

Index to Precedent Decisions

Interim Decisions 3766 to 3984

This index covers Interim Decisions 3766 through 3984 in Volumes 26 and 27. See Volume 15 for the cumulative index to Volumes 1 through 15, and Volume 25 for the cumulative index to Volumes 16 through 25.

A

ACCOMPANYING OR FOLLOWING TO JOIN:

derivative status, eligibility for; #3790

ADDRESS REPORTING REQUIREMENTS:

noncompliance with; #3952, 3953

ADJUSTMENT OF STATUS: see also

Exclusion grounds

sec. 209, 1952 Act, as amended:

asylee; #3798, 3879, 3898

Cuban/Haitian Entrant; #3879

discretion; #3967

prior acquisition of lawful permanent resident status bars eligibility for; #3798

terminates asylee status; #3898

sec. 240A(b), 1952 Act, as amended:

sec. 212(h) waiver availability in conjunction with; #3767

sec. 245, 1952 Act, as amended:

“admission” made at time of; #3797, 3837

assimilation to position of alien seeking admission to U.S.; #3767, 3797

requirements for eligibility:

admissibility; #3818, 3867, 3945

eligibility through time of adjudication; #3945

sec. 245(i); #3779, 3790

unauthorized employment:

alien within provisions of sec. 245(c), question of; #3790

sec. 245A, 1952 Act, as amended:

admissibility at time of adjustment required; #3858

jurisdiction; #3858

waiver of inadmissibility; #3858

ADMISSION:

adjustment of status as constituting; #3785, 3797, 3837

defined; #3773, 3785, 3791, 3840, 3913, 3931

exceptions for certain lawful permanent residents seeking; #3773, 3842, 3862

ADMITTED:

defined; #3817, 3913

APPEAL:

“clearly erroneous” standard of review; #3827, 3838, 3912, 3944, 3971

de novo review; #3838, 3866, 3912, 3971

fact-finding; #3838, 3912

interlocutory order:

criteria for consideration by Board; #3889

specific issues:

administrative closing of case; #3889

issue not raised below; #3912, 3944, 3976, 3981

issue not raised or meaningfully challenged on; #3777, 3892, 3898, 3934, 3957, 3958, 3963, 3971, 3974, 3979, 3980, 3981, 3982

mootness, question of; #3829

APPLICATION FOR ADMISSION TO UNITED STATES:

admissibility determined on law and facts existing at time application finally considered; #3773

sec. 212(h) waiver availability; #3767

ARRIVING ALIEN:

defined; #3773, 3842, 3862, 3983

from contiguous foreign territory; #3983

prosecutorial discretion to initiate sec. 240 removal proceedings against; #3908

ATTORNEYS AND REPRESENTATIVES:

disciplinary proceedings:

grounds for; #3843

notice to, serves as notice to client; #3784

B

BOARD OF IMMIGRATION APPEALS:

administrative notice; #3906

Attorney General:

authority delegated by; #3776, 3870

regulations of, binding on; #3925

authority to:

administratively close proceedings; #3889, 3935

decline to consider arguments or claims not raised below; #3912, 3944, 3976

engage in fact-finding; #3836, 3838, 3912, 3971

court ruling, effect on Board:

circuit court of appeals; #3772, 3870, 3902, 3956, 3964

jurisdiction, question of authority to consider:

adjustment of status under sec. 245A(b); #3858

bond; #3868

cancellation of certificate of citizenship by DHS; #3895

constitutionality of statute; #3774, 3776, 3835, 3899, 3905, 3975, 3983
 custody status, change of; #3868
 guilt of convicted alien; #3774
 institution of proceedings by district director:
 asylum-only pursuant to Visa Waiver Program referral; #3846
 removal; #3889, 3983
 “no risk” determination; #3800, 3897
 parole; #3773
 relief pursuant to a treaty; #3776
 visa petitions; #3776
 memoranda of Government not binding on; #3779, 3860
 precedent decisions; #3883
 standard of review; #3782, 3838, 3843, 3851, 3912, 3944
 unpublished decision, effect of; #3964
BOND, DELIVERY:
 authority to:
 determine or review conditions of release; #3829
 burden of proof: *see* Burden of proof
 discretionary determination; #3868, 3980
 factors considered in determining bond; #3868, 3914, 3980
 mandatory detention, question of; #3770
 procedures for determining conditions of release; #3980
 redetermination is separate from removal proceedings; #3980, 3983
BURDEN OF PROOF:
 attorney or representative disciplinary proceedings; #3843
 bond proceedings; #3770, 3868, 3914, 3980
 discretionary/mandatory relief:
 adjustment of status; #3867
 asylum and withholding of deportation or removal; #3769, 3795, 3811, 3828, 3838, 3841, 3848, 3892, 3893, 3912, 3928, 3970, 3971, 3979, 3983
 cancellation of removal:
 sec. 240A(b); #3777, 3791, 3822, 3850, 3873, 3865, 3963, 3981
 special rule under NACARA; #3891
 Torture Convention; #3899, 3915, 3944, 3970, 3976
 waivers:
 sec. 209(c); #3967
 foreign law; #3982
 removal proceedings:
 alien:
 admissibility; #3791, 3956, 3983
 credibility; #3915
 eligibility for relief; #3791
 citizenship, U.S., claimed; #3895
 Government:
 alienage; #3983
 fraud in asylum application; #3968
 inadmissibility of returning resident; #3773, 3842
 motion for in absentia hearing; #3983
 removability; #3815, 3906, 3983
 materiality of misrepresentation; #3902
 mental competency; #3851

standards of proof compared; #3903, 3960, 3968, 3983
 visa petition proceedings:
 burden on petitioner; #3782, 3801, 3860, 3897, 3903
 marriage; #3960
 standard of proof; #3903, 3960

C

CANCELLATION OF REMOVAL: *see also* Discretionary relief
 sec. 240A(a):
 aggravated felon; #3855
 continuous residence; #3781, 3840, 3845, 3913, 3934, 3951
 discretion, factors considered; #3774
 lawfully admitted for permanent residence; #3781
 sec. 240A(b):
 continuous physical presence; #3822, 3845, 3849, 3850, 3935
 convicted of specified offense:
 admission and temporal requirements not applicable; #3931, 3939
 convicted of:
 crime involving moral turpitude; #3777, 3823, 3899, 3931, 3939, 3963, 3978
 multiple offenses; #3816
 violation of protection order; #3932
 “convicted of an offense under,” meaning of; #3823, 3931, 3932, 3939
 petty offense exception; #3777, 3823, 3931, 3939
 discretion, factors considered; #3978
 exceptional and extremely unusual hardship; #3981
 good moral character: *see also* Crime involving moral turpitude; Good moral character
 calculation of period of; #3865
 qualifying relatives; #3981
 sec. 240A(b)(2):
 discretion, factors considered; #3808
 good moral character; #3808
 inadmissible or deportable under specified grounds; #3767
 special rule under NACARA:
 continuous physical presence; #3854
 participation in persecution; #3891
CHILD:
 adopted:
 abuse of immigration laws as a concern; #3844
 age requirement; #3844
 retroactive or nunc pro tunc order; #3844
 specific jurisdictions, adopted in:
 Hawaii; #3844
 “aging out” of child status, question of; #3942
 definition of; #3826
 illegitimate (born out of wedlock):
 legal differences from legitimate children abolished:
 specific jurisdictions:
 Jamaica; #3826

legitimate or legitimated:
 legitimated, definition of; #3826
 specific jurisdictions:
 Jamaica; #3826
 stepchild:
 marriage creating relationship:
 sham; #3782
 unaccompanied alien:
 jurisdiction over asylum application of;
 #3942

CITIZENSHIP:
 certificate of:
 cancellation of; #3895
 citizenship not conferred by; #3895
 derivative; #3792, 3826, 3895
 false claim to: *see* Deportation grounds;
 Inadmissibility grounds

CONDITIONAL PERMANENT RESIDENT:
 admitted as lawful permanent resident,
 question of; #3813

