigration & Naturalization Service (1973, CA7) 484 F2d 774.*

Although some of alien's children were citizens of United States, provisions of *8 USCS § 1251* [redesignated 1227] former subsection (f) were inapplicable where deportation proceedings were based upon alien's overstay of visa under *8 USCS § 1251* [redesignated 1227] (a)(2) rather than on fraudulent entry. *De Robles v Immigration & Naturalization Service (1973, CA10) 485 F2d 100.*

In deportation proceedings of alien for overstaying visitor visa in violation of INA § 241(a)(2) [*8 USCS § 1251* [redesignated 1227] (a)(2)], alien's collateral attack of earlier deportation order for entry into United States in violation of INA § 241(a)(1) [*8 USCS § 1251* [redesignated 1227] (a)(1)] properly denied, where alleged INS affirmative misconduct for failure to conduct sua sponte investigation under INA § 241(f) [*8 USCS § 1251* [redesignated 1227] former subsection (f)] does not constitute gross miscarriage of justice if alien does not apply for § 241(f) relief, and does not meet burden of making application for, and of offering proof of, such eligibility. *Ponce-Gonzalez v Immigration & Naturalization Service (1985, CA5) 775 F2d 1342.*

Overstaying exchange visitor visa is ground for deportation to which waiver provisions of *8 USCS § 1251* [redesignated 1227] former subsection (f) do not apply and alien's contention that he had gained entry into United States by misrepresenting his intention to depart at expiration of exchange visa is

irrelevant; alien charged with violation which does not come within waiver provisions of *8 USCS § 1251* [redesignated 1227] former subsection (f) may not claim he was guilty of fraud at entry and thereby make himself eligible for waiver. *In re Koryzma (1970, BIA) 13 I & N Dec 514.*

V. ENTRY THROUGH MARRIAGE [*8 USCS § 1227*(a)(1)(G)]

171. Fraudulent marriage

Factual determination based on clear, convincing and unequivocal evidence that alien engaged in fraudulent conduct by entering into marriage for purpose of procuring his entry as immigrant, in final order of deportation, provides clear and substantial basis for District Director's determination that bar of *8 USCS § 1154*(c) precludes alien from thereafter being accorded nonquota or preference status, absent evidence of any gross miscarriage of justice sufficient to support collateral attack on prior proceedings. *In re Agdinaoay (1978, BIA) 16 I & N Dec 545.*

In reviewing action of BIA with respect to claim of alleged marriage fraud, court of appeals conducts very restricted scrutiny to ascertain whether BIA's decision is supported by substantial evidence. *Rodriguez v INS (2000, CA1) 204 F3d 25.*

With respect to alleged marriage fraud, substantive question is whether, at time of marriage, there was intent to establish life together; to extent that evidence of post-marriage conduct bears on this issue, it is relevant. *Rodriguez v INS (2000, CA1) 204 F3d 25.*

172. --Burden of proof

Burden, under provisions of *8 USCS § 1251* [redesignated 1227] former subsection (c), is upon alien to establish that marriage was not contracted for purpose of evading provisions of immigration law when Service has once shown by substantial evidence that alien entered United States on non-quota immigrant visa based on marriage to U.S. citizen entered into two years before entry and terminated within two years after entry. *Sideropoulos v Immigration & Naturalization Service (1966, CA6) 357 F2d 642.*

Burden is upon alien to come forward with sufficient evidence to rebut presumption that visa was procured on basis of fraudulent marriage where government shows that marriage took place less than 2 years prior to entry and that marriage was judicially terminated within 2 years after entry. *Baliza v Immigration & Naturalization Service (1983, CA9) 709 F2d 1231, 12 Fed Rules Evid Serv 759.*

In deportation proceedings against alien charged with entry to United States with immigrant visa procured by fraud on basis of marriage judicially annulled or terminated within 2 years of entry, and for failure or refusal to fulfill marital agreement, sham marriage is found where bride and groom do not intend to establish life together at time they are married; sham marriage is properly found if supported by substantial and probative evidence. *Bu Roe v Immigration & Naturalization Service (1985, CA9) 771 F2d 1328.*

After Government has established prima facie case of deportability under *8 USCS § 1251* [redesignated 1227] former subsection (c)(1), respondent has burden of establishing by preponderance of reasonable, substantial, and probative evidence that he did not marry citizen of United States for express purpose of evading any provisions of immigration laws. *In re T---- (1957, BIA) 7 I & N Dec 417.*

In deportation proceedings under *8 USCS § 1251* [redesignated 1227] former subsection (c), Government has burden of establishing alienage and that

relationship and point of time of marriage, entry, and annulment exist; after Government has done this, burden is upon alien to show that he is within exemption by establishing that marriage was not contracted for purpose of evading immigration laws. *In re V---- (1957, BIA) 7 I & N Dec 460.*

173. --Due process and opportunity to present evidence

In failing to reopen deportation proceedings Board of Immigration Appeals does not abuse discretion where government makes reasonable effort to subpoena witness for cross-examination, alien's marriage less than 2 years prior to entry into United States, terminated less than 2 years after entry, is within statutory presumption of fraud in INA § 241 [*8 USCS § 1251* [redesignated 1227]] and no evidence to rebut presumption is offered. *Dallo v Immigration & Naturalization Service (1985, CA6 Mich) 765 F2d 581.*

