

(6) Illegal entrants and immigration violators.-

(A) ALIENS PRESENT WITHOUT admission or parole.

- (i) In general.-An alien present in the United States, without being admitted or paroled is inadmissible.
- (ii) Exception for certain battered women and children.-Clause (i) shall not apply to an alien who demonstrates that-
 - (I) the alien is a VAWA self-petitioner;
 - (II) (a) the alien has been battered or subjected to extreme cruelty by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or (b) the alien's child has been battered or subjected to extreme cruelty by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty) or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, and
 - (III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States.

(B) Failure to attend removal proceeding.-Any alien who, after reaching the age of 18¹, without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible unless the alien pays a fine in the amount of \$10,000² or unless the alien departed the US prior to the removal hearing and has not returned nor attempted to return without inspection. For provision authorizing waiver of this paragraph, see subsection (i).³

(C) Misrepresentation⁴.-

- (i) PRESUMED FRAUD - Any alien who after the date this clause is enacted into law
 - (I) violates the terms of the Visa Waiver Program or a B1/B2 visitor's visa by engaging in unlawful employment within 30 days of entering the United States⁵, or
 - (II) violates the terms of an F1 student visa by failing to ever attend the classes or program described in the application for a visa or depart the US within 60 days of entering the United States⁶

¹ An exception for minors has been added.

² The alien may pay a big fine in lieu of being inadmissible for 5 years. We need to be stricter with aliens that we have to catch so that there is an incentive for aliens to take affirmative action to fix their status without us having to catch them. We need to be more strict with aliens who are especially uncooperative even after being caught. Therefore, the fine is big.

³ Even though we need to be strict, we should still have a waiver so that there is an incentive for people with outstanding orders for removal to voluntarily try to resolve the situation and/or in case the fine is too much of a hardship for the family.

⁴ Previously there were only two types of fraud: regular and false claim of citizenship. Both of them were lifetime bars. Here, the types of fraud have been parsed significantly as not all fraud is of the same severity. Punishments vary by the significance of the fraud. There are no lifetime bars for fraud because there should be no lifetime bars for anyone who has not proven him/herself to be dangerous.

⁵ This is from the 30/60 day rule that is in the FAM and is creeping into the AFM.

- is rebuttably⁷ presumed to have committed fraud or misrepresentation and is inadmissible for a period of five years from the date of entry into the United States, unless the alien is able to overcome the presumption of fraud or pays a fine in the amount of \$5000⁸. No fraud may be presumed or inferred other than as described in this clause⁹. A Class A Waiver under subsection (i)(1)(A) is available for this clause.
- (ii) ORAL FRAUD - Any alien who, by oral fraud or orally misrepresenting a material fact seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act, and the original fraud or misrepresentation is preserved in an independent recording available to the alien for dispute or the original fraud or misrepresentation was transcribed in writing and signed by the alien within 24 hours of its occurrence¹⁰, is inadmissible for a period of five years from the date of the fraud or misrepresentation, unless the alien pays a fine in the amount of \$5000¹¹. A Class A Waiver under subsection (i)(1)(A) is available for this clause.
- (iii) ABUSE OF THE SOCIAL SECURITY NUMBER¹² – Any alien who after the date this clause is enacted into law has knowingly provided a social security number not belonging to the alien
- (I) to any law enforcement official in the United States at the time of an arrest under a criminal statute,
 - (II) on any application for credit,
 - (III) on any application for a state-issued ID or driver's license,
 - (IV) on any application for medical insurance or request for medical services, or

⁶ Bargaining concession: this rule would replace prior rules for student visa abusers. When an alien NEVER attends the class or school that was the basis of the F1 application, I think most lay people would presume that was fraud.

⁷ The presumed fraud should be rebuttable as sometimes there are extenuating circumstances and therefore no actual fraud.

⁸ The penalties are low in comparison to other types of misrep because with the presumed fraud, you're – in a way – getting into someone's head and making presumptions of their intentions based on their actions. The proof of wrongdoing is not as strong as for other types of fraud, so the penalty is lower.

