

Department of Homeland Security

§ 101.1

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[48 FR 37201, Aug. 17, 1983]

**PART 101—PRESUMPTION OF
LAWFUL ADMISSION**

Sec.

101.1 Presumption of lawful admission.

101.2 Presumption of lawful admission; entry under erroneous name or other errors.

101.3 Creation of record of lawful permanent resident status for person born under diplomatic status in the United States.

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101.5 Special immigrant status for certain G-4 nonimmigrants.

AUTHORITY: 8 U.S.C. 1103, 8 CFR part 2.

§ 101.1 Presumption of lawful admission.

A member of the following classes shall be presumed to have been lawfully admitted for permanent residence even though a record of his admission cannot be found, except as otherwise provided in this section, unless he abandoned his lawful permanent resident status or subsequently lost that status by operation of law:

(a) *Prior to June 30, 1906.* An alien who establishes that he entered the United States prior to June 30, 1906.

(b) *United States land borders.* An alien who establishes that, while a citizen of Canada or Newfoundland, he entered the United States across the Canadian border prior to October 1, 1906; an alien who establishes that while a citizen of Mexico he entered the United States across the Mexican border prior to July 1, 1908; an alien who establishes that, while a citizen of Mexico, he entered the United States at the port of Presidio, Texas, prior to October 21, 1918, and an alien for whom a record of his actual admission to the United States does not exist but who establishes that he gained admission to the United States prior to July 1, 1924, pursuant to preexamination at a United States immigration station in Canada and that a record of such preexamination exists.

(c) *Virgin Islands.* An alien who establishes that he entered the Virgin Islands of the United States prior to July 1, 1938, even though a record of his admission prior to that date exists as a non-immigrant under the Immigration Act of 1924.

(d) *Asiatic barred zone.* An alien who establishes that he is of a race indigenous to, and a native of a country within, the Asiatic zone defined in section 3 of the Act of February 5, 1917, as amended, that he was a member of a class of aliens exempted from exclusion by the provisions of that section, and that he entered the United States prior to July 1, 1924, provided that a record of his admission exists.

(e) *Chinese and Japanese aliens*—(1) *Prior to July 1, 1924.* A Chinese alien for whom there exists a record of his admission to the United States prior to July 1, 1924, under the laws and regulations formerly applicable to Chinese and who establishes that at the time of his admission he was a merchant, teacher, or student, and his son or daughter under 21 or wife accompanying or following to join him; a traveler for curiosity or pleasure and his accompanying son or daughter under 21 or accompanying wife; a wife of a United States citizen; a returning laborer; and a person erroneously admitted as a United States citizen under section 1993 of the Revised Statutes of the United States, as amended, his father not having resided in the United States prior to his birth.

(2) *On or after July 1, 1924.* A Chinese alien for whom there exists a record of his admission to the United States as a member of one of the following classes; an alien who establishes that he was readmitted between July 1, 1924, and December 16, 1943, inclusive, as a returning Chinese laborer who acquired lawful permanent residence prior to July 1, 1924; a person erroneously admitted between July 1, 1924, and June 6, 1927, inclusive, as a United States citizen under section 1993 of the Revised Statutes of the United States, as amended, his father not having resided in the United States prior to his birth; an alien admitted at any time after June 30, 1924, under section 4 (b) or (d) of the Immigration Act of 1924; an alien wife of a United States citizen admitted between June 13, 1930, and December 16, 1943, inclusive, under section 4(a) of the Immigration Act of 1924; an alien admitted on or after December 17, 1943, under section 4(f) of the Immigration Act of 1924; an alien admitted on or after December 17, 1943, under section 317(c) of the Nationality Act of 1940, as amended; an alien admitted on or after December 17, 1943, as a preference or nonpreference quota immigrant pursuant to section 2 of that act; and a Chinese or Japanese alien admitted to the United States between July 1, 1924, and December 23, 1952, both dates inclusive, as the wife or minor son or daughter of a treaty merchant admitted before July 1, 1924, if the hus-

band-father was lawfully admitted to the United States as a treaty merchant before July 1, 1924, or, while maintaining another status under which he was admitted before that date, and his status changed to that of a treaty merchant or treaty trader after that date, and was maintaining the changed status at the time his wife or minor son or daughter entered the United States.

(f) *Citizens of the Philippine Islands*—(1) *Entry prior to May 1, 1934.* An alien who establishes that he entered the United States prior to May 1, 1934, and that he was on the date of his entry a citizen of the Philippine Islands, provided that for the purpose of petitioning for naturalization he shall not be regarded as having been lawfully admitted for permanent residence unless he was a citizen of the Commonwealth of the Philippines on July 2, 1946.

