

103D CONGRESS
1ST SESSION

S. 667

To amend the Immigration and Nationality Act to improve procedures for the exclusion of aliens seeking to enter the United States by fraud.

IN THE SENATE OF THE UNITED STATES

MARCH 29 (legislative day, MARCH 3), 1993

Mr. SIMPSON (for himself, Mr. BYRD, Mr. D'AMATO, Mr. SHELBY, Mrs. KASSEBAUM, Mr. NICKLES, Mr. REID, Mr. LOTT, Mr. HOLLINGS, Mr. ROTH, Mr. WARNER, Mr. GRAMM, and Mr. THURMOND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to improve procedures for the exclusion of aliens seeking to enter the United States by fraud.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Port of Entry Inspec-
5 tions Improvement Act of 1993”.

6 **SEC. 2. ADMISSIONS FRAUD.**

7 (a) EXCLUSION FOR FRAUDULENT DOCUMENTS OR
8 FAILURE TO PRESENT DOCUMENTS.—Section

1 212(a)(6)(C) of the Immigration and Nationality Act (8
2 U.S.C. 1182(a)(6)(C)) is amended—

3 (1) by striking “(C) MISREPRESENTATION” and
4 inserting in lieu thereof the following:

5 “(C) FRAUD, MISREPRESENTATION, AND
6 FAILURE TO PRESENT DOCUMENTS”;

7 (2) by adding at the end the following new
8 clause:

9 “(iii) FRAUDULENT DOCUMENTS AND
10 FAILURE TO PRESENT DOCUMENTS.—

11 “(I) Any alien who, in seeking
12 entry to the United States or board-
13 ing a common carrier for the purpose
14 of coming to the United States, pre-
15 sents any document which, in the de-
16 termination of the immigration officer
17 to whom the document is presented, is
18 forged, counterfeit, altered, falsely
19 made, stolen, or inapplicable to the
20 alien presenting the document, or oth-
21 erwise contains a misrepresentation of
22 a material fact, is excludable.

23 “(II) Any alien who, in boarding
24 a common carrier for the purpose of
25 coming to the United States, presents

1 a document which relates or purports
2 to relate to the alien's eligibility to
3 enter the United States, and fails to
4 present such document to an immi-
5 gration officer upon arrival at a port
6 of entry into the United States, is ex-
7 cludable.”.

8 (b) PROVISION FOR ASYLUM AND OTHER DISCRE-
9 TIONARY RELIEF.—

10 (1) Section 208 of the Immigration and Nation-
11 ality Act (8 U.S.C. 1158) is amended by adding at
12 the end the following new subsections:

13 “(e)(1) Notwithstanding subsection (a), any alien
14 who, in seeking entry to the United States or boarding
15 a common carrier pursuant to direct departure to the
16 United States, presents any document which, in the deter-
17 mination of the immigration officer to whom the document
18 is presented, is fraudulent, forged, stolen, or inapplicable
19 to the person presenting the document, or otherwise con-
20 tains a misrepresentation of a material fact, may not apply
21 for or be granted asylum, unless presentation of the docu-
22 ment was pursuant to direct departure from—

23 “(A) a country in which the alien has a credible
24 fear of persecution; or

1 “(B) a country in which there is a significant
2 danger that the alien would be returned to a country
3 in which the alien would have a credible fear of per-
4 secution.

5 “(2) Notwithstanding subsection (a), an alien who,
6 in boarding a common carrier pursuant to direct departure
7 to the United States, presents any document which relates
8 or purports to relate to the alien’s eligibility to enter the
9 United States, and who fails to present such document
10 to an immigration official upon arrival at a port of entry
11 into the United States, may not apply for or be granted
12 asylum, unless presentation of such document was pursu-
13 ant to direct departure from—

14 “(A) a country in which the alien has a credible
15 fear of persecution; or

16 “(B) a country in which there is a significant
17 danger that the alien would be returned to a country
18 in which the alien would have a credible fear of per-
19 secution.

