



U.S. House of Representative Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement
Hearing on H.R. 2121, the "China Democracy Promotion Act of 2011"
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Chairman Gallegly, Ranking Member Lofgren, and members of the Committee, I am honored to be testifying before you today on behalf of the Congressional Research Service. As a backdrop to this afternoon's discussion of the China Democracy Promotion Act of 2011 (H.R. 2121), my testimony provides summaries of two subsections of the Immigration and Nationality Act (INA):

- §212(a) lists the grounds of inadmissibility that bar the admission of specified foreign nationals; and,
- §212(f) authorizes the President to bar the entry of foreign nationals he deems detrimental to the United States.

These subsections are the basis of current law that may be considered comparable to provisions in H.R. 2121. This legislation states that the President may exercise authority under INA §212(f) to deny entry into the United States to an alien who:

- holds a position in the senior leadership of the government of the People's Republic of China (PRC), or is an immediate family member of such person;
- through his or her business dealings with senior PRC leadership derives significant financial benefit from policies or actions that undermine democratic institutions in the PRC;
- has participated in the PRC's coercive birth limitation policy;
- has participated in the repression or persecution of Tibetans, Uyghurs, Mongolians, or other ethnic minorities;
- has participated in the trafficking of North Korean refugees; or
- is a member of the PRC's security or law enforcement services and has participated in the repression or persecution of any individual in violation of such individual's human rights.

Brief Explanation of Visa Screening and Issuances

Foreign nationals not already legally residing in the United States who wish to come to the United States generally must obtain a visa to be admitted. Those admitted on a permanent basis

are known as immigrants or legal permanent residents (LPRs), while those admitted on a temporary basis are known as nonimmigrants (such as tourists, foreign students, diplomats, temporary agricultural workers, and exchange visitors). They must first meet a set of criteria specified in the Immigration and Nationality Act (INA) that determines whether they are eligible for admission. Conversely, foreign nationals also must not be deemed inadmissible according to other specified grounds in §212 of the INA.

The Bureau of Consular Affairs (Consular Affairs) in the Department of State (DOS) is the agency responsible for issuing visas. All foreign nationals seeking visas must undergo admissibility reviews performed by DOS consular officers abroad.¹ These reviews are intended to ensure that foreign nationals are not ineligible for visas or admission under the grounds for inadmissibility. Consular decisions are not appealable or reviewable; however, some of those seeking visas are able to bring additional information that may be used to overcome an initial refusal.² In some cases, the foreign national may be successful in overcoming the §212(a) exclusion if new or additional information comes forward. The decision of the consular officer, however, is not subject to judicial appeals.³

The documentary requirements for visas are stated in §§221-222 of the INA, with some discretion for further specifications or exceptions by regulation. Generally, the application requirements are more extensive for aliens who wish to permanently live in the United States than those coming for visits. The statutory provision that gives the consular officer the authority to disqualify a visa applicant is broad and straightforward:

No visa or other documentation shall be issued to an alien if (1) it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa or such other documentation under section 212 [8 USC §1182], or any other provision of law, (2) the application fails to comply with the provisions of this Act, or the regulations issued there under, or (3) the consular officer knows or has reason to believe that such alien is ineligible to receive a visa or such other documentation under section 212 [8 USC §1182], or any other provision of law....⁴

These determinations are based on the eligibility criteria of the various and numerous visa categories.⁵ The shorthand reference for these disqualifications is §221(g), which is the subsection of the INA that provides the authority.

¹ The Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS) adjudicators also conduct admissibility reviews for petitions filed within the United States, and DHS Customs and Border Protection (CBP) inspectors do so when aliens seek entry to the United States. Within the United States, however, the immigration judges in Department of Justice's Executive Office for Immigration Review (EOIR) determine whether an alien is admissible.

² Some of these grounds for exclusion may be waived for aliens seeking admission on immigrant visas if certain criteria are met. Immigration authorities have broader authority to waive these grounds with respect to aliens seeking admission as nonimmigrants (INA § 212(d)(3)).

³ For further discussion of visa screening, see CRS Report R41093, *Visa Security Policy: Roles of the Departments of State and Homeland Security*, by Ruth Ellen Wasem.

⁴ Section 221(g) of the INA. 8 USC 1201.

⁵ For further information and analysis of these numerous visa categories, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem, and CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem.

