

[8 USCS § 1367](#)

Current through Public Law 118-274, approved January 6, 2025.

United States Code Service > TITLE 8. ALIENS AND NATIONALITY (Chs. 1 — 15) > CHAPTER 12. IMMIGRATION AND NATIONALITY (§§ 1101 — 1537) > IMMIGRATION (§§ 1151 — 1382) > MISCELLANEOUS (§§ 1351 — 1382)

§ 1367. Penalties for disclosure of information

(a) In general. Except as provided in subsection (b), in no case may the Attorney General, or any other official or employee of the Department of Justice, the Secretary of Homeland Security, the Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)—

- (1)** make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act using information furnished solely by—
 - (A)** a spouse or parent who has battered the alien or subjected the alien to extreme cruelty,
 - (B)** a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty,
 - (C)** a spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty),
 - (D)** a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty 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,
 - (E)** in the case of an alien applying for status under section 101(a)(15)(U) of the Immigration and Nationality Act [[8 USCS § 1101\(a\)\(15\)\(U\)](#)], the perpetrator of the substantial physical or mental abuse and the criminal activity, [or]
 - (F)** in the case of an alien applying for status under section 101(a)(15)(T) of the Immigration and Nationality Act ([8 U.S.C. 1101\(a\)\(15\)\(T\)](#)), under section 107(b)(1)(E)(i)(II)(bb) of the Trafficking Victims Protection Act of 2000 ([22 U.S.C. 7105](#)), under section 244(a)(3) of the Immigration and Nationality Act ([8 U.S.C. 1254a\(a\)\(3\)](#)), as in effect prior to March 31, 1999, or as a VAWA self-petitioner (as defined in section 101(a)(51) of the Immigration and Nationality Act ([8 U.S.C. 1101\(a\)\(51\)](#))), the trafficker or perpetrator,

unless the alien has been convicted of a crime or crimes listed in section 237(a)(2) of the Immigration and Nationality Act [[8 USCS § 1227\(a\)\(2\)](#)]; or

- (2)** permit use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information which relates to an alien who is the beneficiary of an application for relief under paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act [[8 USCS § 1101\(a\)](#)] or section 240A(b)(2) of such Act [[8 USCS § 1229b\(b\)\(2\)](#)].

The limitation under paragraph (2) ends when the application for relief is denied and all opportunities for appeal of the denial have been exhausted.

(b) Exceptions.

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- (1) The Secretary of Homeland Security or the Attorney General may provide, in the Secretary's or the Attorney General's discretion, for the disclosure of information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under [section 8 of title 13, United States Code](#).
- (2) The Secretary of Homeland Security or the Attorney General may provide in the discretion of the Secretary or the Attorney General for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose in a manner that protects the confidentiality of such information.
- (3) Subsection (a) shall not be construed as preventing disclosure of information in connection with judicial review of a determination in a manner that protects the confidentiality of such information.
- (4) Subsection (a)(2) shall not apply if all the battered individuals in the case are adults and they have all waived the restrictions of such subsection.
- (5) The Secretary of Homeland Security and the Attorney General are authorized to disclose information, to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [[8 USCS § 1641\(c\)](#)].
- (6) Subsection (a) may not be construed to prevent the Attorney General and the Secretary of Homeland Security from disclosing to the chairmen and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, information on closed cases under this section in a manner that protects the confidentiality of such information and that omits personally identifying information (including locational information about individuals).
- (7) Government entities adjudicating applications for relief under subsection (a)(2), and government personnel carrying out mandated duties under section 101(i)(1) of the Immigration and Nationality Act [[8 USCS § 1101\(i\)\(1\)](#)], may, with the prior written consent of the alien involved, communicate with nonprofit, nongovernmental victims' service providers for the sole purpose of assisting victims in obtaining victim services from programs with expertise working with immigrant victims. Agencies receiving referrals are bound by the provisions of this section. Nothing in this paragraph shall be construed as affecting the ability of an applicant to designate a safe organization through whom governmental agencies may communicate with the applicant.
- (8) Notwithstanding subsection (a)(2), the Secretary of Homeland Security, the Secretary of State, or the Attorney General may provide in the discretion of either such Secretary or the Attorney General for the disclosure of information to national security officials to be used solely for a national security purpose in a manner that protects the confidentiality of such information.
- (c) Penalties for violations.** Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act [[8 USCS § 1229\(e\)](#)] shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than \$5,000 for each such violation.
- (d) Guidance.** The Attorney General, the Secretary of State, and the Secretary of Homeland Security shall provide guidance to officers and employees of the Department of Justice, Department of State, or the Department of Homeland Security who have access to information covered by this section regarding the provisions of this section, including the provisions to protect victims of domestic violence and severe forms of trafficking in persons or criminal activity listed in section 101(a)(15)(U) of the Immigration and Nationality Act ([8 U.S.C. 1101\(a\)\(15\)\(u\)](#)) from harm that could result from the inappropriate disclosure of covered information.