20 “(3)(A) Whenever an immigration officer determines
21 that an alien seeks entry to the United States as described
22 in paragraph (1) or (2) and that the alien has indicated
23 a desire to apply for asylum, the immigration officer shall
24 refer the matter to an immigration officer specially trained
25 to conduct interviews and to make determinations bearing

1 on eligibility for asylum, who shall interview the alien to
2 determine whether presentation of the document was pur-
3 suant to direct departure from—

4 “(i) a country in which the alien has a credible
5 fear of persecution; or

6 “(ii) which there is a significant danger that
7 the alien would be returned to a country in which
8 the alien would have a credible fear of persecution.

9 “(B) If the immigration officer determines that the
10 alien does not have a credible fear of persecution in the
11 country from which the alien was last present before at-
12 tempting entry into the United States, and that there is
13 no significant danger that the alien would be returned
14 from such country to a country in which the alien would
15 have a credible fear of persecution, the alien may be spe-
16 cially excluded and deported in accordance with section
17 235(e). The alien may not appeal such determination.

18 “(4) As used in this subsection, the term ‘credible
19 fear of persecution’ means—

20 “(A) it is more probable than not that the
21 statements made by the alien in support of his or
22 her claim are true; and

23 “(B) there is a significant possibility, in light of
24 such statements and of such other facts as are
25 known to the officer about country conditions, that

1 the alien could establish eligibility as a refugee with-
2 in the meaning of section 101(a)(42)(A).”.

3 (2) Section 212(c) of the Immigration and Na-
4 tionality Act (8 U.S.C. 1182(c)) is amended in the
5 third sentence by inserting before the period “or to
6 any alien who is excludable pursuant to section
7 212(a)(6)(C)(iii)”.

8 (3) Section 235 of the Immigration and Nation-
9 ality Act (8 U.S.C. 1225) is amended by adding at
10 the end the following new subsection:

11 “(d)(1) Subject to paragraph (2), any alien, who has
12 not been admitted to the United States and who is exclud-
13 able under section 212(a)(6)(C)(iii), is ineligible for with-
14 holding of deportation pursuant to section 243(h), and
15 may not apply for withholding of deportation or for any
16 other relief under this Act, except as provided in section
17 208(e) with respect to asylum.

18 “(2) An alien under paragraph (1) who has been
19 found ineligible to apply for asylum under section 208(e)
20 may be returned only—

21 “(A) to a country in which, in the judgment of
22 an immigration officer specially trained to conduct
23 interviews and to make determinations bearing on
24 eligibility for asylum, the alien has no credible fear
25 of persecution upon return; and

1 “(B) to a country from which, in the judgment
2 of such officer, there is no significant danger that
3 the alien would be returned to a country in which
4 the alien would have a credible fear of persecution.”.

5 (4) Section 237(a) of the Immigration and Na-
6 tionality Act (8 U.S.C. 1227(a)) is amended—

7 (A) in the second sentence of paragraph
8 (1) by striking out “Deportation” and inserting
9 in lieu thereof “Subject to section 235(d)(2),
10 deportation”; and

11 (B) in the first sentence of paragraph (2)
12 by striking out “If” and inserting in lieu there-
13 of “Subject to section 235(d)(2), if”.

14 **SEC. 3. SPECIAL PORT OF ENTRY EXCLUSION FOR ADMIS-**
15 **SIONS FRAUD.**

16 Section 235 of the Immigration and Nationality Act
17 (8 U.S.C. 1225) (as amended by section 2(b)(3) of this
18 Act) is amended by adding after subsection (d) the follow-
19 ing new subsection:

20 “(e)(1) Subject to paragraph (2), any alien (including
21 an alien crewman) who may appear to the examining im-
22 migration officer or to the special inquiry officer during
23 the examination before either of such officers to be exclud-
24 able under section 212(a)(6)(C)(iii) may be ordered spe-

1 cially excluded and deported by the Attorney General, ei-
2 ther by a special inquiry officer or otherwise.

