

HQ 70/6.2.8

JUN 19 2001

MEMORANDUM FOR ALL SERVICE CENTER DIRECTORS;  
REGIONAL DIRECTORS;  
DIRECTOR, OFFICER DEVELOPMENT TRAINING  
FACILITY, GLYNCO  
DIRECTOR, OFFICER DEVELOPMENT TRAINING  
FACILITY, ARTESIA

FROM: Michael A. Pearson /S/  
Executive Associate Commissioner  
Office of Field Operations

SUBJECT: Initial Guidance for Processing H-1B Petitions as Affected by the "American Competitiveness in the Twenty-First Century Act" (Public Law 106-313) and Related Legislation (Public Law 106-311) and (Public Law 106-396)

Attached is the policy memorandum regarding the American Competitiveness in the Twenty-First Century Act and relating laws. The memo outlines proper procedures for handling cases effected by the new statutes. Until regulations are promulgated, I ask that field offices follow the interim procedures in the attached policy. This policy is effective immediately.

Attachment

JUN 19 2001

MEMORANDUM FOR      MICHAEL A. PEARSON  
                                 EXECUTIVE ASSOCIATE COMMISSIONER  
                                 OFFICE OF FIELD OPERATIONS

FROM:            Michael D. Cronin /S/  
                         Executive Associate Commissioner  
                         Office of Programs

SUBJECT:        Initial Guidance for Processing H-1B Petitions as Affected by the "American Competitiveness in the Twenty-First Century Act" (Public Law 106-313) and Related Legislation (Public Law 106-311) and (Public Law 106-396)

On October 17, 2000, former President Clinton signed into law The American Competitiveness in the Twenty-First Century Act, (AC21) Public Law 106-313. The new law increases the Fiscal Year (FY) H-1B cap and establishes new benefits in the H-1B nonimmigrant classification. All provisions in AC21 are effective upon the date of enactment, October 17, 2000. The H-1B nonimmigrant classification was also modified by the Act of October 17, 2000, Public Law 106-311 which increases the H-1B petition fee, and the Visa Waiver Permanent Program Act, Public Law 106-396 401 (2000) which affects the requirements for amended H-1B petitions. These statutes are attached to this memorandum.

On January 29, 2001, the Office of Field Operations issued a memorandum entitled "Interim Guidance for Processing H-1B Applicants for Admission as Affected by the American Competitiveness in the Twenty-first Century Act of 2000, Public Law 106-313," (the January 29, 2001, memo). The January 29, 2001 Memo provides interim guidance to Ports of Entry (POEs) for the processing of H-1B applicants for admission. The January 29, 2001, memo remains in effect and is also attached to this memorandum.

The following guidelines establish interim procedures for use by Service personnel in the processing of new benefits under AC21 and the related legislation. Forthcoming regulations will promulgate substantive standards to be utilized in the adjudication of these new benefits.

#### **I.      EFFECTIVE DATES**

- All provisions in AC21 are effective upon the date of enactment, October 17, 2000.
- The numerical limitations and the exemptions from the numerical limitations for the FY 2001 cap commence with petitions filed on September 1, 2000.
- Public Law 106-311 provides for new fee exemptions for certain entities identified below. These exemptions are effective for cases filed on or after October 17, 2000.
- Unless exempt from the fee, all H-1B petitions received by the Service on or after December 17, 2000 must be accompanied by the \$1,000 H-1B Nonimmigrant Petitioner Account fee.

- Public Law 106-396, effective as of October 30, 2000, stipulates that amended H-1B petitions will not be required for petitioning employers who are involved in certain forms of corporate restructuring.

## II. AC21

### A. AC21 102 -- Temporary Increase in Visa Allotments

The AC21 102 provides that all H-1B petitions approved between the date the numerical limit was reached in FY 1999, \* and September 30, 1999, are to be counted retroactively against the FY 1999 limit. This provision covers the H-1B petitions that were approved over the FY 1999 cap.

All approved H-1B petitions filed beginning October 1, 1999, up to and including August 31, 2000, are to be counted retroactively against the FY 2000 cap, regardless of the date of approval.

AC21 also increases the yearly number of H-1B nonimmigrant visas available to 195,000 for FYs 2001, 2002, and 2003. Starting in FY 2004, the number of H-1B nonimmigrant visas available will return to 65,000 per year. The statute specifies that the FY 2001 cap count starts with H-1B petitions filed on or after September 1, 2000.

### B. AC21 103 and 114 -- Exemptions from the H-1B FY Cap

As of October 17, 2000, the following beneficiaries of approved H-1B petitions are exempt from the H-1B FY cap:

- (a) beneficiaries who are in J-1 nonimmigrant status in order to receive graduate medical education or training pursuant to Immigration and Nationality Act (INA) 212(e)(iii), and who have obtained a waiver of the 2-year home residency requirement under the provisions of the INA first 214(1)(1)(B) (commonly referred to as the Conrad State 20 program); or
- (b) beneficiaries who are employed at, or who have received an offer of employment at, an institution of higher education (as defined in the Higher Education Act of 1965 101(a), 20 USC 1001(a)), or a related or affiliated non-profit entity; or
- (c) beneficiaries who are employed by, or who have received an offer of employment from, a non-profit research organization; or
- (d) beneficiaries who are employed by, or who have received an offer of employment from, a governmental research organization; or

\* See Notice, Information Regarding the H-1B Numerical Limitation for FY 1999, 64 Fed. Reg. 32151 (June 15, 1999). The Service reported that there were sufficient numbers of H-1B petitions pending at the Service Centers to reach the cap for FY 1999.

- (e) beneficiaries who are currently maintaining, or who have held within the last 6 years, H-1B status, and are ineligible for another full six year stay as an H-1B; or
- (f) beneficiaries who have been counted once toward the numerical limit, and are the beneficiary of multiple petitions.

It is noted that section 103 of the law amends section 214(g)(6) of the Act as follows. An H-1B worker not previously counted toward the annual cap who leaves the employment of an institution of higher education or a related or affiliated non-profit entity to work as an H-1B at an employer other than one defined in Section 214(g)(5) of the Act will be counted toward the annual cap at that time.

