

## **9 FAM 40.207**

# **CERTAIN ALIENS INVOLVED IN CONFISCATION OF PROPERTY OF U.S. NATIONALS**

*(CT:VISA-1494; 09-02-2010)*  
*(Office of Origin: CA/VO/L/R)*

## **9 FAM 40.207 RELATED STATUTORY PROVISIONS**

*(CT:VISA-1494; 09-02-2010)*

*Title IV, Section 401 of Public Law 104-114 of the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (Helms-Burton Act) (22 U.S.C. 6091)*

### *Exclusion of Certain Aliens*

SECTION 401. EXCLUSION FROM THE UNITED STATES OF ALIENS WHO HAVE CONFISCATED PROPERTY OF UNITED STATES NATIONALS OR WHO TRAFFIC IN SUCH PROPERTY.

- (a) Grounds for Exclusion: The Secretary of State shall deny a visa to, and the Secretary of Homeland Security shall exclude from the United States, any alien who the Secretary of State determines is a person who, after the date of the enactment of this Act
- (1) Has confiscated, or has directed or overseen the confiscation of, property a claim to which is owned by a United States national, or converts or has converted for personal gain confiscated property, a claim to which is owned by a United States national;
  - (2) Traffics in confiscated property, a claim to which is owned by a United States national;
  - (3) Is a corporate officer, principal, or shareholder with controlling interest of an entity which has been involved in the confiscation of property or trafficking in confiscated property, a claim to which is owned by a United States national; or
  - (4) Is a spouse, minor child, or agent of a person excludable under paragraph (1), (2), or (3).

(b) Definitions: As used in this section, the following terms have the following meanings:

(1) Confiscated; confiscation: The terms “confiscated” and “confiscation” refer to:

(A) The nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property—

(i) Without the property having been returned or adequate and effective compensation provided; or

(ii) Without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(B) The repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay—

(i) A debt of any enterprise, which has been nationalized, expropriated, or otherwise taken by the Cuban Government;

(ii) A debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or

(iii) A debt, which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

(2) Traffics: (A) Except as provided in subparagraph (B), a person “traffics” in confiscated property if that person knowingly and intentionally—

(i) *(I)* Transfers, distributes, dispenses, brokers, or otherwise disposes of confiscated property,

*(II)* Purchases, receives, obtains control of, or otherwise acquires confiscated property, or

*(III)* Improves (other than for routine maintenance), invests in (by contribution of funds or anything of value, other than for routine maintenance), or begins after the date of the enactment of this Act\* to manage, lease, possess, use, or hold an interest in confiscated property,

(ii) Enters into a commercial arrangement using or otherwise benefiting from confiscated property, or

(iii) Causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or

(ii)) through another person, without the authorization of any United States national who holds a claim to the property.

**(B)** The term “traffics” does not include—

(i) The delivery of international telecommunication signals to Cuba;

(ii) The trading or holding of securities publicly traded or held unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) Transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

(iv) Transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

**(c) Exemption--**This section shall not apply where the Secretary of State finds, on a case-by-case basis, that the entry into the United States of the person who would otherwise be excluded under this section is necessary for medical reasons or for purposes of litigation of an action under title III.

**(d) Effective Date.—**

(1) In general.--This section applies to aliens seeking to enter the United States on or after the date of the enactment of this Act.

(2) Trafficking.--This section applies only with respect to acts within the meaning of “traffics” that occur on or after the date of the enactment of this Act.

## **9 FAM 40.207 SECTION 2225 OF DIVISION G OF PUBLIC LAW 105-277**

*(CT:VISA-1494; 09-02-2010)*

### **8 U.S.C. 1182d**

SECTION 2225. DENIAL OF VISAS TO CONFISCATORS OF AMERICAN PROPERTY.

(a) DENIAL OF VISAS: Except as otherwise provided in section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Public Law 104-114), and subject to subsection (b), the Secretary of

State may deny the issuance of a visa to any alien who—

- (1) Through the abuse of position, including a governmental or political party position, converts or has converted for personal gain real property that has been confiscated or expropriated, a claim to which is owned by a national of the United States, or who is complicit in such a conversion; or
  - (2) Induces any of the actions or omissions described in paragraph (1) by any person.
- (b) EXCEPTIONS: Subsection (a) shall not apply to—
- (1) Any country established by international mandate through the United Nations; or
  - (2) Any territory recognized by the United States Government to be in dispute.
- (c) REPORTING REQUIREMENT: Not later than 6 months after the date of enactment of this Act,\* and every 12 months thereafter, the Secretary of State shall submit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a report, including
- (1) A list of aliens who have been denied a visa under this subsection; and
  - (2) A list of aliens who could have been denied a visa under subsection (a) but were issued a visa and an explanation as to why each such visa was issued.

## **9 FAM 40.207 RELATED REGULATORY PROVISIONS**

*(CT:VISA-949; 04-29-2008)*

22 CFR 40.207 [Reserved].