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### **Rescission Proceeding under the Immigration and Nationality Act©**

This paper lays out the history of the rescission statute since its initial drafting, and the case law that has developed around it since 1952.

#### **The statute's evolution**

The rescission statute was first drafted in 1952. It was amended twice, in 1994 and 1996.

##### 1952: the original statute as drafted

The original statute set out separate rescission processes for individuals whose status was adjusted under INA § 244 (§ 1254) or under section 19(c) of the Immigration Act of February 5, 1917, from those who adjusted status under INA §§ 245, 249, “or any other provision of law.” For the former provision, if the Attorney General (AG) found that the individual had not been eligible for the adjustment of status, the AG was required to “submit to the Congress a complete and detailed statement of the facts and pertinent provisions of law in the case,” which Congress would then use to determine whether to pass “a concurrent resolution withdrawing suspension of deportation.”

For all other adjustments to lawful permanent residence, the statute provided that if, within five years of that adjustment,

*it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall rescind the action taken granting an adjustment of status to such person and cancelling deportation in the case of such person if that occurred and the person shall thereupon be subject to all provisions of this Act to the same extent as if the adjustment of status had not been made.*

The statute also provided that if a person naturalized on the basis of an adjustment for which she was not eligible and which was later rescinded, then she would be subject to INA § 340 “as a person whose naturalization was procured by concealment of a material fact or by willful misrepresentation.”

This provision became effective on December 24, 1952.

#### 1994 amendment

The first amendment, enacted in 1994 and immediately effective, removed the language about suspension of deportation, retaining the section pertaining to the AG’s authority to rescind adjustment under INA § 245 and other provisions and the language about naturalization.

#### 1996 amendment

The current statute reads:

*(a) If, at any time within five years after the status of a person has been otherwise adjusted under the provisions of section 245 or 249 of this Act [8 USCS § 1255 or 1259] or any other provision of law to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall rescind the action taken granting an adjustment of status to such person and cancelling removal in the case of such person if that occurred and the person shall thereupon be subject to all provisions of this Act to the same extent as if the adjustment of status had not been made. Nothing in this subsection shall require the Attorney General to rescind the alien’s status prior to commencement of procedures to remove the alien under section 240 [8 USCS § 1229a], and an order of removal issued by*

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