(2) *Entry between May 1, 1934, and July 3, 1946.* An alien who establishes that he entered Hawaii between May 1, 1934, and July 3, 1946, inclusive, under the provisions of the last sentence of section 8(a)(1) of the Act of March 24, 1934, as amended, that he was a citizen of the Philippine Islands when he entered, and that a record of such entry exists.

(g) *Temporarily admitted aliens.* The following aliens who when admitted expressed an intention to remain in the United States temporarily or to pass in transit through the United States, for whom records of admission exist, but who remained in the United States: An alien admitted prior to June 3, 1921, except if admitted temporarily under the 9th proviso to section 3 of the Immigration Act of 1917, or as an accredited official of a foreign government, his suite, family, or guest, or as a seaman in pursuit of his calling; an alien admitted under the Act of May 19, 1921, as amended, who was admissible for permanent residence under that Act notwithstanding the quota limitation's thereof and his accompanying wife or unmarried son or daughter under 21 who was admissible for permanent residence under that Act notwithstanding the quota limitations thereof; and an alien admitted under the Act of May 19, 1921, as amended, who was charged under that Act to the proper quota at the time of his admission or subsequently and who remained so charged.

(h) *Citizens of the Trust Territory of the Pacific Islands who entered Guam prior to December 24, 1952.* An alien who establishes that while a citizen of the Trust Territory of the Pacific Islands he entered Guam prior to December 24, 1952, by records, such as Service records subsequent to June 15, 1952, records of the Guamanian Immigration Service, records of the Navy or Air Force, or records of contractors of those agencies, and was residing in Guam on December 24, 1952.

(i) *Aliens admitted to Guam.* An alien who establishes that he was admitted to Guam prior to December 24, 1952, by records such as Service records subsequent to June 15, 1952, records of the Guamanian Immigration Service, records of the Navy or Air Force, or records of contractors of those agencies; that he was not excludable under the Act of February 5, 1917, as amended; and that he continued to reside in Guam until December 24, 1952, and thereafter was not admitted or readmitted into Guam as a non-immigrant, provided that the provisions of this paragraph shall not apply to an alien who was exempted from the contract laborer provisions of section 3 of the Immigration Act of February 5, 1917, as amended, through the exercise, expressly or impliedly, of the 4th or 9th provisos to section 3 of that act.

(j) *Erroneous admission as United States citizens or as children of citizens.*

(1)(i) An alien for whom there exists a record of admission prior to September 11, 1957, as a United States citizen who establishes that at the time of such admission he was the child of a United States citizen parent; he was erroneously issued a United States passport or included in the United States passport of his citizen parent accompanying him or to whom he was destined; no fraud or misrepresentation was practiced by him in the issuance of the passport or in gaining admission; he was otherwise admissible at the time of entry except for failure to meet visa or passport requirements; and he has maintained a residence in the United States since the date of admission, or (ii) an alien who meets all of the foregoing requirements except that if he were, in fact, a citizen of the United States a passport would not

have been required, or it had been individually waived, and was erroneously admitted as a United States citizen by a Service officer. For the purposes of all of the foregoing, the terms *child* and *parent* shall be defined as in section 101(b) of the Immigration and Nationality Act, as amended.

(2) An alien admitted to the United States before July 1, 1948, in possession of a section 4(a) 1924 Act nonquota immigration visa issued in accordance with State Department regulations, including a child of a United States citizen after he reached the age of 21, in the absence of fraud or misrepresentation; a member of a naturalized person's family who was admitted to the United States as a United States citizen or as a section 4(a) 1924 Act nonquota immigrant on the basis of that naturalization, unless he knowingly participated in the unlawful naturalization of the parent or spouse rendered void by cancellation, or knew at any time prior to his admission to the United States of the cancellation; and a member of a naturalized person's family who knew at any time prior to his admission to the United States of the cancellation of the naturalization of his parent or spouse but was admitted to the United States as a United States citizen pursuant to a State Department or Service determination based upon a then prevailing administrative view, provided the State Department or Service knew of the cancellation.

[23 FR 9119, Nov. 26, 1958, as amended at 24 FR 2583, Apr. 3, 1959; 24 FR 6476, Aug. 12, 1959; 25 FR 581, Jan. 23, 1960; 31 FR 535, Jan. 15, 1966]

§ 101.2 Presumption of lawful admission; entry under erroneous name or other errors.

An alien who entered the United States as either an immigrant or non-immigrant under any of the following circumstances shall be regarded as having been lawfully admitted in such status, except as otherwise provided in this part: An alien otherwise admissible whose entry was made and recorded under other than his full true and correct name or whose entry record contains errors in recording sex, names of relatives, or names of foreign