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1. [22 USCS § 211a](#)

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22 USCS § 211a

Current through Public Law 117-70, approved December 3, 2021, with a gap of Public Law 117-58.

United States Code Service > TITLE 22. FOREIGN RELATIONS AND INTERCOURSE (Chs. 1 — 107) > CHAPTER 4. PASSPORTS (§§ 211 — 229)

§ 211a. Authority to grant, issue, and verify passports

The Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by diplomatic and consular officers of the United States, and by such other employees of the Department of State who are citizens of the United States as the Secretary of State may designate, and by the chief or other executive officer of the insular possessions of the United States, under such rules as the President shall designate and prescribe for and on behalf of the United States, and no other person shall grant, issue, or verify such passports. Unless authorized by law, a passport may not be designated as restricted for travel to or for use in any country other than a country with which the United States is at war, where armed hostilities are in progress, or where there is imminent danger to the public health or the physical safety of United States travellers.

History

HISTORY:

July 3, 1926, ch 772, § 1, [44 Stat. 887](#); Oct. 7, 1978, [P. L. 95-426](#), Title I, § 124, [92 Stat. 971](#); April 30, 1994, *P. L. 103-236*, Title I, Part B, § 127(a), *108 Stat. 394*; Oct. 25, 1994, *P. L. 103-415*, § 1(b), *108 Stat. 4299*.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Short titles:

Amendment Notes

1978.

1994.

Other provisions:

Short titles:

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Act Jan. 10, 2006, *P. L. 109-167*, § 1, *119 Stat. 3578*, provides: “This Act [amending [22 USCS § 214](#)] may be cited as the ‘Passport Services Enhancement Act of 2005’.”.

Amendment Notes**1978.**

Act Oct. 7, 1978 inserted the sentence beginning “Unless authorized by law . . .”.

1994.

Act April 30, 1994 substituted “by diplomatic and consular officers of the United States, and by other employees of the Department of State who are citizens of the United States,” for “by diplomatic representatives of the United States, and by such consul generals, consuls, or vice consuls when in charge,”.

Act Oct. 25, 1994 substituted “such other employees” for “other employees”.

Such Act further directed the substitution of “United States” for “United States,”; however, the substitution was made only after “who are citizens of the” in order to effectuate the probable intent of Congress.

Other provisions:

Rules governing granting, issuing, and verifying of passports. Ex. Or. No. 11295 of [Aug. 5, 1966, 31 Fed. Reg. 10603](#), provided:

Section 1. Delegation of authority. The Secretary of State is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority conferred upon the President by the first section of the Act of July 3, 1926 ([22 U.S.C. 211a](#)) [this section], to designate and prescribe for and on behalf of the United States rules governing the granting, issuing, and verifying of passports.

Sec. 2. Superseded orders. Subject to Section 3 of this order, the following are hereby superseded:

(1) Executive Order No. 7856 of March 31, 1938 [unclassified], entitled “Rules Governing the Granting and Issuing of Passports in the United States.”

(2) Executive Order No. 8820 of July 11, 1941 [unclassified], entitled “Amending the Foreign Service Regulations of the United States.”

Sec. 3. Saving provisions. All rules and regulations contained in the Executive order provisions revoked by Section 2 of this order, and all rules and regulations issued under the authority of those provisions, which are in force at the time of the issuance of this order shall remain in full force and effect until revoked, or except as they may be hereafter amended or modified, in pursuance of the authority conferred by this order, unless sooner terminated by operation of law.

Persons entitled to diplomatic or official United States passport. Act Oct. 7, 1978, [P. L. 95-426](#), Title I, § 125, [92 Stat. 971](#), provided: “It is the sense of the Congress that a diplomatic or official United States passport should be issued only to, and used only by, a person who holds a diplomatic or other official position in the United States Government or who is otherwise eligible for such a passport under conditions specifically authorized by law.”.

Funds unavailable for paper for passports manufactured outside U.S. or by noncitizens; exception. Act Sept. 22, 1988, *P. L. 100-440*, Title VI, § 617(b), *102 Stat. 1755*, provides: “None of the funds made available by this or any other Act with respect to any fiscal year may be used to procure paper for passports granted or issued pursuant to the first section of the Act entitled ‘An Act to regulate the issue and validity of passports, and for other purposes’, approved July 3, 1926 ([22 U.S.C. 211a](#)), if such paper is manufactured outside of the United States or its

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possessions or is procured from any corporation or other entity owned or controlled by persons not citizens of the United States. This subsection shall not apply if no domestic manufacturer for passport paper exists.”.