⁹ There's been a problem with people who get turned away at the border/airport for trying to enter as an immigrant with nonimmigrant intent and later getting found inadmissible for misrep. This sentence is meant to put a stop to that as it's just too much of a presumption. Many people honestly don't know they can't come in on VWP or enter as a Canadian with the intent to marry a USC and adjust status. It's ignorance, not fraud.

¹⁰ There has been a lot of dispute over what exactly an alien said at the airport or border or especially at the consulate. Sometimes there are disputes over what was said many years previously when the memory has started to erode. The requirement that there be an independent record is a response to that. Technology is to a point where this is not too expensive. The alien must be immediately told that he/she is accused of oral fraud. Once the accusation has been made, the recording should be immediately preserved or transcribed for later dispute. When there is no accusation of oral fraud, the recording may be destroyed or erased and the recording storage device re-used the next day.

¹¹ Because oral fraud is frequently spontaneous in a moment of nervousness or anxiety, rather than calmly planned, the punishment should be less severe than for other types of misrep.

¹² Bargaining concession: Many are angry over the abuse of social security numbers by illegal immigrants. Indeed the abuse has caused damage to the credit scores for many people. This clause is a response to those concerns. The clause is carefully worded so that those who use the social security number only for employment or school would not be inadmissible; using the social for these purposes will not damage someone's credit score except in exceptional circumstances. This provision should not be retroactive and should not be conceded absent a mass legalization program. There remains a concern over what additional documents the gov't might start requiring to check for this ground of inadmissibility.

- (V) on any application for utilities, rental housing or any other purpose that requires a credit check,
and the fraud or misrepresentation is in writing signed by the alien or is preserved in an independent recording available to the alien for dispute, is inadmissible for a period of ten years from the time of the fraud or misrepresentation, or three years¹³ from the time of fraud or misrepresentation under (III), (IV) or (V) if the alien has not by an act or omission done anything – other than no more than three initial credit checks – that would result in a lowered credit score, whether or not the social security number has actually been assigned to a person. A Class A Waiver under subsection (i)(1)(A) is available for this clause.
- (iv) WRITTEN FRAUD - Any alien who by willfully misrepresenting a material fact in writing on any application for an immigration benefit submitted by the applicant directly to a US federal government official¹⁴, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible for a period of ten years from the date of the fraud or misrepresentation. A Class B Waiver under subsection (i)(1)(B) is available for this clause.
- (v) DOCUMENT FRAUD - Any alien who is found by any federal or state law enforcement official to be in possession of a fraudulent passport from any country, a fraudulent US immigration document, a fraudulent social security card, or a fraudulent US state-issued identity document, is inadmissible for a period of fifteen years from the time the document is discovered¹⁵ by a state or federal law enforcement official. A Class B Waiver under subsection (i)(1)(B) is available for this clause.
- (vi) FALSELY CLAIMING CITIZENSHIP-
- (I) IN GENERAL- Any alien who falsely represents, or has falsely represented, himself or herself in writing to be a citizen of the United States in any application for any specific benefit under any Federal or State law is inadmissible for a period of 15 years from the date the false claim of citizenship is made.
- (II) EXCEPTION- In the case of an alien making a representation described in subclause (I), if 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 inadmissible under any provision of this subsection based on such representation.
- A Class B Waiver under subsection (i)(1)(B) is available for this clause.¹⁶
- (vii) SHAM MARRIAGE¹⁷. Any alien who has entered into a sham marriage primarily for immigration purposes is inadmissible during the marriage and for a period of 20 years from the termination of the marriage, if and only if (I) the finding is made by

¹³ For those who used the social for other purposes and did not do anything that would, in fact, cause damage to one's credit report other than credit checks, the penalty is lower. There is still a penalty, however, because the person was taking a risk with someone else's credit.

¹⁴ This is worded so that it eliminates the I-9 as the alien does not submit that directly to the gov't.

¹⁵ Because this section is severe, there is a requirement that the gov't actually take possession of the false document. There can be no inference or confession that a false document was used.

¹⁶ This creates a waiver for this ground of inadmissibility.