C. AC21 104(c) - "One -Time Protection" Benefits Extension of H-1B Status Permitted where Adjustment Pending under Per Country Limitations

The AC21 104(c) enables H-1B nonimmigrants with approved I-140 petitions who are unable to adjust status because of per-country limits to be eligible to extend their H-1B nonimmigrant status until their application for adjustment of status has been adjudicated. An H-1B nonimmigrant is eligible for this benefit even if he or she has exhausted the maximum 6-year period of authorized stay for H-1B nonimmigrants under 8 U.S.C. 1184(g)(4), INA 214(g)(4). The statute states that the beneficiary must:

- (a) have a petition filed on his or her behalf for a preference status under INA 203(b)(1), (2), or (3) (an employment based ("EB") petition); and
- (b) be eligible to be granted that status except for the per-country limitations.

Any H-1B nonimmigrant who meets the statutory requirements above may be approved as the beneficiary of a request for an extension of H-1B nonimmigrant status until a decision is made on the nonimmigrant's application for adjustment of status.

**1. Procedure for processing "one -time protection" benefits**

In order for a nonimmigrant to obtain an extension of H-1B nonimmigrant status under AC21 104(c), a petitioner must file a Form I- 129, Petition for Nonimmigrant Worker, with the appropriate signature, fees, and supporting documentation on behalf of the nonimmigrant. Existing guidelines in the instructions to the Form I-129W, "H-1B Data Collection and Filing Fee Exemption" for payment of the \$1,000 H-1B Nonimmigrant Petitioner Account Fee shall be followed. For example, if the petitioner is a nonprofit research organization or the petition is a second or subsequent request for extension of stay filed by that petitioner on behalf of that beneficiary, the petitioner is exempt from payment of the \$1,000 H-1B Nonimmigrant Petitioner Account Fee. If the petition and request for extension of stay are otherwise approvable, adjudicating officers shall not deny a petition because the nonimmigrant has exhausted the maximum 6-year limit provided for by INA 214(g)(4). Extensions of stay under AC21 104(c) shall be made in increments of three years.

The status of a dependent of an H-1B nonimmigrant is derivative of and linked to the status of the principal H-1B nonimmigrant. Therefore, dependents are eligible for H-4 status upon the

filing of an H-1B petition on behalf of the principal alien and the filing of a Form I-539, Application to Extend/Change Nonimmigrant Status with filing fee and all necessary supporting documentation for the dependent. Dependents should be advised to file the Form I-539 concurrently, whenever possible, with the H-1B petition filed on behalf of the principal H-1B nonimmigrant.

D. AC21 105 -- Visa portability

The AC21 105 provides that a nonimmigrant who was previously issued an H-1B visa or provided H-1B nonimmigrant status may begin working for a new H-1B employer as soon as that new employer files a "nonfrivolous" H-1B petition on the nonimmigrant's behalf, if:

- (a) the nonimmigrant was lawfully admitted to the United States;
- (b) the nonfrivolous petition for new employment was filed before the end of their period of authorized stay; and
- (c) the nonimmigrant has not been employed without authorization since his lawful admission to the United States, and before the filing of the nonfrivolous petition.

The status of a dependent of a principal nonimmigrant that is working pursuant to portability benefits is derivative of and linked to the status of the principal nonimmigrant. Therefore, dependents will remain in H-4 status if the principal nonimmigrant is lawfully working pursuant to portability benefits. There are four contexts in which the question of whether a nonimmigrant has lawfully worked or maintained lawful status under the 105 portability provisions may arise:

- (a) Adjustment of status, when determining whether a nonimmigrant has maintained lawful status or engaged in unauthorized employment; or
- (b) Request for extension of stay, when determining whether a nonimmigrant has maintained lawful status; or
- (c) Request for change of nonimmigrant status, when determining whether a nonimmigrant has continued to maintain status; or
- (d) Removal proceedings under INA 237(a)(1)(C)(i), failure to maintain nonimmigrant status.

Until the Service promulgates final regulations addressing the above questions, Service personnel shall consult with Tracy Renaud/Headquarters Immigration Services Division on a case by case basis before denying benefits or issuing Notices to Appear (NTA's) on the grounds that the nonimmigrant was not lawfully working or maintaining lawful status under the requirements of the AC21 105 portability provisions. Headquarters may direct Service personnel to hold certain applications in abeyance until a final regulation becomes effective, permitting adjudication of the application. It should be noted that 8 C.F.R. 214.1(c)(4) and 8 C.F.R. 248.1 (b) permit the discretionary excuse, in certain circumstances, of a nonimmigrant's failure to timely file a request for an extension of stay or change of status, and may be applicable in some cases involving portability provisions.

The Service is formulating a proposed regulation to address the AC21 105 portability provisions. One key issue involves the scope of the portability provisions. On the one hand,

Congress does not appear to have limited portability benefits only to those who are working lawfully in H-1B status at the time a new employer files a new H-1B petition on their behalf. Nor, on the other hand, does Congress appear to have extended portability benefits to any alien who has ever held H-1B status, no matter how long ago or what the alien's current status in the United States. The Service expects, therefore, to propose a rule that would afford H-1B beneficiaries, who are no longer working for the initial H-1B employer, some reasonable period of time such as 60 days after leaving the initial H-1B employer to begin working for a new H-1B petitioning employer under the portability provisions. It is important to note that such a proposed rule would not, of course, take effect until it has been published as a final rule, after notice and comment, and any revisions. This prospective statement of policy is provided solely for informational purposes to Service personnel and shall not be utilized as a standard of adjudication in cases involving portability issues, unless and until promulgation of a final rule implementing AC21 105 with such an interpretation. Service personnel will be notified of any changes in the processing of AC21 benefits that may occur upon the effective date of a final rule.

### 1. Admission Procedures for Nonimmigrants Claiming Portability

The following procedures reflect the Service's January 29, 2001, memo. An H-1B applicant for admission who is no longer working for the original petitioner is admissible at a Port of Entry (POE) pursuant to the portability provisions, upon presentation of the following evidence:

- (a) that the applicant is otherwise admissible;
- (b) that the applicant, unless exempt, is in possession of a valid, unexpired passport and visa (including a valid, unexpired visa endorsed with the name of the original petitioner);
- (c) that the applicant was previously admitted as an H-1B or otherwise accorded H-1B status. If a visa exempt applicant is not in possession of the previously issued Form I-94, Arrival/Departure Record, or a copy of the previously issued I-94, the applicant may present a copy of the Form I-797, Notice of Action, with the original petition's validity dates; and
- (d) that an H-1B petition was timely filed on behalf of the applicant, before expiration of the validity dates of the applicant's previously authorized period of stay. This evidence shall be in the form of a copy of a dated Form I-797 receipt notice reflecting that a new petition has been filed, or other credible evidence of timely filing that is validated through a CLAIMS query.

