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§1361. Burden of proof upon alien

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this chapter, and, if an alien, that he is entitled to the nonimmigrant, immigrant, special immigrant, immediate relative, or refugee status claimed, as the case may be. If such person fails to establish to the satisfaction of the consular officer that he is eligible to receive a visa or other document required for entry, no visa or other document required for entry shall be issued to such person, nor shall such person be admitted to the United States unless he establishes to the satisfaction of the Attorney General that he is not inadmissible under any provision of this chapter. In any removal proceeding under part IV of this subchapter against any person, the burden of proof shall be upon such person to show the time, place, and manner of his entry into the United States, but in presenting such proof he shall be entitled to the production of his visa or other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry in the custody of the Service. If such burden of proof is not sustained, such person shall be presumed to be in the United States in violation of law.

(June 27, 1952, ch. 477, title II, ch. 9, §291, 66 Stat. 234 ; Pub. L. 97–116, §18(k)(1), Dec. 29, 1981, 95 Stat. 1620 ; Pub. L. 104–208, div. C, title III, §308(d)(4)(N), (e)(1)(N), (g)(9)(A), Sept. 30, 1996, 110 Stat. 3009–618 , 3009-619, 3009-624.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original, "this Act", meaning act [June 27, 1952, ch. 477, 66 Stat. 163](#) , known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out