CONSTITUTIONAL RIGHTS:
 rights of:
 returning lawful permanent resident;
 #3842

CONVICTION OF CRIME:
 aggravated felony:
 bar to discretionary relief from removal;
 #3813, 3967
 definition; #3793, 3799, 3857, 3859,
 3871, 3885, 3907, 3936
 “described in,” meaning of; #3949
 divisible statute; #3807, 3809, 3825,
 3874, 3890
 inadmissibility, conviction for not a
 ground of; #3905
 legislative history; #3910
 procedure for determining; #3861, 3872,
 3890, 3901, 3949
 question whether crime relates to:
 firearms offense; #3793
 specific offenses:
 accessory to a felony; #3936
 aiding and abetting; #3901
 attempt; #3799
 burglary offense:
 home invasion; #3910
 crime of violence under 18 U.S.C. § 16:
 definition; #3807, 3839, 3855,
 3857, 3871, 3874, 3920
 divisible statute; #3807, 3825,
 3874, 3890
 imprisonment of at least 1 year;
 #3863
 procedure for determining; #3807,
 3825, 3839, 3857, 3871, 3874,
 3885
 specific offenses:
 attempted voluntary manslaughter;
 #3920
 battery:
 aggravated; #3857, 3871
 felony; #3839
 simple; #3863
 felony discharge of a firearm;
 #3807, 3825, 3874, 3890
 forcible sodomy; #3797
 interference with aircraft (laser
 directed at pilot’s eyes); #3789
 mayhem; #3885
 possession of ammunition by a
 felon; #3793
 sexual abuse of a minor; #3824
 standard for determining; #3920
 drug offenses: *see* Conviction of
 Crime: drug offenses
 kidnapping under 18 U.S.C § 1201;
 #3949
 obstruction of justice; #3936, 3964
 perjury; #3883
 prostitution business; #3927
 rape; #3907
 sexual abuse of a minor; #3824
 theft offense:
 possession of stolen property;
 #3799
 receipt of stolen property; #3894,
 3896
 robbery; #3901
 robbery by force or fear; #3872
 congressional intent to remove criminal
 aliens; #3910
 domestic violence, stalking or child abuse:
 child abuse, neglect, or abandonment:
 defined; #3856
 harm or injury not required; #3856
 specific offenses:
 child endangerment; #3856
 corruption of minors; #3772
 domestic violence:
 crime of violence, question of; #3863
 domestic nature of the crime; #3863
 procedure for determining; #3863
 stalking; #3774, 3924
 drug offenses:
 aggravated felony; #3786, 3809, 3815,
 3919
 divisible statute; #3809, 3961
 guilty knowledge; #3809
 possession of minimal amount of
 marijuana; #3770, 3814
 procedure for determining; #3814, 3815,
 3956, 3961
 question whether crime relates to:
 controlled substance:
 drug paraphernalia; #3770
 narcotics not on Federal drug
 schedule; #3815, 3956
 illicit possession or traffic in drugs:
 possession of controlled substance;
 #3840
 sale of narcotics not on Federal
 drug schedule; #3815
 trafficking:
 definition for determining aggravated
 felony; #3786, 3809, 3919
 failure to appear; #3861
 failure to appear for service of sentence;
 #3859
 Federal law determines immigration conse-
 quences of; #3939
 final conviction for immigration purposes,
 question of:
 adjudication of guilt withheld; #3855

direct appellate review exhausted or waived; #3834, 3934
 expunction of record of conviction; #3884
 juvenile delinquency adjudication; #3785
 post-conviction remedy sought; #3934
 pretrial intervention program; #3900
 specific jurisdictions:
 New York; #3934
 standard for determining; #3884, 3934
 vacated conviction; #3923, 3934
 firearms violation:
 antique firearm exception; #3807
 specific offenses:
 felony discharge of a firearm; #3807
 transporting a loaded firearm; #3886
 law at time of conviction applies; #3924, 3939
 mens rea; #3883, 3896
 record of conviction:
 defined; #3863, 3978
 sentence:
 actually imposed; #3939
 confinement as a condition of probation; #3855
 confinement in a substance abuse treatment facility; #3855
 enhancement of; #3797
 imprisonment for a year or more; #3855
 indeterminate; #3855
 maximum that could be imposed based on law at time of conviction; #3939
 specified offense against a minor; #3897
 violation of protection order; #3909, 3932
CRIME INVOLVING MORAL TURPITUDE:
 divisible statute; #3875, 3887, 3899
 moral turpitude defined; #3768, 3775, 3777, 3812, 3823, 3873, 3875, 3877, 3878, 3888, 3899, 3906, 3916, 3931, 3934, 3963, 3972
 petty offense exception; #3931, 3939
 procedure for determining; #3768, 3775, 3812, 3833, 3873, 3875, 3877, 3887, 3899, 3906, 3916, 3931, 3934, 3972, 3978
 sentence of a year or more “may be imposed”; #3939
 specific offenses:
 animal fighting; #3777, 3931
 assault and battery:
 simple; #3963
 with a deadly weapon; #3888
 with intent to cause fear of imminent serious physical injury; #3963
 attempt:
 generally; #3934
 criminal sale of controlled substance; #3934
 burglary; #3899
 criminal copyright infringement; #3873
 criminally negligent homicide; #3906
 “deadly conduct”; #3823
 drug possession, sale or importation; #3862, 3934
 extortion; #3905