Alien properly found deportable as charged under an INA § 241(c)(2) [*8 USCS § 1251* [redesignated 1227] former subsection (c)(2)], and immigration judge did not violate 8 CFR § 103.2(b)(2) by preventing alien from rebutting adverse evidence, nor was alien denied due process by being barred from fully presenting evidence regarding marriage to second spouse, where record does not support alien's assertion that immigration judge precluded him from rebutting derogatory evidence and alien was accorded a full and fair hearing. *Bu Roe v Immigration & Naturalization Service (1985, CA9) 771 F2d 1328.*

174. --Right to counsel

In proceedings where alien found deportable as charged under INA § 241(c)(2) [*8 USCS § 1251* [redesignated 1227] former subsection (c)(2)] alien is not denied effective assistance of counsel, where attorney allegedly failed to elicit critical information from witnesses, and attorney made tactical decision not to cross-examine a witness. *Bu Roe v Immigration & Naturalization Service (1985, CA9) 771 F2d 1328.*

175. --Particular circumstances

Alien failed to prove that his marriage to United States citizen less than two years prior to entry as nonquota immigrant which was terminated by divorce within two years subsequent to entry was not contracted with purpose of evading immigration law where he never lived with wife and saw her only two or three times on street during course of their marriage. *Hamadeh v Immigration & Naturalization Service (1965, CA7) 343 F2d 530,* cert den *(1965) 382 US 838, 15 L Ed 2d 80, 86 S Ct 85.*

Immigrant alien, who married citizen approximately one year before entering United States and who was divorced five months after entering country, came within statutory limitations and, absent proof of nonavoidance of immigration laws, was subject to deportation. *Soares v Immigration & Naturalization Service (1971, CA5) 449 F2d 621.*

Alien properly found to be deportable on basis of sham marriage, where alien divorced his first wife on same day he married second wife who was immigrating to United States as fifth preference visa beneficiary; alien did not live with second spouse after marriage; alien was issued immigrant visa on basis of second marriage and sought employment and accommodation in different city from his second wife; after obtaining his green card alien initiated divorce proceedings from second wife, and upon finalization of divorce remarried his first wife after bringing her to United States. *Bu Roe v Immigration & Naturalization Service (1985, CA9) 771 F2d 1328.*

Alien was not deportable on basis of *8 USCS § 1251* [redesignated 1227] former subsection (c) just because state court annulled his marriage to U.S. citizen

back to date of marriage, where he had entered United States prior to his marriage and his marriage had nothing to do with his entry. *Ciani v Adkins (1954, DC Tex) 126 F Supp 828.*

Prima facie case against petitioner was made out under *8 USCS § 1251* [redesignated 1227] former subsection (c), and determination of hearing officer that petitioner failed to sustain burden of proof cast upon him by statute was supported by substantial evidence, despite conflict in testimony and colored and exaggerated statements made by both petitioner and his former wife. *Todaro v Pederson (1961, ND Ohio) 205 F Supp 612,* affd (1962, CA6 Ohio) *305 F2d 377,* cert den *(1962) 371 US 891, 9 L Ed 2d 124, 83 S Ct 190.*

In finding of deportability under *8 USCS § 1251* [redesignated 1227] former subsection (c)(1), burden of proof was met by clear, unequivocal and convincing evidence that alien's marriage took place less than two years prior to his entry, and that marriage was judicially terminated within two years after entry. *In re Oliveira (1970, BIA) 13 I & N Dec 503.*

176. Failure to fulfill marriage agreement

Government has burden of establishing, under *8 USCS § 1251* [redesignated 1227] former subsection (c)(2), governing deportation for alien's failure to fulfill marital agreement, that its case rests on reasonable, substantial, and probative evidence. *In re M---- (1957, BIA) 7 I & N Dec 601.*

177. --Particular circumstances

Greek alien who married U.S. citizen in civil ceremonies in Bahamas but who refused to consummate marriage until performance of religious ceremony and who, after entering as nonquota immigrant as wife of U.S. citizen failed to go through religious ceremony and never lived with citizen husband, was subject to deportation for failure to live up to "promises for a marital agreement," even though entered into with good faith. *Giannoulias v Landon (1955, CA9 Cal) 226 F2d 356.*

Deportability under *8 USCS § 1251* [redesignated 1227] former subsection (c)(2) was not established where evidence showed that respondent was not at fault for failure to fulfill marital agreement. *In re M---- (1957, BIA) 7 I & N Dec 601.*

Alien had failed and refused to fulfill his marital agreement, which was deemed to have been made for purpose of procuring entry as immigrant, and was deportable under *8 USCS § 1251* [redesignated 1227] former subsection (c)(2) where alien had never lived with his wife, where he stated he was not willing to marry his wife in religious ceremony and that he was not willing to live with her without church wedding, and where, on day of their marriage, his wife traveled to Warsaw for purpose of petitioning to accord him nonquota status. *In re Mietus (1966, BIA) 11 I & N Dec 679.*