

HR 1751 IH

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H. R. 1751

To amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES**March 26, 2009**

Mr. BERMAN (for himself, Ms. ROYBAL-ALLARD, Mr. LINCOLN DIAZ-BALART of Florida, Ms. ZOE LOFGREN of California, Mr. NUNES, Mr. POLIS of Colorado, Mr. CAO, Ms. ROS-LEHTINEN, Mr. CONYERS, and Mr. MARIO DIAZ-BALART of Florida) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `American Dream Act'.

SEC. 2. DEFINITIONS.

[--]
FEEDBACK

In this Act:

- (1) INSTITUTION OF HIGHER EDUCATION- The term `institution of higher education' has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).
- (2) UNIFORMED SERVICES- The term `uniformed services' has the meaning given that term in section 101(a) of title 10, United States Code.

SEC. 3. RESTORATION OF STATE OPTION TO DETERMINE RESIDENCY FOR PURPOSES OF HIGHER EDUCATION BENEFITS.

- (a) In General- Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1623) is repealed.
- (b) Effective Date- The repeal under subsection (a) shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

SEC. 4. CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS OF CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.

(a) Special Rule for Certain Long-Term Residents Who Entered the United States as Children-

- (1) IN GENERAL- Notwithstanding any other provision of law and except as otherwise provided in this Act, the Secretary of Homeland Security may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, subject to the conditional basis described in section 5, an alien who is inadmissible or deportable from the United States, if the alien demonstrates that--
- (A) the alien has been physically present in the United States for a continuous period of not less than 5 years immediately preceding the date of enactment of this Act, and had not yet reached the age of 16 years at the time of initial entry;
- (B) the alien has been a person of good moral character since the time of application;
- (C) the alien--
- (i) is not inadmissible under paragraph (2), (3), or (6)(E) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)); and
- (ii) is not deportable under paragraph (1)(E), (2), or (4) of section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a)); and
- (D) the alien, at the time of application, has been admitted to an institution of higher education in the United States, or has earned a high school diploma or obtained a general education development certificate in the United States.
- (2) WAIVER- Notwithstanding paragraph (1), the Secretary of Homeland Security may waive the grounds of ineligibility under section 212(a)(2) of the Immigration and Nationality Act, and the grounds of deportability under paragraphs (1)(E) and (2) of section 237(a) of such Act, if the Secretary determines that the alien's removal would result in extreme hardship to the alien, the alien's child, or (in the case of an alien who is a child) to the alien's parent.

(3) PROCEDURES- The Secretary of Homeland Security shall provide a procedure by regulation allowing eligible individuals to apply affirmatively for the relief available under this subsection without being placed in removal proceedings.

(b) Termination of Continuous Period- For purposes of this section, any period of continuous residence or continuous physical presence in the United States of an alien who applies for cancellation of removal under this section shall not terminate when the alien is served a notice to appear under section 239(a) of the Immigration and Nationality Act (8 U.S.C. 1229(a)).

(c) Treatment of Certain Breaks in Presence-

(1) IN GENERAL- An alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of subsection (a)(1)(A) by virtue of brief, casual, and innocent absences from the United States.

(2) WAIVER- The Secretary of Homeland Security may waive breaks in presence beyond brief, casual, or innocent absences for humanitarian purposes, family unity, or when it is otherwise in the public interest.

(d) Exemption From Numerical Limitations- Nothing in this section may be construed to apply a numerical limitation on the number of aliens who may be eligible for cancellation of removal or adjustment of status under this section.

(e) Regulations-

(1) PROPOSED REGULATIONS- Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall publish proposed regulations implementing this section. Such regulations shall be effective immediately on an interim basis, but are subject to change and revision after public notice and opportunity for a period for public comment.

(2) INTERIM, FINAL REGULATIONS- Not later than 90 days after publication of the interim regulations in accordance with paragraph (1), the Secretary of Homeland Security shall publish final regulations implementing this section.

(f) Removal of Alien- The Secretary of Homeland Security may not remove any alien who has a pending application for conditional status under this Act.

SEC. 5. CONDITIONAL PERMANENT RESIDENT STATUS.

(a) In General-

(1) CONDITIONAL BASIS FOR STATUS- Notwithstanding any other provision of law, and except as provided in section 6, an alien whose status has been adjusted under section 4 to that of an alien lawfully admitted for permanent residence shall be considered to have obtained such status on a conditional basis subject to the provisions of this section. Such conditional permanent resident status shall be valid for a period of 6 years, subject to termination under subsection (b).