History

HISTORY:

Sept. 30, 1996, *P. L. 104-208*, Div C, Title III, Subtitle A, § 308(g)(8)(D), Subtitle F, § 384, *110 Stat. 3009-624*, 3009-652; Aug. 5, 1997, *P. L. 105-33*, Title V, Subtitle F, Ch 4, Subch B, § 5572(b), *111 Stat. 641*; Oct. 28, 2000, *P. L. 106-386*, Div B, Title V, § 1513(d), *114 Stat. 1536*; Jan. 5, 2006, *P. L. 109-162*, Title VIII, Subtitle B, § 817, *119 Stat. 3060*; Aug. 12, 2006, *P. L. 109-271*, § 6(h), *120 Stat. 763*; March 7, 2013, *P. L. 113-4*, Title VIII, § 810(a), (b), (d), *127 Stat. 117*, 118.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES**References in text:****Explanatory notes:****Amendment Notes****1996.****1997.****2000.****2006.****2013.****Other provisions:****Transfer of functions:****References in text:**

The “Immigration and Nationality Act”, referred to in this section, is Act June 27, 1952, ch 477, which appears generally as [8 USCS §§ 1101](#) et seq. For full classification of such Act, consult USCS Tables volumes.

Explanatory notes:

The bracketed word “or” has been inserted in subsec. (a)(1)(E) to indicate the probable intent of Congress to include it.

The bracketed closing parenthesis has been inserted in subsec. (a)(1)(F) to indicate the probable intent of Congress to include it.

As originally enacted, this section contained a subsec. (d), which amended [8 USCS §§ 1160\(b\)\(6\)](#) and [1255a\(c\)\(5\)](#) and appeared in part as [8 USCS § 1160](#) note.

This section was enacted as part of Act Sept. 30, 1996, *P. L. 104-208*, and not as part of Act June 27, 1952, ch 477, which generally comprises this chapter.

Amendment Notes**1996.**

Act Sept. 30, 1996 (effective as provided by § 309(a) of such Act, which appears as 8 USCS § 1101 note) purported to amend § 364(a)(2) of Division C of Act Sept. 30, 1996 by substituting “240A(a)(3)” for “244(a)(3)”; however, the substitution was made in § 384(a)(2) of such Division (subsec. (a)(2) of this section) in order to effectuate the probable intent of Congress.

1997.

Act Aug. 5, 1997 (effective as provided § 5582 of such Act, which appears as a note to this section), in subsec. (b), added para. (5).

2000.

Act Oct. 28, 2000, in subsec. (a), in para. (1), in subpara. (C), deleted “or” following the concluding comma, in subpara. (D), added “or” following the concluding comma, and added subpara. (E), and, in para. (2), inserted “section 101(a)(15)(U),”.

2006.

Act Jan. 5, 2006, in subsec. (a), in the introductory matter, substituted “, the Secretary of Homeland Security, the Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)” for “(including any bureau or agency of such Department)”, in para. (1), in subpara. (D), deleted “or” following the concluding comma, and added subpara. (F), and added paras. (6) and (7); in subsec. (c), inserted “or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act”; and added subsec. (d).

Act Aug. 12, 2006, in subsec. (a)(2), substituted “paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act or section 240A(b)(2) of such Act.” for “clause (iii) or (iv) of section 204(a)(1)(A), clause (ii) or (iii) of section 204(a)(1)(B), section 216(c)(4)(C), section 101(a)(15)(U), or section 240A(a)(3) of such Act as an alien (or the parent of a child) who has been battered or subjected to extreme cruelty.”.

2013.

Act March 7, 2013, in subsec. (a)(1), in the concluding matter, substituted “237(a)(2)” for “241(a)(2)”; in subsec. (b), in para. (1), inserted “Secretary of Homeland Security or the” and “Secretary’s or the”, in para. (2), inserted “Secretary of Homeland Security or the”, “Secretary or the”, and “in a manner that protects the confidentiality of such information”, in para. (5), substituted “Secretary of Homeland Security and the Attorney General are” for “Attorney General is”, and added para. (8); and in subsec. (d), inserted “, Secretary of State,”, “, Department of State,”, and “and severe forms of trafficking in persons or criminal activity listed in section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(u))”.

Other provisions:

Effective date of Aug. 5, 1997 amendments. Act Aug. 5, 1997, *P. L. 105-33*, Title V, Subtitle F, Ch 5, Subch C, § 5582, *111 Stat. 577*, provides: “Except as otherwise expressly provided, the amendments made by this chapter [for full classification, consult USCS Tables volumes] shall be effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [enacted Aug. 22, 1996].”