The nonimmigrant applicant is admissible to the validity date of the previously approved petition, plus 10 days.

Applicants for admission who are dependents of nonimmigrants working pursuant to portability must present the following evidence when seeking admission at a POE:

- (a) that the dependent is otherwise admissible;
- (b) that the dependent is in possession of a valid, unexpired passport and visa, unless exempt;
- (c) that the principal nonimmigrant on whom the applicant is dependent was previously admitted as an H-1B or otherwise accorded H-1B status. If the principal nonimmigrant was visa exempt and not in possession of the previously issued Form I-94,

Arrival/Departure Record, or a copy of the previously issued I-94, the applicant may present a copy of the principal nonimmigrant's Form I-797, Notice of Action, with the original petition's validity dates; and

- (d) that an H-1B petition was timely filed on behalf of the principal nonimmigrant on whom the applicant is dependant, before expiration of the validity dates of the principal nonimmigrant's previously authorized period of stay. This evidence shall be in the form of a copy of a dated Form I-797 receipt notice reflecting that a new H-1B petition has been filed, or other credible evidence of timely filing that is validated through a CLAIMS query.

**a. The applicant does not present evidence that an H-1B petition has been timely filed on behalf of the principal nonimmigrant**

If the applicant is not in possession of a copy of the Form I-797, or a query of CLAIMS shows no evidence that an H-1B petition has been timely filed, the applicant is not admissible and should be processed accordingly. Generally, an applicant who lacks evidence of a pending H-1B petition should not be processed as an expedited removal unless there is evidence of fraud or misrepresentation.

**b. The validity dates of the applicant's previously approved nonimmigrant petition have expired**

If the validity dates of the applicant's previously approved nonimmigrant petition have expired, and the applicant does not present evidence that the new H-1B petition has been approved, he is not admissible under these provisions and should be processed accordingly. Generally, an alien whose petition has expired should not be processed as an expedited removal unless there is evidence of fraud or misrepresentation.

**E. AC21 106 -- Special Provisions in Cases of Lengthy Adjudication**

AC21 106 permits H-1B nonimmigrants to obtain an extension of H-1B status beyond the 6-year maximum period, when:

- ✓ (a) the H-1B nonimmigrant is the beneficiary of an employment based (EB) immigrant petition or an application for adjustment of status; and
- ✓ (b) 365 days or more have passed since the filing of a labor certification application, Form ETA 750, that is required for the alien to obtain status as an EB immigrant, or 365 days or more have passed since the filing of the EB immigrant petition.

The Attorney General is required to grant the extension of stay of such H-1B nonimmigrants in 1-year increments, until a final decision is made on the H-1B nonimmigrant's lawful permanent residence.

## **1. Procedures for Obtaining Extension of Status in Cases of Lengthy Adjudication**

In order for an H-1B nonimmigrant to receive an extension of stay under AC21 106 beyond the maximum 6-year limit, a petitioner must file a Form I-129 on behalf of the nonimmigrant beneficiary. The petitioner may be either the beneficiary's current employer or a new employer. If the H-1B petition is approved, the petition will be valid for a period of 1 year. One-year extensions of the beneficiary's H-1B status may continue until a final decision is made on the alien's lawful permanent resident status. A petitioner is required to file a new Form I-129 and pay the \$110 filing fee for the request for a 1-year extension of status under AC21 106. Existing guidelines in the instructions to the Form I-129W for payment of the \$1,000 H-1B Nonimmigrant Petitioner Account Fee shall be followed. For example, if the petitioner is a nonprofit research organization or the petition is a second or subsequent request for extension of stay filed by that petitioner on behalf of that beneficiary, the petitioner is exempt from payment of the \$1,000 H-1B Nonimmigrant Petitioner Account Fee.

The status of a dependent of an H-1B nonimmigrant is derivative of and linked to the status of the principal H-1B nonimmigrant. Therefore, dependents are eligible for H-4 status upon the filing of an H-1B petition on behalf of the principal alien, and the filing of a Form I-539 with filing fee and all necessary supporting documentation for the dependent. Dependents should be advised to file the Form I-539 concurrently, whenever possible, with the H-1B petition filed on behalf of the principal H-1B nonimmigrant.

### **F. AC21 106(c) - Change of Employment Permitted in Cases of Lengthy Adjustment Adjudication**

The AC21 106(c) provides that the certification or Form I-140 approval of an EB immigrant petition shall remain valid when an alien changes jobs, if:

- (a) a Form I-485, Application to Adjust Status, on the basis of the EB immigrant petition has been filed and remained adjudicated for 180 days or more; and
- (b) the new job is in the same or similar occupational classification as the job for which the certification or approval was initially made.

## **1. Procedures for Processing Benefits under AC21 106(c)**

If an alien has complied with the above statutory requirements, adjudicators shall not deny applications for adjustment of status on the basis that the alien has changed jobs. Under present practices it is expected that an I-485 applicant notify the Service when they no longer intend to enter into employment with the employer who sponsored them on the I-140 petition. The Service should continue to expect the applicant to submit a letter notifying INS of this change in intent, if the Adjudicator has reason to believe that the applicant's intent has changed a Request for Evidence (RFE) may be issued to clarify the applicant's intent in regards to employment.

In instances where the applicant no longer intends to be employed by the employer who sponsored him/her on the I-140, the Service should request a letter of employment from the new

employer. The letter from the new employer verifying that the job offer exists should contain the new job title, job description and salary. This information is necessary to determine whether the new job is in the same or similar occupation and to determine whether the alien is admissible under the public charge ground of inadmissibility at INA 8212(a)(4). To determine whether a new job is in the same or similar occupational classification as the original job for which the certification or approval was initially made, the adjudicating officer may consult the Department of Labor's Dictionary of Occupational Titles or its online O'NET classification system or similar publications.

The Service is currently formulating proposed regulations to establish a policy framework in which to adjudicate AC21 106(c) benefits. Until the Service promulgates final regulations establishing such a policy framework, adjudicators shall consult, on a case by case basis, with Headquarters before denying cases on the basis that the new job is not in the same or similar classification.

