



Deportation

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Background

DEPORTATION, according to the U.S. IMMIGRATION and Naturalization Service (INS), is "the formal removal of an alien from the United States when the alien has been found removable for violating immigration laws." Throughout the history of the United States individuals have been deported for such reasons as committing subversive acts against the government, fraudulently obtaining legal residency, and having a criminal record. In the last two decades of the twentieth century, for example, a number of immigrants to the United States were deported when it was determined that they had been prison guards in Nazi concentration camps during the 1930s and 1940s. Sometimes these individuals had been living quietly in the United States for nearly half a century.

Until nearly the end of the twentieth century, deportation was considered separate from *exclusion*, the act of denying an alien entry into the United States. With the passage of the Illegal Immigration Reform and Immigrant Responsibility Act in 1996, deportation and exclusion procedures were consolidated, effective April 1, 1997.

History of Deportation in the United States

The first deportation law in the United States was the Alien Act of 1798. Under this law, the president could deport any alien who was deemed dangerous. (A Naturalization Act was also passed that raised from five to 14 years the length of time an immigrant had to reside in the United States before being eligible for naturalization.) These measures were the result of growing hostility between the United States and France; with the accession to power of Napoleon Bonaparte, tensions eased dramatically, and no one was ever deported under the Alien Act.

Toward the end of the nineteenth century the Chinese Exclusion Act was passed to limit the number of Chinese immigrants into the United States, but it was not a deportation law. During the first decades of the twentieth century, however, a number of potentially subversive [ALIENS](#) were deported, particularly in light of the proliferation of anarchists and the spread of socialism. Events such as World War I and the 1918 Bolshevik revolution in Russia helped shape opinions in the United States, and immigration was viewed less and less favorably.

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In the 1920s the issue was not so much deporting aliens as keeping them out; quota systems limited the number of immigrants to the United States. After World War II, the Cold War and a growing fear of Communist infiltration into the U.S. government resulted in more deportations for several years.

In the 1980s and 1990s an increasing number of illegal immigrants from South and Central America, Haiti, and Cuba tried to enter the United States. Most deportation cases today, in fact, are illegal immigration cases.

The Deportation Process

In general, a person who is a *lawful permanent resident* (LPR) need not fear deportation, unless it can be proven that he or she entered the United States fraudulently or committed a serious crime (ex-Nazi prison guards, for example). One of the more familiar ways for ordinary people to remain in the United States by [FRAUD](#) is to marry a U.S. citizen. When someone who is about to be sent back to his or her country (because a [VISA](#) has expired, for example) suddenly gets married, INS requires that both spouses be questioned. The typical movie depiction of this is of a desperate alien who loves the U.S. and is able to stay after finding a kindhearted and selfless person who agrees to a fake marriage. In real life these marriages are not always based on such altruistic motives.

The first step in deporting an alien is to issue an "Order to Show Cause." This document establishes the government's reasons for deporting the person in question. The alien is usually detained, although he or she can be released by posting bond. The alien is then scheduled to attend a [HEARING](#) before an immigration judge. The government is represented at these hearings by an attorney; the alien can also have legal representation, but it must be "at no expense to the government." In many jurisdictions, there are lawyers and legal agencies who will work for the alien for reduced fees or [PRO BONO](#).

The judge hears the [EVIDENCE](#) on both sides and makes a ruling, which can be appealed by both sides to the Board of Immigration Appeals (BIA). Once BIA makes this ruling, the losing side can appeal through federal courts, although the likelihood of an alien appealing would depend on his or her financial resources.

Voluntary Departure

Some aliens fear that deportation will forever ruin their chances of returning to the United States. A less punitive measure that serves the same effect (getting the alien out of the country) is "voluntary departure." This is usually the final step before deportation hearings, and it allows the alien to leave with somewhat less of a stigma. Voluntary departure candidates must possess good moral character and must be capable of paying their own transportation costs (including air and ship travel).

Inadmissible Aliens

Some potential immigrants are barred from entering the United States. INADMISSIBLE aliens cannot enter the country as immigrants, refugees, or asylum seekers because they fail to meet the necessary requirements. Reasons for inadmissibility include:

- *Communicable diseases.* Carriers of diseases such as tuberculosis, AIDS, typhoid fever, and other serious ailments that can easily be transmitted are not allowed to emigrate. The reason is obvious: Someone carrying a serious or deadly disease can infect others and create a severe health crisis. (It is possible for someone with a serious communicable disease to have a finding of inadmissibility overturned, but only if he or she can prove that the disease in question has been cured. For some incurable diseases, such as AIDS, a [WAIVER](#) may be granted.)

- *Criminal record.* Anyone who has committed crimes classified as "aggravated felonies" are generally denied admission to the United States. Aggravated felonies include serious crimes such as murder, rape, and drug trafficking. Other aggravated felonies are [TREASON](#), [ESPIONAGE](#), and terrorist activities. (In certain cases, some ex-convicts who seek asylum can get a waiver, but they have to be able to prove to a judge that their crime was not serious or that the charges had been trumped up by their government.)
- *Physical and mental disorders.* Certain conditions bar aliens from immigrating to the United States, although aliens can try to prove that the condition in question has been cured or is under control.
- *Terrorist and or espionage threat.* In addition to those who have been convicted of aggravated felonies, anyone deemed likely to engage in subversive activity against the United States will be denied entry.

As covered under the Illegal Immigration Reform and Immigrant Responsibility Act, inadmissible aliens can be deported through the procedure known as *expedited removal*. Aliens who possess no entry documents or whose documents are either fraudulently obtained or [COUNTERFEIT](#) are subject to expedited removal. So are aliens who have entered (or attempted to enter) the United States without having first been admitted by an immigration officer at a standard port of entry. Aliens have the right to make claim to legal status in the United States, or they can ask for asylum. While the INS can allow an alien to appear before an immigration judge, there is no obligation to do so, and the alien may simply be ordered removed.