(2) NOTICE OF REQUIREMENTS-

(A) AT TIME OF OBTAINING PERMANENT RESIDENCE- At the time an alien obtains permanent resident status on a conditional basis under paragraph (1), the Secretary of Homeland Security shall provide for notice to the alien regarding the provisions of this section and the requirements of subsection (c) to have the conditional basis of such status removed.

(B) EFFECT OF FAILURE TO PROVIDE NOTICE- The failure of the Secretary of Homeland Security to provide a notice under this paragraph--

(i) shall not affect the enforcement of the provisions of this Act with respect to the alien; and

(ii) shall not give rise to any private right of action by the alien.

(b) Termination of Status-

(1) IN GENERAL- The Secretary of Homeland Security shall terminate the conditional permanent resident status of any alien who obtained such status under this Act, if the Secretary determines that the alien--

(A) ceases to meet the requirements of subparagraph (B) or (C) of section 4(a)(1);

(B) has become a public charge; or

(C) has received a dishonorable or other than honorable discharge from the uniformed services.

(2) RETURN TO PREVIOUS IMMIGRATION STATUS- Any alien whose conditional permanent resident status is terminated under paragraph (1) shall return to the immigration status the alien had immediately prior to receiving conditional permanent resident status under this Act.

(c) Requirements of Timely Petition for Removal of Condition-

(1) IN GENERAL- In order for the conditional basis of permanent resident status obtained by an alien under subsection (a) to be removed, the alien must file with the Secretary of Homeland Security, in accordance with paragraph (3), a petition which requests the removal of such conditional basis and which provides, under penalty of perjury, the facts and information so that the Secretary may make the determination described in paragraph (2)(A).

(2) ADJUDICATION OF PETITION TO REMOVE CONDITION-

(A) IN GENERAL- If a petition is filed in accordance with paragraph (1) for an alien, the Secretary of Homeland Security shall make a determination as to whether the alien meets the requirements set out in subparagraphs (A) through (E) of subsection (d)(1).

(B) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION- If the Secretary determines that the alien meets such requirements, the Secretary shall notify the alien of such determination and immediately remove the conditional basis of the status of the alien.

(C) TERMINATION IF ADVERSE DETERMINATION- If the Secretary determines that the alien does not meet such requirements, the

Secretary shall notify the alien of such determination and terminate the conditional permanent resident status of the alien as of the date of the determination.

(3) **TIME TO FILE PETITION-** An alien may petition to remove the conditional basis to lawful resident status during the period beginning 180 days before and ending 2 years after either the date that is 6 years after the date of the granting of conditional permanent resident status or any other expiration date of the conditional permanent resident status as extended by the Secretary of Homeland Security in accordance with this Act. The alien shall be deemed in conditional permanent resident status in the United States during the period in which the petition is pending.

(d) **Details of Petition-**

(1) **CONTENTS OF PETITION-** Each petition for an alien under subsection (c)(1) shall contain information to permit the Secretary of Homeland Security to determine whether each of the following requirements is met:

(A) The alien has demonstrated good moral character during the entire period the alien has been a conditional permanent resident.

(B) The alien is in compliance with section 4(a)(1)(C).

(C) The alien has not abandoned the alien's residence in the United States. The Secretary shall presume that the alien has abandoned such residence if the alien is absent from the United States for more than 365 days, in the aggregate, during the period of conditional residence, unless the alien demonstrates that alien has not abandoned the alien's residence. An alien who is absent from the United States due to active service in the uniformed services shall not be considered to have abandoned the alien's residence in the United States during the period of such service.

(D) The alien has completed at least 1 of the following:

(i) The alien has acquired a degree from an institution of higher education in the United States or has completed at least 2 years, in good standing, in a program for a bachelor's degree or higher degree in the United States.

(ii) The alien has served in the uniformed services for at least 2 years and, if discharged, has received an honorable discharge.

(E) The alien has provided a list of all of the secondary educational institutions that the alien attended in the United States.

(2) **HARDSHIP EXCEPTION-**

(A) **IN GENERAL-** The Secretary of Homeland Security may, in the Secretary's discretion, remove the conditional status of an alien if the alien--

(i) satisfies the requirements of subparagraphs (A), (B), and (C) of paragraph (1);

(ii) demonstrates compelling circumstances for the inability to complete the requirements described in paragraph (1)(D); and

(iii) demonstrates that the alien's removal from the United States would result in exceptional and extremely unusual hardship to the alien or the alien's spouse, parent, or child who is a citizen or a lawful permanent resident of the United States.