#### G. AC21 108 -- Recovery of Visas Obtained Fraudulently

The AC21 108 provides that when approval of an H-IB petition is revoked on the basis of fraud or the willful misrepresentation of a material fact, one number shall be restored to the H-IB cap in the FY in which the petition is revoked, regardless of the FY in which the petition was actually approved.

Any revocation based on fraud or misrepresentation must be updated correctly in CLAIMS, and the proper correspondence shall be sent to the petitioner.

#### H. Extensions of Stay beyond the 6-Year Maximum Period of Stay and Unlawful Presence

As described above, AC21 provides for the extension of H-IB status in cases where an alien's immigrant visa petition or adjustment of status application is pending due to the per-country limitation on visas, or due to a lengthy adjudication process. Therefore, it is possible that an H-IB nonimmigrant may stay beyond the 6-year maximum period of stay \* defined at INA 214(g)(4), yet remain in status under the AC21 provisions. As long as aliens in these circumstances remain in a period of stay authorized through extensions of nonimmigrant stay, they do not accrue unlawful presence.

\* Petitions for Department of Defense projects may be extended to 10 years.

### III. OTHER LEGISLATION AFFECTING THE H-1B NONIMMIGRANT CLASSIFICATION

#### A. Public Law 106-311- Increase of the H-1B Nonimmigrant Petitioner Fee from \$500 to \$1,000

This law raises the H-1B Nonimmigrant Petitioner Fee from \$500 to \$1,000 effective 60 days after enactment. The law was enacted on October 17, 2000. Therefore, unless exempt by statute from the H-1B Nonimmigrant Petitioner Fee, all Form I-129 H-1B petitions received by the Service on or after December 17, 2000, must be accompanied by the increased H-1B Nonimmigrant Petitioner Fee of \$1,000. There are no provisions in the law for waiving the \$1,000 H-1B Nonimmigrant Petitioner Fee.

The employer continues to be precluded from requiring an alien beneficiary to reimburse or otherwise compensate the employer for all or part of the H-1B Nonimmigrant Petitioner Fee. The petitioner may submit separate checks or one single remittance to cover the usual filing fee for the Form I-129 and the H-1B Nonimmigrant Petitioner Fee.

Under Public Law 106-311, the following employers are exempt from the H-1B Nonimmigrant Petitioner Fee, effective October 17, 2000:

- (a) a primary or secondary educational institution;
- (b) an institution of higher education, as defined in section 101 (a) of the Higher Education Act of 1965, 20 U.S.C. Sec. 1001(a);
- (c) a nonprofit entity related to or affiliated with an institution of higher education;
- (d) a nonprofit entity which engages in established curriculum-related clinical training of students at an institution of higher education;
- (e) a nonprofit research organization; or
- (f) a governmental research organization.

Guidance on these provisions will be forthcoming in regulation.

#### B. Public Law 106-396 - Exemption of Certain Employers from Requirement to File Amended Petitions

Under the provisions of this law, amended H-1B petitions are not required when the petitioning employer is involved in a corporate restructuring where:

- (a) the new corporate entity succeeds to the interests and obligations of the original petitioning employer; and
- (b) the terms and conditions of employment remain the same, except for the identity of the petitioner.

The eligible forms of corporate restructuring may include, but are not limited to, mergers, acquisitions or consolidations. Forthcoming regulations will define the eligible forms of corporate restructuring, and the type of evidence required, including the manner in which that evidence should be submitted for extension of stay requests by the new corporate entity.

The statute requires no affirmative action on the part of the employer in these corporate restructuring scenarios. In these instances, the previous approval and previously issued approval notice remain valid. Therefore, the Service will not issue amended approval notices bearing the new company name. Although not necessary, if an employer wishes to obtain an approval notice bearing the new company name, the appropriate procedure for obtaining a new approval notice will continue to be through the filing of an amended Form I-129 with fee.

**1. Admission Procedures for H-1B Nonimmigrants Working for Employers Claiming Exemption from the Requirement to file Amended H-1B Petitions**

An H-1B applicant for admission who no longer works for the original H-1B petitioner and now works for a new corporate entity claiming exemption from the requirement to file an amended H-1B petition may be admitted at a POE if:

- (a) he is otherwise admissible;
- (b) unless exempt, he is in possession of a valid, unexpired passport and nonimmigrant visa; and
- (c) he presents a letter from the new corporate entity stating that:
  - (i) the new corporate entity has succeeded to the interests and obligations of the original H-1B petitioning employer; and
  - (ii) the terms and conditions of employment of the H-1B nonimmigrant remain the same.

Questions regarding this memorandum may be directed to Tracy Renaud, Immigration Services Division at (202) 305-8010.

HQ 70/6.2.8

JUN 19 2001

MEMORANDUM FOR ALL SERVICE CENTER DIRECTORS;  
REGIONAL DIRECTORS;  
DIRECTOR, OFFICER DEVELOPMENT TRAINING  
FACILITY, GLYNCO  
DIRECTOR, OFFICER DEVELOPMENT TRAINING  
FACILITY, ARTESIA

FROM: Michael A. Pearson /S/  
Executive Associate Commissioner  
Office of Field Operations

SUBJECT: Initial Guidance for Processing H-1B Petitions as Affected by the "American Competitiveness in the Twenty-First Century Act" (Public Law 106-313) and Related Legislation (Public Law 106-311) and (Public Law 106-396)

Attached is the policy memorandum regarding the American Competitiveness in the Twenty-First Century Act and relating laws. The memo outlines proper procedures for handling cases effected by the new statutes. Until regulations are promulgated, I ask that field offices follow the interim procedures in the attached policy. This policy is effective immediately.

Attachment



U.S. Department of Justice  
Immigration and Naturalization Service

HQADN 70/23.1

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Office of the Executive Associate Commissioner

425 I Street NW  
Washington, DC 20536

March 8, 2002

MEMORANDUM FOR REGIONAL DIRECTORS

FROM: Michael A. Pearson /s/  
Executive Associate Commissioner  
Office of Field Operations

SUBJECT: Procedures for Preservation of Immigration Benefits for Victims of Terrorism (Title IV, Subtitle C (Sections 421-428), of the USA PATRIOT Act) P.L. 107-56 (October 26, 2001).

The attached memorandum contains policy guidance and field instructions relating to the adjudications-related provisions of the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, signed into law on October 26, 2001.