Provisions similar to those of this note are contained in Act Dec. 22, 1987, [P. L. 100-202](#), § 101(m) [Title VI, § 622(b)], [101 Stat. 1329-428](#).

NOTES TO DECISIONS

1. Generally

2. Constitutionality

3. Restrictions and limitations

4.—Enforcement

5. Denial of issuance

6. Surrender or cancellation

1. Generally

[22 USCS § 211a](#) gives secretary exclusive authority to grant and issue passports under such rules as President shall designate; Executive Order 11295 empowers secretary to prescribe rules under President's authority without action of President; Congress has delegated to executive branch power to prescribe restrictions that, if violated, constitute offense under [18 USCS § 1544](#). [United States v. Johnson, 735 F.2d 373, 1984 U.S. App. LEXIS 21499 \(9th Cir. 1984\)](#).

Unpublished decision: Where individual appealed district court's entry of final judgment against him in his challenge to denial of his application for U.S. passport, district court did not err in refusing to give preclusive effect under principles of comity to Mexican default judgment. Permitting foreign judgment to preclude U.S. Secretary of State from determining individual's eligibility for U.S. passport would clearly be contrary or prejudicial to interests of federal government in maintaining its exclusive authority over regulation of immigration. [Garcia v. Kerry, 557 Fed. Appx. 304, 2014 U.S. App. LEXIS 2822 \(5th Cir. 2014\)](#).

2. Constitutionality

[22 USCS § 211a](#) does not constitute a violation USCS Constitution art. 9, cl. 3 prohibiting passage of bill of attainder or ex post facto law, since right may be lost at any time through abuse of privilege conferred by right. [Bauer v. Acheson, 106 F. Supp. 445, 1952 U.S. Dist. LEXIS 4021 \(D.D.C. 1952\)](#).

Passport regulations denied procedural due process, where regulations made it impossible for applicant to refute charges, as charges were based on reports and evidence which were closed to him. [Boudin v. Dulles, 136 F. Supp. 218, 1955 U.S. Dist. LEXIS 2398 \(D.D.C. 1955\)](#), remanded, [235 F.2d 532, 98 U.S. App. D.C. 305, 1956 U.S. App. LEXIS 3907 \(D.C. Cir. 1956\)](#).

Neither § 215 of Immigration and Nationality Act of 1950 [[8 USCS § 1185](#)] nor Passport Act of 1926 ([29 USCS § 216](#)) construed to authorize imposition of geographical limitations is unconstitutional. [MacEwan v. Rusk, 228 F. Supp. 306, 1964 U.S. Dist. LEXIS 7116 \(E.D. Pa. 1964\)](#), aff'd, [344 F.2d 963, 1965 U.S. App. LEXIS 5598 \(3d Cir. 1965\)](#).

Passports are necessary for foreign travel, and the mandatory requirement that all applicants for United States passports swear or affirm an oath of allegiance is not authorized by law and is an unconstitutional abridgement of

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the Fifth Amendment right of citizens to travel abroad. [Woodward v. Rogers, 344 F. Supp. 974, 16 Fed. R. Serv. 2d \(Callaghan\) 241, 1972 U.S. Dist. LEXIS 13050 \(D.D.C. 1972\)](#), aff'd, 486 F.2d 1317, 159 U.S. App. D.C. 57 (D.C. Cir. 1973).

3. Restrictions and limitations

Although language of [22 USCS § 211a](#) does not specifically authorize Secretary to impose area restrictions in issuance of passports, it is broad enough to cover them, and they have been imposed on numerous occasions since World War II; consequently, refusal to validate passport of United States citizen for travel to Cuba is authorized and such refusal does not violate the citizen's rights under either First or Fifth Amendment. *ERROR:0001* [Zemel v. Rusk, 381 U.S. 1, 85 S. Ct. 1271, 14 L. Ed. 2d 179, 1 Media L. Rep. \(BNA\) 2299, 1965 U.S. LEXIS 1304](#), reh'g denied, [382 U.S. 873, 86 S. Ct. 17, 15 L. Ed. 2d 114, 1965 U.S. LEXIS 962 \(1965\)](#).