(B) **EXTENSION-** Upon a showing of good cause, the Secretary of Homeland Security may extend the period of the conditional resident status for the purpose of completing the requirements described in paragraph (1)(D).

(e) **Treatment of Period for Purposes of Naturalization-** Except as otherwise provided under this Act, an alien who is in the United States as a lawful permanent resident on a conditional basis under this section shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence. However, the conditional basis must be removed before the alien may apply for naturalization.

SEC. 6. APPLICABILITY.

If, on the date of the enactment of this Act, an alien has satisfied all the requirements of subparagraphs (A) through (D) of section 4(a)(1) and section 5(d)(1)(D), the Secretary of Homeland Security may adjust the status of the alien to that of a conditional resident in accordance with section 4. The alien may petition for removal of such condition at the end of the conditional residence period in accordance with section 5(c) if the alien has met the requirements of subparagraphs (A), (B), and (C) of section 5(d)(1) during the entire period of conditional residence.

SEC. 7. EXCLUSIVE JURISDICTION.

(a) **In General-** The Secretary of Homeland Security shall have exclusive jurisdiction to determine eligibility for relief under this Act, except where the alien has been placed into deportation, exclusion, or removal proceedings either prior to or after filing an application for relief under this Act, in which case the Attorney General shall have exclusive jurisdiction and shall assume all the powers and duties of the Secretary until proceedings are terminated, or if a final order of deportation, exclusion, or removal is entered the Secretary shall resume all powers and duties delegated to the Secretary under this Act.

(b) **Stay of Removal of Certain Aliens Enrolled in Primary or Secondary School-** The Attorney General shall stay the removal proceedings of any alien who--

(1) meets all the requirements of subparagraphs (A), (B), (C), and (E) of section 4(a)(1);

(2) is at least 12 years of age; and

(3) is enrolled full time in a primary or secondary school.

(c) **Employment-** An alien whose removal is stayed pursuant to subsection (b) may be engaged in employment in the United States, consistent with the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), and State and local laws governing minimum age for employment.

(d) **Lift of Stay-** The Attorney General shall lift the stay granted pursuant to subsection (b) if the alien--

(1) is no longer enrolled in a primary or secondary school; or

(2) ceases to meet the requirements of subsection (b)(1).

SEC. 8. CONFIDENTIALITY OF INFORMATION.

(a) Prohibition- No officer or employee of the United States may--

(1) use the information furnished by the applicant pursuant to an application filed under this Act to initiate removal proceedings against any persons identified in the application;

(2) make any publication whereby the information furnished by any particular individual pursuant to an application under this Act can be identified; or

(3) permit anyone other than an officer or employee of the United States Government or, in the case of applications filed under this Act with a designated entity, that designated entity, to examine applications filed under this Act.

(b) Required Disclosure- The Attorney General or the Secretary of Homeland Security shall provide the information furnished under this section, and any other information derived from such furnished information, to--

(1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or

(2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(c) Penalty- Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than \$10,000.

SEC. 9. EXPEDITED PROCESSING OF APPLICATIONS; PROHIBITION ON FEES.

Regulations promulgated under this Act shall provide that applications under this Act will be considered on an expedited basis and without a requirement for the payment by the applicant of any additional fee for such expedited processing.

SEC. 10. HIGHER EDUCATION ASSISTANCE.

Notwithstanding any provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) or any provision of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1601 et seq.), with respect to Federal financial education assistance, an alien who is lawfully admitted for permanent residence under this Act and has not had the conditional basis removed shall not be eligible for--

(1) Federal Pell grants under part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a et seq.); and

(2) Federal supplemental educational opportunity grants under part A of title IV of that Act (20 U.S.C. 1070b et seq.).

SEC. 11. GAO REPORT.

Not later than 7 years after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Committees on the Judiciary of the Senate and the House of Representatives setting forth--

(1) the number of aliens who were eligible for cancellation of removal and adjustment of status under section 4(a);

(2) the number of aliens who applied for adjustment of status under section 4(a);

(3) the number of aliens who were granted adjustment of status under section 4(a); and

(4) the number of aliens whose conditional permanent resident status was removed under section 5.

END