The Office of Policy and Planning (Adjudications Division) and the Office of Field Operations (Immigration Services Division and Inspections) have coordinated to develop these policies and procedures to implement the various provisions of this law.

If you have questions please contact, through appropriate supervisory channels, your service center or regional representative. If needed, contact the Office of Policy and Planning (Adjudications Division) or the Office of Field Operations (Immigration Services Division and Inspections), as appropriate.

Attachment



U.S. Department of Justice  
Immigration and Naturalization Service

HQADN 70/23.1

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Office of the Executive Associate Commissioner

425 I Street NW  
Washington, DC 20536

January 31, 2002

MEMORANDUM FOR MICHAEL A. PEARSON  
EXECUTIVE ASSOCIATE COMMISSIONER  
OFFICE OF FIELD OPERATIONS

FROM: Stuart Anderson /s/  
Executive Associate Commissioner  
Office of Policy and Planning

SUBJECT: Procedures for Preservation of Immigration Benefits for Victims of  
Terrorism (Title IV, Subtitle C (Sections 421-428), of the USA PATRIOT  
Act) P.L. 107-56 (October 26, 2001)

On November 20, 2001, Headquarters issued an informational memorandum summarizing the immigration benefits-related provisions of the USA PATRIOT Act. Since many of the provisions of this Act are time sensitive, the Office of Adjudications (ADN), the Office of Immigration Services (ISD), and the Office of Inspections (INP) have developed the interim procedures described in this memorandum. As the need arises, the appropriate HQ office will amend these procedures in subsequent memoranda.

This memorandum discusses, on a section-by-section basis, the specific eligibility criteria for each provision of the USA PATRIOT ACT and procedures for obtaining the benefit. The instructions in this memorandum cover Port-of-Entry (POE), district office, and service center procedures.

**Definition**

The term "specified terrorist activity" is defined by section 428 of Title IV, Subtitle C of the USA PATRIOT Act as any terrorist activity conducted against the Government or people of the United States on September 11, 2001. Therefore, it includes the attacks on the World Trade Center area and the Pentagon, as well as the crash of Flight 93 in Pennsylvania. It does not, however, include the subsequent anthrax attacks or threats or other previous or subsequent terrorist activities.

**Section 421—Special immigrant status**

Under this section, three groups of aliens may self-petition for special immigrant status under section 101(a)(27) of the Immigration and Nationality Act (Act). To be eligible for special immigrant status, the alien must be eligible to receive an immigrant visa and admissible to the United States for permanent residence. For purposes of determining admissibility, however, the ground of inadmissibility at section 212(a)(4) of the Act (public charge) does not apply. This means that the affidavit of support is not required. Immigrant visas available under this section will be assigned chronologically in order of application submission. In the event that the Service reaches the annual limit for special immigrants under section 203 of the Act, aliens may retain the prior priority date from the petition that was revoked, terminated or otherwise rendered null due to a specified terrorist activity.

Section 421(b) lists three groups of aliens (listed below) that are eligible for special immigrant status under section 101(a)(27) of the Act as follows:

**(1) Principal aliens**—Principal alien beneficiaries of:

- Visa petitions filed under section 204 of the Act (Forms I-130, I-140, and I-526)
- Fiancé petitions under section 214(d) of the Act, or
- Applications for labor certification under section 212(a)(5)(A) of the Act.

The petition or application must have been filed on or before September 11, 2001, and the petition or application must have been revoked, terminated, or otherwise rendered null due to a “specified terrorist activity” that resulted in:

- The death or disability of the petitioner, applicant, or alien beneficiary<sup>1</sup>; or
- The loss of employment due to physical damage to, or destruction of, the business of the petitioner or applicant<sup>2</sup>.

**(2) Spouse and children of principal aliens**—The spouse and children of principal aliens as described in section 421(b)(1), where the relationship existed on September 10, 2001, and

- The alien is accompanying the principal alien, or

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<sup>1</sup> The discussion, in this memorandum, of section 426 of the USA PATRIOT Act contains information on how aliens may demonstrate eligibility due to death or disability, which directly resulted from a specified terrorist activity. This discussion applies to all relevant sections.

<sup>2</sup> The discussion, in this memorandum, of section 426 of the USA PATRIOT Act contains information on how aliens may demonstrate eligibility due to loss of employment due to physical damage to, or destruction of, the business of the petitioner or applicant, which directly resulted from a specified terrorist activity. This discussion applies to all relevant sections.

- The alien is following-to-join the principal alien not later than September 11, 2003<sup>3</sup>.

**(3) Grandparents of orphans**—The grandparents of a child, both of whose parents died as a direct result of a specified terrorist activity, if either parent was a citizen or national of the United States or a lawful permanent resident on September 10, 2001.

## Procedures

**Form**—An alien who falls within categories (1), (2), or (3) may apply for benefits under the USA PATRIOT Act by submitting Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, with fee (or request for fee waiver), to the INS service center that has jurisdiction over the alien's place of residence. Self-petitioners should so indicate in Part II, Box K, by writing on the form that they are applying for benefits under the USA PATRIOT Act and indicate the specific, qualifying reason for their eligibility e.g., principal, spouse/child of a principal, grandparent).

**Additional evidence**—Self-petitioners for special immigrant status should also include evidence, as outlined later in this memorandum, of their eligibility for the special immigrant status, including, but not limited to, evidence that demonstrates the requisite death, disability, or loss of employment due to physical damage to, or destruction of, the petitioning business. In addition, such an applicant must also provide a statement describing, or evidence of, the petition or application that was revoked, terminated, or rendered null by the above reasons. Such evidence may be in the form of a receipt issued by the Service. In the case of category (3), the alien grandparent must be coming to assume legal custody of the orphaned grandchild before the grandchild turns 21 years old, or who was under the age of 18 at the time the petition was filed and is not older than 21.

**Related forms**—Aliens present in the United States whose Form I-360 is approved may then file Form I-485, Application to Register Permanent Residence or Adjust Status, with all supporting documentation with the local office that has jurisdiction over their place of residence. When the Form I-485 is filed, an applicant may file related applications for employment authorization and advance parole.

In the case of a grandparent or other alien who is residing abroad and has an approved Form I-360 under this section, the Service should annotate the approved

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<sup>3</sup> The law uses the terms "accompanying" and "following-to-join" in this paragraph to apply as if the death of the petitioner had not occurred.

petition with the appropriate section of the USA PATRIOT Act and forward to the National Visa Center for future immigrant processing.