Secretary of State was empowered to refuse renewal to newspaperman of passport which contained restrictions against travel in five (Communist) areas, upon his refusal to make commitment that he would abide by restrictions. *ERROR:0002* [Worthy v. Herter, 270 F.2d 905, 106 U.S. App. D.C. 153, 1959 U.S. App. LEXIS 5437 \(D.C. Cir.\)](#), cert. denied, [361 U.S. 918, 80 S. Ct. 255, 4 L. Ed. 2d 186, 1959 U.S. LEXIS 67 \(1959\)](#).

Congressman, who is issued passport which prohibited him from traveling in certain Communist-controlled countries and who brings action to enjoin Secretary of State from withholding passport facilities and to remove limitation on use of passport for travel to China, is not exempted from regulations or orders of executive department in matters within the latter's constitutional competence. *ERROR:0003* [Porter v. Herter, 278 F.2d 280, 107 U.S. App. D.C. 400, 1960 U.S. App. LEXIS 4858 \(D.C. Cir.\)](#), cert. denied, [364 U.S. 837, 81 S. Ct. 70, 5 L. Ed. 2d 61, 1960 U.S. LEXIS 595 \(1960\)](#).

Where U.S. passport applicant, who was intersex and could not identify as either male or female, was denied passport because application required identification as either male or female, and State Department denied request for "X" designation for gender, Department acted within its authority under Passport Act by enforcing its binary sex policy because statutory language was permissive, authorizing State Department to deny passports for reasons not listed in Act, and policy had been in place for more than 39 years with Congress' acquiescence. [Zzyym v. Pompeo, 958 F.3d 1014, 2020 U.S. App. LEXIS 15147 \(10th Cir. 2020\)](#).

Authority to issue passports carries with it the implied authority to regulate its use. [Bauer v. Acheson, 106 F. Supp. 445, 1952 U.S. Dist. LEXIS 4021 \(D.D.C. 1952\)](#).

President of the United States, acting by Secretary of State, has inherent power within authority to conduct foreign affairs to impose geographical restrictions upon travel by American citizens, and this power was not unreasonably exercised in restricting travel to Cuba. [MacEwan v. Rusk, 228 F. Supp. 306, 1964 U.S. Dist. LEXIS 7116 \(E.D. Pa. 1964\)](#), aff'd, [344 F.2d 963, 1965 U.S. App. LEXIS 5598 \(3d Cir. 1965\)](#).

Section 215 of Immigration and Nationality Act of 1950 [[8 USCS § 1185](#)] authorizes passport control in limited circumstances of war or national emergency proclaimed by President, and by proclamation, departure and entry of citizens and nationals of United States from and into the United States shall be subject to regulations prescribed by Secretary of State under [22 USCS § 211a](#). [MacEwan v. Rusk, 228 F. Supp. 306, 1964 U.S. Dist. LEXIS 7116 \(E.D. Pa. 1964\)](#), aff'd, [344 F.2d 963, 1965 U.S. App. LEXIS 5598 \(3d Cir. 1965\)](#).

4. —Enforcement

Area restrictions upon the use of otherwise valid passports are not criminally enforceable under § 215(b) of the Immigration and Nationality Act of 1952 [[8 USCS § 1185\(b\)](#)]; consequently, citizens conspiring to travel or traveling to and from Cuba with otherwise valid passports, not specifically validated for travel to that country, are not subject to prosecution for leaving or entering the United States without a valid passport. *ERROR:0004* [United States v Laub \(1967\) 385 US 475, 17 L Ed 2d 526, 87 S Ct 574](#); *ERROR:0005* [Travis v. United States, 385 U.S. 491, 87 S. Ct. 583, 17 L. Ed. 2d 536, 1967 U.S. LEXIS 2576 \(1967\)](#).

5. Denial of issuance

Secretary of State is not empowered under [22 USCS § 211a](#) or [8 USCS § 1185](#) to deny passports to applicants for their refusal to be subjected to inquiry into their beliefs and associations and who refuse to execute affidavits with respect to past and present membership in the Communist party. *ERROR:0006* [Kent v. Dulles, 357 U.S. 116, 78 S. Ct. 1113, 2 L. Ed. 2d 1204, 1958 U.S. LEXIS 814 \(1958\)](#).