§212(a) Exclusion

In addition to the determination that a foreign national is qualified for a visa, a decision must be made as to whether the foreign national is admissible or excludable under the INA. The grounds for inadmissibility are spelled out in §212(a) of the INA. These criteria are health-related grounds; criminal history; security and terrorist concerns; public charge (e.g., indigence); seeking to work without proper labor certification; illegal entrants and immigration law violations; ineligible for citizenship; and aliens previously removed. The decision of the consular officer, however, is not subject to judicial appeals.⁶

Provisions listed as criminal grounds under §212(a)(2) and as national security grounds under §212(a)(3) are relevant to today's hearing. Among those foreign nationals who are inadmissible under current law are:

- foreign government officials who have committed particularly severe violations of religious freedom;⁷
- foreign nationals who have committed or have conspired to commit a human trafficking offense or who are known or reasonably believed to have aided or otherwise furthered severe forms of human trafficking, or are known or reasonably believed to be the adult child or spouse of such an alien and knowingly benefitted from the proceeds of illicit activity while an adult in the past five years.⁸
- foreign nationals who ordered, incited, assisted, or otherwise participated in genocide;⁹ and,
- foreign nationals who, outside the United States, have committed, ordered, incited, assisted, or otherwise participated in the commission of any act of torture or any extrajudicial killing.¹⁰

Furthermore, §801 of the Consolidated Appropriations Act, 2000 (P.L. 106-113) included a provision that deems inadmissible “any foreign national that has been directly involved in the enforcement of population control policies forcing a woman to undergo an abortion against her free choice, or forcing a man or woman to undergo sterilization against his or her free choice...” This law provides exceptions for foreign nationals who are heads of state or cabinet-level ministers, and is subject to waiver if the Secretary of State determines the waiver is important to the national interest and provides written notification to appropriate congressional committees.

⁶ For a complete analysis, see CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem.

⁷ Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998 (22 U.S.C. 6402), is inadmissible. §212(a)(2)(G) of INA.

⁸ §212(a)(2)(H) of INA.

⁹ As defined in section 1091(a) of title 18, United States Code. §212(a)(3)(E) (ii) of INA.

¹⁰ As defined in section 2340 of title 18, United States Code, and as defined in section 3(a) of the Torture Victim Protection Act of 1991, respectively. §212(a)(3)(E)(iii) of INA.

§212(f) Suspension of Entry or Imposition of Restrictions

In addition to the §212(a) grounds of inadmissibility, the INA gives the President authority to bar the entry of foreign nationals he deems detrimental to the United States. This broad authority is found in §212(f), which states:

Whenever the President finds that the entry of any aliens or any class of aliens into the United States would be detrimental to the United States, he may by proclamation, and for such a period as he shall deem necessary, suspend the entry of all aliens of any class of aliens as immigrants of nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.¹¹

During FY2010, the State Department reported that six foreign nationals seeking to become immigrants and 38 foreign nationals seeking to become nonimmigrants were denied visas on the basis of §212(f) proclamations.¹²

In August 2011, President Barack Obama issued Presidential Proclamation 8697, *Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Participate in Serious Human Rights and Humanitarian Law Violations and Other Abuses*. As its title implies, this proclamation bars the admission of any foreign national who planned, ordered, assisted, aided and abetted, committed or otherwise participated in, including through command responsibility, widespread or systematic violence, war crimes, crimes against humanity, or other serious violations of human rights, against any civilian population.¹³

Also, there are 18 other §212(f) proclamations currently in effect according to the Department of State, most of which are directed at foreign nationals from specific countries. These countries or areas with §212(f) proclamations include: Belarus, Bosnia, Burma, Cuba, Haiti, Nicaragua, Serbia and Montenegro, Sierra Leone, Sudan, the Western Balkans, and Zimbabwe.¹⁴

¹¹ §212(f) of INA.

¹² Data from FY2010 Report of the Visa Office, U.S. Department of State, Bureau of Consular Affairs.

¹³ Presidential Proclamation 8697, "Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Participate in Serious Human Rights and Humanitarian Law Violations and Other Abuses," August 4, 2011.

¹⁴ For a complete listing, see Bureau of Consular Affairs, *Presidential Proclamations*, U.S. Department of State, http://travel.state.gov/visa/fees/fees_3724.html.