fraud:
 obtaining passport by false statement; #3791
 possession of forged instrument; #3939
 gambling; #3905
 indecency with a child; #3875
 indecent assault; #3772
 indecent exposure; #3775
 larceny; #3877, 3878
 malicious vandalism with gang enhancement; #3812
 menacing; #3963
 misprision of felony; #3916
 petty larceny; #3783, 3878
 possession of child pornography; #3978
 reckless endangerment; #3768
 solicitation:
 marijuana possession for sale; #3862
 sexual:
 of a law enforcement officer posing as a minor; #3887
 of a minor; #3887, 3978
 statutory rape; #3978
 terroristic threats; #3972
 standard of care:
 guilty knowledge; #3888, 3978
 intent; #3888, 3916, 3972
 mistake of age as defense; #3978
 negligence; #3906
 recklessness; #3768, 3823, 3972
 strict liability; #3887, 3978
 willfulness; #3873
 within 5 years of admission, question of; #3931, 3939

D

DEPARTURE FROM UNITED STATES:
 during pendency of deportation or removal proceedings; #3771
 evidence of voluntary return sufficient to break continuous physical presence; #3849, 3850
DEPORTATION GROUNDS:
 endangering public safety or national security; #3789
 false claim to U.S. citizenship; #3867, 3957
 inadmissible at time of sec. 245A(b) adjustment; #3858
 violation of protection order; #3909
 voted in violation of law; #3835
DISCRETIONARY RELIEF: *see also*
 Adjustment of status; Cancellation of removal; Good moral character; Permission to reapply; Persecution; Temporary protected status; Voluntary Departure; Waivers
 adverse factors:
 circumstances of crime; #3958
 criminal activity; #3875, 3967
 false testimony; #3865, 3958
 aggravated felony conviction as bar to; #3813
 biometrics requirements; #3846
 discretionary denial, notwithstanding statutory eligibility; #3958

DISTRICT DIRECTOR:

authority to add charges or amend notice to appear; #3983
 jurisdiction, question of authority to consider:
 asylum; #3908
 institution of removal proceedings; #3889, 3908
 parole; #3908
 prosecutorial discretion; #3889, 3908, 3983

DUE PROCESS:

continuation of removal proceedings, alien's right to; #3955
 counsel:
 actions of, binding on alien; #3783
 ineffective assistance of; #3865, 3970
 fundamental fairness; #3784, 3853, 3908, 3935, 3951
 interpreter, right to; #3915
 notice; #3935, 3951, 3952, 3975, 3983
 prejudice; #3774, 3955, 3974

E**ESTOPPEL:**

collateral (res judicata):
 applicability to:
 criminal removal grounds; #3910
 hearing for termination of deferral of removal; #3810
 motion to reconsider; #3925
 applied flexibly in administrative proceedings; #3910
 equitable:
 authority to apply; #3827

EVIDENCE:

admissibility:
 documents:
 in Government possession:
 Form I-9; #3818
 relevant to discretionary determination; #3958
 fundamental fairness; #3827, 3853
 hearsay; #3810, 3827
 probative, question of; #3827
 citizenship, certificate of; #3895
 corroboration; #3828, 3971
 counsel's statements as evidence; #3975
 inconsistencies in; #3971
 interview at border or airport; #3915
 materiality; #3968
 presumptions:
 alienage from evidence of birth abroad; #3895
 persecution in present or future from past persecution; #3769, 3970
 reliability of Government documents; #3915
 probative, question of; #3860
 reliability; #3915
 right to present and confront; #3803
 rules of evidence:
 generally; #3827, 3853
 submission on appeal; #3897

sufficiency of evidence:

affidavits; #3960
 determined by facts of each case; #3795, 3893, 3903, 3960

to establish:

danger to U.S. security; #3868
 false testimony; #3865
 marriage:
 fraudulent; #3960

witness:

credibility of; #3827, 3915
 expert; #3827

F**FAIR HEARING:**

adjournment of hearing:
 for purpose of:
 adjudication by district director:
 U nonimmigrant visa; #3974
 mental competency concerns; #3784, 3866
 proper service of notice to appear; #3784, 3881
 submission of:
 additional evidence; #3828
 good cause required; #3889, 3974, 3975
 motion for; #3974
 administrative closing of case; #3834, 3889
 conduct of Immigration Judge: *see* Immigration Judge: impartiality of
 in absentia hearing; #3771, 3788, 3952, 3953, 3975, 3983
 mental competency; #3784, 3841, 3851, 3866

FRAUD:

finding of, to invalidate:
 asylum; #3805
 fraudulent marriage:
 defined; #3960
 intent at time of marriage, question of; #3960
 steprelationship, marriage as basis for; #3782
 visa petition, ineligibility for subsequent, under sec. 204(c):
 applicable to spouse only; #3782
 legislative history; #3960
 standard of proof; #3960
 inadmissibility for:
 procuring visa or documents by; #3791, 3948
 knowledge of falsity; #3948, 3957
 materiality of misrepresentation; #3902, 3948, 3968
 willfulness; #3948, 3957

G**GOOD MORAL CHARACTER:**

distinct from discretion; #3958
 false testimony given under oath; #3865

I

IMMIGRANT:

defined; #3983

IMMIGRATION JUDGE:

Attorney General:

authority delegated by; #3776, 3870

regulations of, binding on; #3925

authority to:

administratively close proceedings;
#3889, 3935

amend factual allegations; #3934

make reasonable inferences from
evidence; #3915

set time limits for filing applications;
#3774

terminate proceedings; #3771, 3908,
3955, 3975, 3983

credibility findings; #3772, 3808, 3810,
3818, 3828, 3841, 3847, 3848, 3880,
3892, 3915, 3948, 3971

duty to give alien notice of biometrics
requirements; #3846

duty to inform alien of eligibility for relief;
#3983

frivolousness determination; #3880

impartiality of; #3853

in absentia hearing:

requirements to proceed with; #3975,
3983

rescission of order; #3788, 3952, 3953

inconsistencies, treatment of; #3971

jurisdiction, question of authority to con-
sider:

adjustment of status under sec. 245A(b);
#3858

asylum application; #3942

asylum in withholding of removal pro-
ceedings; #3915

bond; #3829, 3868

cancellation of certificate of citizenship
by DHS; #3895

constitutionality of statute; #3774, 3776,
3983

custody location; #3829

custody status, change of; #3829, 3868

institution of proceedings by district
director:

asylum-only pursuant to Visa Waiver
Program referral; #3846

removal; #3889, 3908, 3983

motion to reconsider by DHS; #3925

political question; #3827

relief pursuant to a treaty; #3776

temporary protected status; #3958

unaccompanied alien child status; #3942

venue; #3829

visa petitions; #3776

waiver:

sec. 209(c); #3879

sec. 212(d)(3)(A)(ii); #3870

jurisdiction, vesting of; #3771, 3935, 3951,
3952, 3953, 3955, 3973, 3975, 3983

order of:

fact findings needed; #3928

reasons for decision required; #3928

rules of procedure; #3828

INADMISSIBILITY GROUNDS:

commission of acts of torture or extra-
judicial killings; #3827, 3892, 3902

false claim to U.S. citizenship; #3791,
3818, 3867, 3957

fraud or misrepresentation; #3791, 3902,
3948

no valid entry document; #3983

present without permission:

exception for battered spouse; #3904

prostitution; #3927

public charge; #3945

terrorist activities:

exceptions; #3864, 3928

material support; #3864, 3928

waiver of; #3864, 3928

INSPECTION:

defined; #3791

J

JUVENILE DELINQUENCY:

definition; #3785

L

LABOR CERTIFICATION:

sec. 245(i), requirements to “grandfather”
an alien for eligibility under; #3779

LAWFUL PERMANENT RESIDENT:

status of parent imputed to child; #3781

termination of status as, question of:

final administrative order of exclusion,
deportation, or removal; #3810

LEGALIZATION:

adjustment from temporary to permanent
resident status; #3858

M

MARRIAGE:

fraud: *see* Fraud: fraudulent marriage

same-sex couples; #3787

sham: *see* Fraud: fraudulent marriage

validity of:

governed by law of place where cele-
brated; #3787

MINOR:

unaccompanied alien:

jurisdiction over asylum application
of; #3942

MOTIONS:

dismissal of removal proceedings; #3955

recalendar; #3889

reconsideration:

authority of DHS to file; #3925

purpose of; #3925

requirements for; 3890

remand:

discretionary determination; #3783

jurisdiction; #3951

requirements for; #3783, 3865

reopening of proceedings:

authority of DHS to file; #3925

deferral of removal, termination of;
#3810

following administrative closing of case; #3889
limitations of time and number; #3788
requirements for:
 new evidence; #3788
 prima facie showing of eligibility; #3788
specific claims:
 in absentia hearing improper; #3952, 3953
specific forms of relief, application for:
 asylum or withholding of deportation or removal; #3788
 sec. 212(c) waiver: #3934
 sua sponte; #3953

N

NATURALIZATION:

certificate of; #3895, 3957
process of; #3895, 3957
revocation of citizenship status; #3895

NAZI PERSECUTION:

eligibility for relief from removal; #3930

NONIMMIGRANT:

specific classification:
 fiancé or spouse of U.S. citizen (K visa):
 adjustment of status; #3945
 affidavit of support from petitioner required; #3945
 marriage nonviable or terminated; #3945
 victim of criminal activity (U visa); #3776, 3870, 3974
 waiver; *see* Waivers: sec. 212(d)(3)(A)(ii), sec. 212(d)(14)

P

PAROLE:

admission, distinguished from; #3773
authority to grant; #3773
Cuban/Haitian Entrant; #3879
prosecution, paroled for purpose of; #3773
refugee; #3879

PARENT:

abandonment of lawful permanent resident status imputed to minor child; #3781

PERSECUTION:

asylum:
 adjustment of status; #3879, 3898
 discretionary relief; #3769
 duress exception to persecutor bar; #3930
 exemptions from eligibility for:
 participation in persecution; #3930
 filing date of application, question of; #3847, 3880, 3970
 frivolous application for; #3880
 humanitarian; #3769
 jurisdiction; #3908, 3942
 physical presence in U.S.; #3879
 reinstated order of removal, ineligibility of alien for; #3925

restrictions on removal; #3898
status, subject to review and termination; #3785
termination of; #3805, 3898

PERSECUTION CLAIM:

country conditions changed, question of #3769, 3788
credibility; #3810, 3841, 3847, 3848, 3892, 3915, 3971
distinctions between forms of relief; #3810
duress exception to persecutor bar; #3930
evidence:

admissibility of:

 advisory opinion of State Department; #3810

 burden of proof and persuasion; #3769, 3795, 3828, 3848, 3893, 3979

 corroboration; #3795, 3828, 3848, 3971

 interview at border or airport; #3915

opportunity to:

 inspect, explain and rebut; #3828, 3848

 present; #3803, 3828

sufficiency of:

 background evidence of a country's conditions; #3795, 3970

 conclusory and generic in nature; #3848

 corroborating evidence; #3828

 failure to report persecution; #3970

 Interpol Red Notice to show serious nonpolitical crime; #3979

 undocumented claims or testimony of applicant; #3828, 3841, 3892

exemptions from eligibility for relief:

 aggravated felony; #3772, 3776, 3785, 3967

 danger to U.S. security; #3928

 participation in persecution; #3891, 3892, 3930

 particularly serious crime; #3772, 3776, 3785, 3806, 3851

 serious nonpolitical crime; #3766, 3979

 terrorist activities; #3864, 3928

 Geneva Convention; #3930

grounds of persecution:

 enumerated; #3795

 "on account of," question of (nexus); #3794, 3795, 3893, 3976

 "one central reason," question of; #3893

 particular social group; #3794, 3795, 3811, 3893, 3899, 3912, 3963, 3976, 3981

 religious beliefs; #3971

specific claims:

 family relationship; #3893, 3976

 former gang members; #3794

 gang activity; #3795, 3981

 landownership; #3976

 military deserter; #3971

 Handbook; #3769, 3898, 3930

legislative history; #3780, 3930
 persecution:
 by individual or nongovernmental group; #3970, 3982
 civil strife or general violence; #3795
 country-wide (relocation, question of); #3769
 defined; #3970
 domestic violence; #3811
 family members threatened or harmed; #3893, 3963
 harm incidental to achievement of political goal; #3891
 question of what constitutes; #3795, 3838, 3970
 Refugee Act; #3780, 3795, 3930
 standard of proof:
 clear probability; #3970
 more likely than not; #3981
 Torture Convention:
 acting in an official capacity (under color of law), question of; #3970
 consent or acquiescence of public official; #3776, 3785, 3809, 3944, 3970
 deferral of removal:
 temporary protection; #3810
 termination of; #3810
 evidence, sufficiency of; #3776, 3785, 3794, 3899, 3915, 3944, 3967, 3970, 3971, 3981
 exemptions from eligibility for:
 participation in persecution; #3930
 standard of proof; #3809, 3915, 3944, 3981
 torture:
 definition of; #3785, 3944, 3970
 question of what constitutes; #3944
 refugee:
 adjustment of status; #3879
 definition; #3780, 3795, 3930
 dual nationality; #3780
 firm resettlement; #3982
 parole; #3879
 specific countries:
 Albania; #3785
 China; #3838
 Colombia; #3864
 Cote d'Ivoire; #3766
 Cuba; #3967
 El Salvador; #3794
 Eritrea; #3930
 Ghana; #3776
 Guatemala; #3795, 3811, 3970, 3976, 3981
 Haiti; #3982
 India; #3848
 Mexico; #3899, 3944, 3963
 Sri Lanka; #3769
 Ukraine; #3971
 withholding of removal:
 availability to alien with reinstated order of removal; #3915
 duress exception to persecutor bar; #3930
 exemptions from eligibility for:
 aggravated felony; #3785, 3967

participation in persecution; #3892, #3930
 particularly serious crime; #3785
 standard of proof; #3970, 3981

R

RECOGNITION AND ACCREDITATION:

application, proper filing of; #3821
 nominal charges; #3820
 nonprofit status; #3819
 requirements for; #3778, 3819, 3820, 3821

REGULATIONS:

interpretation of; #3784, 3843, 3935, 3973
 Supplementary Information; #3960
 transfer of, pursuant to Homeland Security Act of 2002; #3970, 3973

REMOVAL:

reinstated order of; #3915, 3925

REMOVAL GROUNDS: *see* Deportation grounds; Inadmissibility grounds

REMOVAL PROCEEDINGS:

expedited:
 credible fear determination; #3908
 Migrant Protection Protocols; #3975, 3983
 notice to appear:
 charging document; #3973, 3983
 contents of; #3935, 3951, 3952, 3953, 3973, 3975, 3983
 discretion to issue lies with DHS; #3845, 3955
 language other than English not required; #3975
 purpose of; #3983
 service of:
 incompetent alien; #3784
 means of; #3952, 3953, 3975, 3983
 minor; #3881
 sufficiency of; #3952
 terminates continuous residence or physical presence; #3845, 3951
 sufficiency of; #3975, 3983
 termination of; #3973, 3975, 3983

RESIDENCE:

see Temporary protected status

RETURNING LAWFUL PERMANENT

RESIDENT ALIEN:

returning resident defined; #3842
 seeking admission:
 applicability of *Fleuti* doctrine; #3842
 committed criminal offense; #3773

S

SEC. 101(a)(48): *see* Conviction of crime
SEC. 204(c): *see* Fraud: fraudulent marriage
SEC. 209(c): *see* Waivers
SEC. 212(c): *see* Waivers
SEC. 212(d)(3)(A)(ii): *see* Waivers
SEC. 212(d)(14): *see* Waivers
SEC. 212(h): *see* Waivers
SEC. 216(b): *see* Conditional permanent resident
SEC. 216(c)(4): *see* Waivers
SEC. 217: *see* Visa Waiver Program
SEC. 237(a)(1)(H): *see* Waivers

SEC. 240(c): *see* Fraud: fraudulent marriage

SEC. 240A: *see* Cancellation of removal

SEC. 240B: *see* Voluntary departure

SEC. 241(b)(3)(B): *see* Persecution: persecution claim: exemptions from eligibility for relief