Secretary of State is not empowered to deny passport to applicant who executes affidavit with respect to present and past membership in Communist party, and whom Secretary finds, in part upon confidential information to which applicant is not given access, is going abroad to engage in activities which will advance Communist movement. *ERROR:0007* [Dayton v. Dulles, 357 U.S. 144, 78 S. Ct. 1127, 2 L. Ed. 2d 1221, 1958 U.S. LEXIS 815 \(1958\)](#).

Fact that applicant for passport is head of organization on Attorney General's subversive list is not in and of itself sufficient to warrant denial of issuance of passport particularly when applicant files complaint alleging that organization in fact is nonsubversive and noncommunitic, which complaint was not answered by Secretary of State since denial is thus arbitrary and violative of due process. [Shachtman v. Dulles, 225 F.2d 938, 96 U.S. App. D.C. 287, 1955 U.S. App. LEXIS 4277 \(D.C. Cir. 1955\)](#).

6. Surrender or cancellation

Passport Act of 1926 ([22 USCS § 211a](#)) authorizes Secretary to revoke citizen's passport pursuant to policy contained in regulation ([22 CFR § 51.70 \(B\)\(4\)](#)) permitting revocation of passport where Secretary determines that national's activities abroad are likely to cause serious damage to national security or foreign policy of United States; this policy is sufficiently substantial and consistent administrative practice to compel conclusion that Congress has approved it. *ERROR:0008* [Haig v. Agee, 453 U.S. 280, 101 S. Ct. 2766, 69 L. Ed. 2d 640, 7 Media L. Rep. \(BNA\) 1545, 1981 U.S. LEXIS 39 \(1981\)](#).

[22 USCS § 211a](#) does not vest Secretary of State with exclusive jurisdiction over surrender of passport and nothing in § 211a prohibits court from ordering holder to surrender passport for use in connection with judicial proceeding. *ERROR:0009* [United States v. Praetorius, 622 F.2d 1054, 5 Fed. R. Evid. Serv. \(CBC\) 455, 1979 U.S. App. LEXIS 9824 \(2d Cir. 1979\)](#), cert. denied, 449 U.S. 860, 101 S. Ct. 162, 66 L. Ed. 2d 76, 1980 U.S. LEXIS 3096 (1980), overruled in part, [United States v. Khan, 821 F.2d 90, 23 Fed. R. Evid. Serv. \(CBC\) 511, 1987 U.S. App. LEXIS 7415 \(2d Cir. 1987\)](#).

Action of Secretary of State in cancelling passport without hearing is without authority of law and violates due process. [Bauer v. Acheson, 106 F. Supp. 445, 1952 U.S. Dist. LEXIS 4021 \(D.D.C. 1952\)](#).

Unpublished decision: Plaintiff's challenge to revocation of his passport failed, as district court did not clearly err in finding that plaintiff was born in Mexico; there was no support for claim that presentation of U.S. birth certificate filed contemporaneously with birth created presumption of citizenship. [Martinez v. Sec'y of the United States, 652 Fed. Appx. 758, 2016 U.S. App. LEXIS 10353 \(11th Cir. 2016\)](#).

Research References & Practice Aids

Code of Federal Regulations:

Department of State—Board of Appellate Review, [22 CFR 7.1](#) et seq.

Department of State—Passports, [22 CFR 51.1](#) et seq.

Am Jur:

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59A Am Jur 2d, Passports §§ 8, 14, 25, 39.

Law Review Articles:

Consular Discretion in the Immigrant Visa-Issuing Process. 16 San Diego L Rev 87, December 1978.

Criminal sanctions against passport area-restriction violations. 19 Stan L Rev 1369.

Federal Procedure:

1 Administrative Law (Matthew Bender), ch 3, Separation and Delegation of Powers § 3.03.

Immigration:

1 [Immigration Law and Procedure \(rev. ed.\), ch 3](#), Agencies, Records and Information, Fees and Forms § 3.09.

7 [Immigration Law and Procedure \(rev. ed.\), ch 99](#), Evidence of American Citizenship § 99.06.

Annotations:

Validity of passport legislation and regulations. [14 L Ed 2d 880](#).

United States Code Service
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