Ways to Avoid Deportation

Deportation is a complex issue that many immigrants cannot understand, especially if they are expected to gain all the necessary knowledge through a relatively small window of opportunity. Finding an immigration lawyer or service is probably the best step anyone facing deportation can take. In larger cities with significant immigration populations, there may be organizations in place to help immigrants. Contacting local bar associations may be a useful first step in finding lawyers who specialize in immigration law, including those who charge reduced fees or no fees at all.

Waivers, Cancellation, and Suspension

Among the ways to avoid deportation are the following:

- *Waivers.* In certain cases, immigrants can apply for waivers from deportation if they can prove that deporting them would pose an undue hardship (the government uses the phrase "extreme hardship") to his or her spouse, children, or parents. (This assumes that these relatives are either U.S. citizens or LPRs). The granting of a waiver depends on the reason for deportation, and immigration officials have considerable leeway in making a decision.
- *Cancellation of Removal.* If someone who is already an LPR is targeted for deportation, he or she can apply for a cancellation of removal from the United States. The individual must have been a resident of the United States for at least seven years and an LPR for at least five and cannot have committed any serious crimes (called "aggravated felonies" by the government). It is helpful if the person has family ties to the United States, has a good employment history or owns a business, has engaged in community service, has served in the U.S. Armed Forces, and has no criminal record (or has been rehabilitated if a criminal record exists). In short, if the person displays "good moral character," it weighs in his or her favor. Non-permanent residents can also apply for cancellation of removal, but they must have been in the United States for a minimum of 10 years. (This is done in part to prevent illegal aliens from marrying American citizens simply to stay in the United States.)
- *Suspension of Deportation.* This is another means by which an illegal alien can apply not only to

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remain in the United States but also obtain LPR status. Again, family ties, good moral character, and the threat of hardship are key factors. (The United States only issues 4,000 cancellation of removal and suspension of deportation grants per year.).

If an alien is allowed to stay in the United States on any of these grounds, the deportation order will be canceled and the case will be closed.

Asylum Seekers

Asylum seekers often have a bit more leeway, depending on where they are coming from and whether a significant danger of [IMPRISONMENT](#), torture, or [EXECUTION](#) awaits them if they are returned to their home country. Asylum seekers who wish to obtain a waiver of inadmissibility do not need to disprove the grounds of inadmissibility, but they do have to prove that their particular situation warrants a waiver.

Anyone who seeks asylum in the United States must be able to prove that he or she will be subject to persecution if returned home. That persecution may be based on race, religion, gender, sexual orientation, or political beliefs. Sometimes, an alien in danger of being deported will make a claim of "credible fear of persecution" in his or her native country. INS is required to make information about this option available to those who may be able to avail themselves of it. An INS asylum officer determines whether each such case warrants further action.

If it does, the claimant will appear before an immigration judge to make a case during a full hearing. It should be understood that a credible fear of persecution ruling is not the same as being granted asylum. The credible fear ruling is merely the first step in the process; it may or may not result in a granting of asylum.

In addition, an alien seeking asylum may be granted a "withholding of deportation" instead. This is similar to asylum, except that it does not allow the alien to apply for permanent resident in the United States, and it only prohibits deportation to the country in question.

The Changing Role of INS

Particularly since the 1990s, INS has come under increasing attacks from a number of fronts. Civil liberties and [HUMAN RIGHTS](#) organizations have charged that such measures as the Illegal Immigration Reform and Immigrant Responsibility Act have been used not to streamline the organization, as INS claims. Rather, they say, such laws have allowed INS to exercise its authority to deny due process to innocent aliens. A number of articles have appeared that explore the plight of an immigrant who had led a productive life while in the United States, only to be detained and threatened with deportation on account of a minor [INFRACTION](#) committed many years earlier. While it would be unfair to characterize the entire INS by cases such as these, it is fair to say that efforts to streamline the agency fell short of expectations.

Charges of INS inefficiency have been exacerbated by the growing sense of unrest and anti-American sentiment throughout the world. The destruction of the World Trade Center and the attack on the Pentagon in September 2001 drove home the point to Americans of all political persuasions that immigration issues demand better scrutiny. Among other concerns, many Americans worried that INS had been unable to keep the hijackers out of the country; the primary fear was that more such criminals could be living in the United States without the knowledge of INS.

A push to reorganize the functions of INS to make the agency run better resulted in Congressional action in the spring of 2002, when the House of Representatives voted to authorize significant changes to the agency.

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(Those seeking updated information on current progress at INS can obtain comprehensive information from the agency's website, <http://www.ins.usdoj.gov>.) A streamlined organization will be better equipped to handle the huge number of illegal immigration, exclusion, and deportation hearings that will continue as long as the United States is seen as a country in which opportunities are so much more abundant than in other parts of the world.

Additional Resources

Deportation Officer's Handbook. U.S. Department of Justice, Immigration and Naturalization Service, 1986.

Historical Guide to the U.S. Governments. George T. Kurian, ed., Oxford University Press, 1998.

The Immigration and Naturalization Service. Dixon, Edward H., and Mark A. Galan, Chelsea House, 1990.

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Refugee Rights and Realities: Evolving International Concepts and Regimes. Nicholson, Frances, and Patrick Twomey, editors, Cambridge University Press, 1999.

Organizations

United States Association for the United Nations High Commissioner for Refugees (UNHCR)

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