SEC. 244(a): *see* Temporary protected status

SEC. 245: *see* Adjustment of Status

SEC. 245A: *see* Adjustment of Status; Waivers

STATUTE:

construction of:

deference given to agency's interpretation; #3775

legislative history, consideration of; #3816, 3828, 3904, 3910, 3913, 3925, 3934, 3936

rules of:

construed to avoid surplusage; #3788, 3913

construed to be consistent; #3767, 3817

eiusdem generis; #3928

lenity (ambiguities resolved in alien's favor); #3896

permissive ("may") versus mandatory ("shall") language; #3958

plain meaning of language:

ambiguous: #3792, 3844, 3845, 3867, 3913, 3923, 3934

controls interpretation: #3782, 3788, 3793, 3798, 3817, 3818, 3891, 3904, 3905, 3957

starting point for interpretation; #3828, 3837, 3842

presumption that Congress:

acts intentionally in disparate inclusion or omission; #3767, 3864, 3897, 3934, 3936, 3957

expresses intent by ordinary meaning of words chosen; #3782, 3792, 3817, 3818

knows legislative history of statute; #3936

knows prior construction of statute; #3934, 3936

retroactivity disfavored; #3910, 3964

specific provision prevails over general one; #3767

statutory term can have different meanings; #3826

divisible; #3807, 3809, 3825, 3874, 3875, 3899

effective date; #3802

retroactive application of; #3802, 3939, 3964

T

TEMPORARY PROTECTED STATUS:

authority to adjudicate; #3958

availability in removal proceedings; #3795

discretion; #3958

requirements for; #3804, 3958

V

VISA PETITION:

bar to petitioner convicted of specified offense against a minor:

actual minor not required; #3897

circumstance-specific approach applied; #3801, 3884

"no risk" determination; #3800, 3801, 3802, 3884, 3897

burden of proof: *see* Burden of proof

eligibility at time of filing; #3790

evidence:

birth records; #3860, 3903

blood tests; #3860, 3903

foreign documents:

reliability of; #3903

sufficiency of; #3903

marriage:

bona fides of; #3787

secondary; #3903

sibling relationship; #3860

marriage:

fraud: *see* Fraud: fraudulent marriage

spouse petition:

same-sex couples; #3787

VISA WAIVER PROGRAM:

asylum applicant; #3846

waiver of rights; #3846

VOLUNTARY DEPARTURE:

discretion:

factors considered; #3791

failure to post bond, effect of; #3887

good moral character: *see also* Crime involving moral turpitude; Good moral character

required for 5 years preceding application; #3840

W

WAIVERS: *see also* Discretionary relief

sec. 209(c):

Cuban/Haitian Entrant; #3879

discretion; #3967

eligibility for; #3798

hardship; #3967

refugee application for adjustment of status; #3967

sec. 212(a)(6)(A)(ii):

requirements for; #3904

sec. 212(c):

availability:

in deportation/removal proceedings:

to:

aggravated felon; #3810

alien lawfully admitted for permanent residence; #3810, 3858

waive deportation grounds; #3796

retroactivity of restrictions on; #3796, 3810

returning to lawful unrelinquished domicile of 7 years; #3913

sec. 212(d)(3)(A)(ii):

authority to adjudicate; #3870

U visa petitioner, availability to; #3870

sec. 212(d)(3)(B)(i):
material support, question of; #3928

sec. 212(d)(14):
authority to adjudicate; #3870
U visa petitioner, specific to; #3870

sec. 212(h):
availability:
in deportation/removal proceedings:
nunc pro tunc or in conjunction with
adjustment application; #3783,
3797, 3876
to:
aggravated felon; #3797, 3813,
3836, 3905
alien lawfully admitted for per-
manent residence; #3813,
3836, 3905
alien whose inadmissibility re-
lates to possession of a small
amount of marijuana; #3956

waive ground for sec. 240A(b)
ineligibility bar; #3767
factors considered; #3967

sec. 216(c)(4):
hardship period; #3817
waiver of joint petition requirement;
#3817

sec. 237(a)(1)(H):
crime involving moral turpitude not
waived; #3876
participation in genocide or extrajudicial
killing, ineligibility for; #3892
waives fraud at time of adjustment;
#3837

sec. 245A(d)(2):
grounds of inadmissibility that may not
be waived; #3858