### **Class of admission**

The class of admission code for aliens adjusting status under section 421(b)(1), (2) or (3) of the USA PATRIOT Act is Z-83.

### **Section 422—Extension of various deadlines**

Subsections (a) through (f) of this section provide extension of various deadlines for certain groups of aliens. In many cases, aliens benefiting from section 422 will need to demonstrate that their failure to meet the specific deadline was due to a specified terrorist activity. The Service notes that, due to the date of issuance of this memorandum, it is unlikely that many aliens remain able to benefit from subsections 422(b), (d), (e), and (f).

### **Section 422(a) Nonimmigrants—extended period of admission**

**Principal nonimmigrant aliens**—An alien who was lawfully present in a nonimmigrant status on September 10, 2001, and who was disabled as a direct result of a specified terrorist activity, may remain lawfully in that status until the later of:

- (1) the date such lawful nonimmigrant status otherwise would have terminated if this subsection had not been enacted, as documented on the Form I-94; or
- (2) 1 year after the disability.

**Dependent nonimmigrant aliens**—An alien who was lawfully present in a nonimmigrant status on September 10, 2001, and who was on that date the spouse or child of an alien who subsequently died or was disabled as a direct result of a specified terrorist activity may remain lawfully in that status until the later of:

- (3) the date such lawful nonimmigrant status otherwise would have terminated if this subsection had not been enacted, as documented on the Form I-94; or
- (4) 1 year after the death or disability.

**Employment authorization**—Such aliens are employment authorized and must be issued a document evidencing such employment within 30 days of receipt of an application for such documentation on Form I-765 filed with the local district office.

**Procedures**—An eligible alien whose nonimmigrant status was terminated must apply to the appropriate service center for an extension of that status in accordance with section 422(a). The alien must provide evidence, as discussed later in this memorandum, demonstrating his or her eligibility for this extension. Once approved for the additional time, an alien may apply for employment authorization with the local office, using (c)(14) as the eligibility code. Such an application must be made to the district office with jurisdiction over the alien's place of residence.

**Section 422(b) Nonimmigrants—late filing of applications for extension of stay or change of status**

**Filing delays**—An alien lawfully present in the United States in a nonimmigrant status on September 10, 2001, who was prevented from filing a timely application for an extension of stay or change of status as a direct result of a specified terrorist activity, will have his or her application considered as timely if it is filed no later than 60 days after it would have otherwise been due.

**Procedures**—Service center directors have existing authority and guidelines for accepting applications for extension of stay or change of status submitted after the applicant's period of admission has expired. Aliens wishing to utilize this provision must submit an application, per existing standards, and submit evidence documenting that they were unable to submit the application timely as a direct result of a specified terrorist activity.

**Return delays**—Likewise, an alien, and his or her dependent spouse and children, who were in lawful nonimmigrant status on September 10, 2001, but who were not present in the United States, and were unable to return to the United States in order to file a timely application for extension of stay or change of status as a direct result of a specified terrorist activity, will have 60 additional days from the expiration of the period of admission as a nonimmigrant to file an application for extension of stay or change of status. The period of lawful admission as a nonimmigrant will continue for 60 additional days as well.

**Procedures**--Service center directors have existing authority and guidelines for accepting applications for extension of stay or change of status submitted after the applicant's period of admission has expired. Aliens wishing to utilize this provision must submit an application, per existing standards, and submit evidence documenting that they were unable to submit the application timely as a direct result of a specified terrorist activity.

**Departure delays**—An alien lawfully present in the United States in a nonimmigrant status on September 10, 2001, who was prevented from departing the United States after the alien's period of lawful admission expired as a direct result of a specified terrorist activity shall not be considered to have accrued unlawful presence during the period between September 11, 2001 and November 11, 2001.

### **Section 422(c) Special provisions for FY 2001 Diversity immigrants**

**Principals**—A diversity visa-related immigrant visa number issued to an alien for FY 2001 may be used by the alien until April 1, 2002, if the alien demonstrates that he or she was unable to use the DV number prior to September 30, 2001, as a direct result of a specified terrorist activity.

**Dependents**—The spouse and children (on September 10, 2001) of an alien issued a diversity visa-related immigrant visa number for FY 2001 who died as a direct result of a specified terrorist activity shall, until June 30, 2002, be entitled to the same status as they would have otherwise been able to receive if the principal alien were not deceased or if the spouse or children's visa applications had been adjudicated prior to September 30, 2001.

**Procedures**—In cases where a DV number was issued by the Department of State but the alien was unable to adjust status prior to the end of FY 2001 due to a specified terrorist activity, local offices should adjudicate diversity visa-related applications for adjustment of status as if fiscal year 2001 ends on April 1, 2002, or June 30, 2002, as appropriate. An alien requesting benefits under this provision should submit evidence as described below with his or her application to adjust status.

**POE**—In cases where a DV-related visa was issued by the Department of State but the alien was unable to enter the U.S. prior to the end of FY 2001 due to a specified terrorist activity, the Department of State will issue a transportation letter to accompany the expired visa. This letter will state that the DV validity has been extended under section 422(c) of the USA PATRIOT Act. Consular posts will also contact INS when such a letter has been issued. Inspectors should admit such diversity visa-related applications for admission until April 1, 2002, or June 30, 2002, as appropriate.

### **Section 422(d) Extension of the validity of immigrant visas**

An alien issued an immigrant visa that contains an expiration date prior to December 31, 2001, who was unable to enter the United States prior to that

expiration as a direct result of a specified terrorist activity shall be considered to have an immigrant visa valid through December 31, 2001.

**Procedures**—Inspectors at POEs should treat as valid an expired immigrant visa presented by an alien who is otherwise eligible for admission as an immigrant if the expiration date is prior to December 31, 2001, provided that the alien can demonstrate that he or she was prevented from entering the United States prior to the immigrant visa's expiration as a direct result of a specified terrorist activity.

Aliens abroad who are unable to board a plane due to an expired immigrant visa may obtain a new immigrant visa from the Embassy or Consulate that issued the initial immigrant visa.