¹⁷ This would replace the section on sham marriage rule located in 204(C)(1) and would create both an expiration for this ground of inadmissibility and a waiver.

- preponderance of the evidence¹⁸, (II) within one year of the finding of sham marriage¹⁹ or within one year of the date this clause is enacted into law the alien is notified in writing by the Secretary of Homeland Security that such a finding has been made and (III) the alien is afforded an opportunity to rebut the finding within one year of notification of the finding. A Class C Waiver under subsection (i)(1)(C) is available for this clause.
- (viii) FRIVOLOUS ASYLUM CLAIM²⁰. Any alien who has filed an asylum application after April 1, 1997 and has been found by an immigration judge to have filed a frivolous asylum claim is inadmissible for a period of 20 years from the date the immigration judge announced the finding to the alien. A Class C Waiver under subsection (i)(1)(C) is available for this clause.
 - (ix) FRAUD ON AN ADVANCED APPLICATION FOR DETERMINATION OF INADMISSIBILITY²¹. Any alien who commits fraud or misrepresentation in writing on an advanced application for determination of inadmissibility described in subsection (i)(3)(A) is inadmissible for a period of 20 years.
 - (x) Clauses (i) to (ix) shall not apply to any alien who was under age 18 at the time the misrepresentation or fraud was committed by the alien or by any person on the alien's behalf.²²
 - (xi) Clauses (i) to (ix) shall apply to any alien who caused or conspired to cause an alien under the age of 18 to commit an act of misrepresentation or fraud under this section after the date this clause is enacted into law.²³
 - (xii) STATUTE OF LIMITATIONS – Unless otherwise stated, an alien is not inadmissible or was not inadmissible at the time of admission under this paragraph unless the alien was notified in writing by the Secretary of Homeland Security within ten years of the act of misrepresentation or fraud that a finding under this paragraph had been made.²⁴

(D) Stowaways.-Any alien who is a stowaway over age 18²⁵ at the time of arrival in the United States is inadmissible.

(E) Smugglers.-

- (i) In general.-Any alien who at any time after reaching the age of 18²⁶ knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to

¹⁸ Currently, aliens are being found inadmissible for sham marriage based on the flimsiest of evidence, especially a letter from a disgruntled ex. The requirement that there be a preponderance of evidence increases the standard.

¹⁹ Aliens are getting surprised when they are told years after the demise of a marriage that the ex sent a letter accusing the alien of fraudulent marriage. As years have passed, the alien has trouble getting proof of real marriage when financial records and photos have been destroyed and contacts with old friends have been lost. The accusation should only be made when the evidence is fresh.

²⁰ This section would replace 208(d)(6) and would create both an expiration and a waiver.

²¹ Under a different model section of INA 212, there is an opportunity for the alien to 'come clean' and try to resolve the problem. If the alien lies on the application where he/she is supposed to be coming clean, then perhaps the alien really doesn't have respect for US law.

²² An exception for minors for all misrep and fraud is introduced.

²³ Bargaining concession: Those who commit fraud on behalf of a minor are currently not held accountable. We can make it so they are.

²⁴ This section prevents a finding under INA 237(a)(1) that the alien was inadmissible at the time he/she was admitted many years after the alleged misrep.

²⁵ An exception for minors is introduced.

²⁶ An exception for minors is introduced.

- enter the United States in violation of law is inadmissible for a period of ten years from the date the other alien entered or attempted to enter the United States unless the smuggling occurred simultaneously on the alien's own first entry²⁷ into the United States.
- (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), 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) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 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.-For provision authorizing waiver of clause (i), see subsection (d)(11).
- (F) Subject of civil penalty.-
- (i) In general.-An alien who is the subject of a final order for violation of section [274C](#) is inadmissible.
 - (ii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(12).
- (G) (deleted)²⁸

²⁷ Currently two unrelated, adult aliens who illegally cross the desert together can be charged with smuggling each other. By eliminating the possibility that you could smuggle someone else on your first entry, we eliminate that situation, while still going after 'coyotes'.

²⁸ The section on student visa abusers is eliminated here because there's a new ground for F1 students under misrep.