3 “(2)(A) An alien who has been found ineligible to
4 apply for asylum under section 208(e) may be returned
5 only—

6 “(i) to a country in which, in the judgment of
7 an immigration officer specially trained to conduct
8 interviews and to make determinations bearing on
9 eligibility for asylum, the alien has no credible fear
10 of persecution upon return; and

11 “(ii) to a country from which, in the judgment
12 of such officer, there is no significant danger that
13 the alien would be returned to a country in which
14 the alien would have a credible fear of persecution.

15 “(B) Such special exclusion order is not subject to
16 administrative appeal and shall have the same effect as
17 if the alien has been ordered excluded and deported pursu-
18 ant to section 236, except that judicial review of such an
19 order shall not be available under section 106 or, except
20 by habeas corpus as herein provided, under any other pro-
21 vision of law.

22 “(C) Nothing in this subsection may be construed as
23 requiring an inquiry before a special inquiry officer in the
24 case of an alien crewman.”.

1 **SEC. 4. RESTRICTIONS ON JUDICIAL REVIEW.**

2 Section 235 of the Immigration and Nationality Act
3 (8 U.S.C. 1225) (as amended by section 3 of this Act)
4 is amended by adding after subsection (e) the following
5 new subsections:

6 “(f) ALIENS EXCLUDABLE FOR ADMISSIONS
7 FRAUD.—Notwithstanding any other provision of law, no
8 court shall have jurisdiction to review, except by petition
9 for habeas corpus, any determination made with respect
10 to an alien found excludable for admissions fraud pursu-
11 ant to section 212(a)(6)(C)(iii). In any such case, review
12 by habeas corpus shall be limited to examination of wheth-
13 er the petitioner (1) is an alien, and (2) was ordered spe-
14 cially excluded from the United States pursuant to sec-
15 tions 212(a)(6)(C)(iii) and 235(e).

16 “(g) INTERVIEWS AND SPECIAL EXCLUSION.—(1)
17 Notwithstanding any other provision of law, no court shall
18 have jurisdiction—

19 “(A) to review the procedures established by the
20 Attorney General for the determination of admis-
21 sions fraud pursuant to section 212(a)(6)(C)(iii); or

22 “(B) to enter declaratory or injunctive relief
23 with respect to the implementation of subsection (d)
24 or (e).

25 “(2) Notwithstanding the nature of the suit or claim,
26 no court shall have jurisdiction (except by habeas corpus

1 petition as provided in subsection (f)) to consider the va-
2 lidity of any adjudication or determination of special ex-
3 clusion or to provide declaratory or injunctive relief with
4 respect to the special exclusion of any alien.

5 “(h) COLLATERAL ENFORCEMENT PROCEEDINGS.—
6 In any action brought for the assessment of penalties for
7 improper entry or re-entry of an alien under sections 275
8 and 276, no court shall have jurisdiction to hear claims
9 collaterally attacking the validity of orders of exclusion,
10 special exclusion, or deportation entered under sections
11 235, 236, and 242.”.

12 **SEC. 5. ENHANCED PENALTIES FOR CERTAIN ALIEN SMUG-**
13 **GLING.**

14 Section 274(a)(1) of the Immigration and Nationality
15 Act (8 U.S.C. 1324(a)(1)) is amended—

16 (1) by striking “five years” and inserting “ten
17 years”; and

18 (2) by inserting before the period at the end of
19 paragraph (1) “, except that in any case in which
20 a person causes serious bodily injury to, or places in
21 jeopardy the life of, any alien involved in the offense,
22 such person shall be fined in accordance with the
23 provisions of title 18, United States Code, or impris-
24 oned not more than 20 years for each alien with re-

1 spect to whom any violation of this paragraph oc-
2 curs, or both.”.

3 **SEC. 6. EFFECTIVE DATE.**

4 This Act and the amendments made by this Act shall
5 take effect on the date of enactment of this Act, and such
6 amendments shall apply to aliens who arrive in or seek
7 admission to the United States on or after the date of
8 enactment of this Act.

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