#### **Section 422(e) Grants of parole extended**

An alien's grant of parole (including advance parole) under section 212(d)(5) of the Act that expires on or after September 11, 2001, is deemed extended for a period of 90 days if the alien beneficiary of the grant of parole was unable to return to the United States prior to the date of expiration of the parole as a direct result of a specified terrorist activity.

**Procedures**—If an alien presents a genuine, expired Form I-512, Authorization for Parole of an Alien into the United States, which contains an expiration date on or after September 11, 2001, the Service should process such document as unexpired for a period not to exceed 90 days of the expiration date listed on the Form I-512 if the alien can establish that he or she was prevented from returning to the United States by a specified terrorist activity. All aliens presenting such a document must still be otherwise eligible for parole and be inspected on a case-by-case basis.

#### **Section 422(f) Voluntary departure extended**

All periods of voluntary departure that expired between September 11, 2001 and October 11, 2001 (inclusive) are deemed extended for an additional 30-day period. Thus, for example, if the period of voluntary departure expired on September 20, 2001, but the alien did not depart until October 19, 2001, the alien will be regarded as having made a timely departure. There is no requirement that the alien demonstrate that the delay in departure was due to a specified terrorist activity.

### **Circumstances preventing timely action and directly resulting in various delays**

The following list contains the various events that may have occurred due to a specified terrorist activity that aliens may use to support their claim for benefits under section 422. This list is not exhaustive, and the Service will review all evidence on a case-by-case basis.

**Section 422(a) EOS/COS filing delays**—Office closures, mail or courier service cessations or delays, and other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

**Section 422(b) Nonimmigrant departure and return delays**—Office closures, airline flight cessations or delays, and other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

**Section 422(c) DV filing delays**—Office closures, mail or courier service cessations or delays, airline flight cessations or delays, and other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

**Section 422(d) IV extensions**—Office closures, airline flight cessations or delays, and other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

**Section 422(e) Parole extensions**—Office closures, airline flight cessations or delays, and other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

### **Section 423—Humanitarian relief for certain surviving spouses and children**

This section provides benefits for the surviving relatives of United States citizens, lawful permanent residents, and certain employment-based adjustment of status applicants.

#### **Section 423(a) Continued treatment of the spouses and children of United States citizens as immediate relatives**

If a United States citizen was killed as a direct result of a specified terrorist activity, his or her spouse and/or children continue, for 2 years, to meet the definition of an immediate relative at section 201(b) of the Act. At the time of the citizen's death, the alien spouse cannot have been legally separated from the citizen, and he or she cannot remarry and still benefit from this provision.

Conversely, the children of the citizen will be considered to remain immediate relatives for 2 years regardless of age or marriage.

**Procedures**—To benefit from this section, an alien must file Form I-130 under section 204(a)(1)(A)(ii), as appropriate for spouses, within 2 years of the death of the U.S. citizen. This provision does not have derivative classifications. Therefore, each alien must file his or her own petition. The alien should write in Box A., Relationship, with “USA PATRIOT Act, Section 423(a),” and provide evidence of eligibility. The USA PATRIOT Act deems a petition filed by an eligible child to be a petition under section 204(a)(1)(A) of the Act.

In the case of aliens who have returned abroad and whose Form I-130 is approved under this section, the Service should annotate the approved petition with the appropriate section of the USA PATRIOT Act and forward to the National Visa Center.

In the case where the Department of State issues an immigrant visa based on this section, the consular office will issue a standard IR-1 or IR-2 visa. Because of the special exemptions of the age and marital status requirements of IR-2s under this provision, however, the IR-2 visa will contain a notation indicating that the visa was issued pursuant to section 423(a) of the USA PATRIOT Act. For such visas only, Service inspectors may admit the qualifying alien as an IR-2, despite age or marital status.

#### **Section 423(b) Spouses, children, and unmarried sons and daughters of lawful permanent resident aliens**

**Beneficiaries of petitions**—If a lawful permanent resident alien who was killed as a direct result of a specified terrorist activity had a pending petition(s) for his or her spouse, children, and/or unmarried sons or daughters on or before September 11, 2001, the petition(s) shall remain valid and the alien beneficiary will retain his or her priority date. Such alien beneficiaries may apply for employment authorization and request deferred action to remain in the United States until such time as their priority date is reached. Such aliens may also be eligible for the special immigrant provisions under section 421.

**Procedures**—There is no new petition required for the retention of the priority date. The Service will process the application as if the death had not occurred. At the time of adjudication or interview, the Service may request additional evidence to confirm that the alien is eligible for benefits under this section. During the time before a visa number becomes available to an alien, he or she may request

deferred action and related employment authorization. Such an application must be made to the local office with jurisdiction over the alien's place of residence. The alien may apply for adjustment of status when his or her priority date becomes current.

**Aliens who are not beneficiaries of a visa petition**—If a lawful permanent resident alien who was killed as a direct result of a specified terrorist activity has not filed a visa petition for his or her spouse, children, and/or unmarried sons or daughters, the alien spouse, child, or son or daughter may file a self-petition for classification under 203(a)(2) (A) or (B) of the Act, as appropriate, as if the lawful permanent resident is still alive. Aliens seeking benefits under this provision must have been present in the United States on September 11, 2001. Such aliens may apply for employment authorization and request deferred action to remain in the United States until such time as their priority date is reached.

**Procedures**—Aliens requesting benefits under this section should file Form I-130, Petition for Alien Relative, at the service center that has jurisdiction over the alien's place of residence. Aliens should include evidence that demonstrates their eligibility for benefits under this section. During the time before a visa number becomes available to an alien, he or she may request deferred action and related employment authorization. Such an application must be made to the local office with jurisdiction over the alien's place of residence. The alien may apply for adjustment of status when his or her priority date becomes current.

In the case of aliens who have returned abroad and whose Form I-130 is approved under this section, the Service should annotate the approved petition with the appropriate section of the USA PATRIOT Act and forward to the National Visa Center.

### **Section 423(c) Surviving spouses and children of employment-based immigrants**

An alien who on September 10, 2001, was the spouse or child of an alien who was killed as a direct result of a specified terrorist activity and who was either an employment-based lawful permanent resident or had an employment-based Form I-485 pending and was admissible, may continue to have his or her Form I-485 adjudicated as if the death had not occurred, provided the Form I-485 was filed on or before September 11, 2001.

**Procedures**— There is no new application or petition required for the continuation of the adjustment application. The Service will process the application as if the death has not occurred. At time of adjudication or interview,

the Service may request additional evidence to confirm that the alien is eligible for benefits under this section.