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Implementation of March 7, 2013 amendments. Act March 7, 2013, *P. L. 113-4*, Title VIII, § 810(c), *127 Stat. 118*, provides: “Not later than 180 days after the date of the enactment of this Act, the Attorney General, the Secretary of State, and Secretary of Homeland Security shall provide the guidance required by section 384(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (*8 U.S.C. 1367(d)*), consistent with the amendments made by subsections (a) and (b) [amending subsecs. (b) and (d) of this section].”.

Transfer of functions:

For abolition of the Immigration and Naturalization Service, transfer of functions, and treatment of related references, see transfer of functions note under [8 USCS § 1551](#).

NOTES TO DECISIONS

Restriction on use of information about battered alien spouses under *8 USCS § 1367(a)(1)* was inapplicable in criminal prosecution for making false attestation on employment eligibility verification form under [18 USCS § 1546\(b\)\(3\)](#), but was limited to use in immigration proceedings. [United States v. Maswai, 419 F.3d 822, 2005 U.S. App. LEXIS 17976 \(8th Cir. 2005\)](#), reh'g denied, reh'g, en banc, denied, [2005 U.S. App. LEXIS 23329 \(8th Cir. Oct. 27, 2005\)](#), cert. denied, *546 U.S. 1208, 126 S. Ct. 1418, 164 L. Ed. 2d 115, 2006 U.S. LEXIS 1686 (2006)*.

Court previously granted putative class members' motion for protective order because it ultimately concluded that corporations' opportunity to test credibility of putative class members did not outweigh public interest in allowing employees to enforce their rights, and it found that nothing occurred in suit or in relevant case law that would change its earlier findings of fact and conclusions of law; production of T-and U-visa applications themselves would necessarily result in inquiry into putative class members current immigration status, inquiry that court had already barred; although corporation argued that because one putative absent class member allegedly waived any claim to privilege, be it attorney-client, work-product or privilege under *8 USCS § 1367*, all putative class representatives waived any claim to privilege, that argument failed because no class yet existed, and even were court to find that alleged putative absent class member waived any claim to privilege by revealing his T-visa application to third party, such actions would not affect individually-named putative class representatives; putative class members offered to produce sworn statements of putative class representatives that were attached to T- and/or U-visa applications, and court found that such compromise was most productive way to resolve instant dispute. [David v. Signal Int'l, L.L.C., 735 F. Supp. 2d 440, 2010 U.S. Dist. LEXIS 88047 \(E.D. La. 2010\)](#).

Unpublished decision: *8 USCS § 1367(a)(1)* did not apply to render in absentia removal order entered against alien invalid because neither IJ nor BIA had relied upon testimony of alien's alleged abusive spouse in finding that he was removable; wife's withdrawal of her petition for adjustment of status on alien's behalf merely terminated procedural stay that had prevented him from being removed on separate ground; further, alien was ordered removed not because of wife's testimony, but because he had violated terms of his student visa. [Yari v. United States AG, 192 Fed. Appx. 842, 2006 U.S. App. LEXIS 20348 \(11th Cir. 2006\)](#), cert. denied, *549 U.S. 1310, 127 S. Ct. 1886, 167 L. Ed. 2d 372, 2007 U.S. LEXIS 3662 (2007)*.

Research References & Practice Aids

Cross References:

Alien defined, [8 USCS § 1101\(a\)\(3\)](#).

Attorney General defined, [8 USCS § 1101\(a\)\(5\)](#).

Am Jur:

8 USCS § 1367

3A *Am Jur 2d, Aliens and Citizens* § 19.

3B *Am Jur 2d, Aliens and Citizens* § 1765.

3C *Am Jur 2d, Aliens and Citizens* §§ 19, 1593, 1746.

Law Review Articles:

Orloff; Kaguyutan; Immigrant Women Program of NOW Legal Defense and Education Fund. Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses. 10 *Am UJ Gender Soc Pol'y & L* 95, 2001.

Gallagher. Immigration consequences of criminal convictions: protecting your client's immigration interests in criminal proceedings. 01 *Immigr Brief* 1, April 2001.

Immigration:

4 [Immigration Law and Procedure \(rev. ed.\), ch 41](#), Preliminary Visa Petition Requirements for Immediate Relatives and Family-Sponsored Preference Groups § 41.05.

5 [Immigration Law and Procedure \(rev. ed.\), ch 64](#), Removal of Noncitizens § 64.04.

Hierarchy Notes:

[8 USCS, Ch. 12](#)

[8 USCS, Ch. 12, Immigration](#)

United States Code Service
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