**Section 423(d) Waiver of the public charge ground of inadmissibility**

Aliens eligible for benefits under section 423(a), (b), or (c) of this Act are exempt the public charge ground of inadmissibility found at section 212(a)(4) of the Act. That ground of inadmissibility encompasses the Form I-864, the Affidavit of Support. Thus, no affidavit of support is required in these cases.

**Class of admission**

Aliens benefiting from section 423 should be assigned the same class of admission as if the death of the petitioner had not occurred. Immigrant visas issued by the Department of State under section 423 will be annotated accordingly.

**Section 424—Age-out benefits for certain alien children**

**Section 424(2) An alien beneficiary whose 21<sup>st</sup> birthday occurred after September 2001.**

For any alien child beneficiary of a petition or application to adjust status filed on or before September 11, 2001, the alien shall be considered to remain a child for an additional 45-day period if the alien's 21<sup>st</sup> birthday occurs(ed) after September 2001.

**Adjudication procedures**—If an alien described in paragraph (2) of section 422 has an application or petition pending before the Service that was filed prior to September 11, 2001, and the desired benefit requires the applicant or petitioner to be under the age of 21, that alien shall be considered to remain a child for an additional period of 45 days after his or her 21<sup>st</sup> birthday. This benefit may apply to, but is not limited to, visa petitions, applications to adjust status, applications for an extension of nonimmigrant status, applications for a change of nonimmigrant status, and/or applications for asylum or refugee status.

**Form I-485**—If the Form I-485 was filed on or prior to September 11, 2001, or is based upon a visa petition filed on or before September 11, and the alien's 21<sup>st</sup> birthday occurred after September 2001, the application may be approved for an additional 45 days from the date of his or her 21<sup>st</sup> birthday.

**POE procedures**—The DOS will annotate "PL 107-56 USA Patriot Act Sec. 424" on all immigrant and non-immigrant visas issued based on visa petitions filed on or before September 11, 2001 where the beneficiary has turned or will turn 21 years of age in or after October 2001.

**Immigrant visa**—If the applicant is over the age of 21, the DOS system will not electronically print the Form I-551 A; therefore, the DOS will manually generate the immigrant visa cover page. Such visa packets will include a cover memorandum verifying authenticity. These IVs should be processed in accordance with standard procedures outlined in the IFM.

**Nonimmigrant visas**—If the visa is annotated as described above and the alien's 21st birthday occurred in or after October 2001, the alien is to be admitted for 45 days from the date of his or her 21st birthday. If the visa validity date has passed, the alien is required to obtain the appropriate visa prior to admission to the United States.

**"Following to join" children of Refugees**—For an alien child applying for admission as the "Following to join" child of a Refugee, and whose 21st birthday occurred after September 2001, such an alien can be admitted until 45 days after the date of his or her 21st birthday if the Form I-730 was filed on or before September 11, 2001.

**Note:** These sections are **NOT** limited to aliens affected by the events of September 11, 2001. The provisions of sections 424(1) and (2) apply to all aliens who have a petition or application pending on or before September 11, 2001. This means that all such aliens will receive an additional 90-day or 45-day period of age-out exemption.

#### **Section 425—Temporary administrative relief**

This section provides the Attorney General with the authority to grant administrative relief to any alien lawfully present in the United States on September 10, 2001, who was the spouse, parent, or child of a person who died or was disabled as a direct result of a specified terrorist activity, and who is not otherwise entitled to relief under this Act.

**Procedures**—Administrative relief shall take the form of deferred action and employment authorization. Affected persons must request this relief, and the local office Director must review each request on a case-by-case basis.

### **Section 426—Evidence of death, disability, or loss of employment**

**Death**—The following documentation may be used to demonstrate that a person was killed as a direct result of a specified terrorist activity:

- An official Death Certificate, where the date of death is listed as on or after September 11, 2001, accompanied by other documentation attributing the death to a specified terrorist activity;
- An interim Death Certificate, as issued by the State of New York, where the date of death is listed on or after September 11, 2001;
- Flight Records (for deceased passengers);
- Public records, listing the deceased as a victim of the September 11 attacks;
- Other official or non-official documentation.

The Service will evaluate all evidence on a case-by-case basis.

**Disability**—Service personnel shall use the following definition to make a determination of disability. In relevant part, it is the definition found in the Americans with Disability Act (ADA) at 42 USC § 12102(a)(2):

- (2) Disability. - The term “disability” means, with respect to an individual—
  - (A) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

Further, for purposes of the USA PATRIOT Act, a licensed medical doctor or licensed psychiatrist must provide documentation that the physical or mental impairment meets this definition and is a direct result of the specified terrorist activity.

**Loss of employment due to physical damage to, or destruction of, business**—The following documentation may be used to demonstrate loss of employment due to the physical damage to, or destruction of, a business, which directly resulted from a specified terrorist activity:

- A letter from the employer (in the case of a business that was not totally destroyed);
- Official records indicating that the business was completely destroyed; or
- Other documentation showing the complete destruction of the business.

However, if an alien is able to continue in the employ of the business at a different location, such an alien will not be considered to have lost employment

due to the physical damage to, or destruction of, a business, which directly resulted from a specified terrorist activity. In any case, the Service will evaluate all evidence on a case-by-case basis.

**Section 427—No benefits to terrorists or family members of terrorists**

This section restricts any terrorist “culpable for a specified terrorist activity” or the family members of such an alien from obtaining benefits under Title IV, Subtitle C of the USA PATRIOT Act.

Culpability may be found where the alien either admits to involvement with a specified terrorist activity, is convicted of a crime related to a specified terrorist activity, and/or is found liable in a civil suit for his or her wrongful conduct related to a specified terrorist activity.

**Section 428—Definitions**

This section defines the term “specified terrorist activity” to mean any terrorist activity conducted against the Government or people of the United States on September 11, 2001. Therefore, it includes the attacks on the World Trade Center area and the Pentagon, as well as the crash of Flight 93 in Pennsylvania. It does not, however, include the subsequent anthrax attacks or threats or other previous or subsequent terrorist activities.

This section also states that unless provided or required otherwise in Subtitle C of the USA PATRIOT Act, the definitions found in the Immigration and Nationality Act shall apply to terms found in Subtitle C of the USA PATRIOT Act.