

108TH CONGRESS
1ST SESSION

S. 1545

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.

IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 21), 2003

Mr. HATCH (for himself, Mr. DURBIN, Mr. LUGAR, Mr. LEAHY, Mr. CRAIG, Mr. FEINGOLD, Mr. CRAPO, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Development, Relief,
3 and Education for Alien Minors Act of 2003” or
4 “DREAM Act”.

5 **SEC. 2. DEFINITION OF INSTITUTION OF HIGHER EDU-**
6 **CATION.**

7 In this Act, the term “institution of higher edu-
8 cation” has the meaning given the term in section 101
9 of the Higher Education Act of 1965 (20 U.S.C. 1001).

10 **SEC. 3. RESTORATION OF STATE OPTION TO DETERMINE**
11 **RESIDENCY FOR PURPOSES OF HIGHER EDU-**
12 **CATION BENEFITS.**

13 (a) IN GENERAL.—Section 505 of the Illegal Immi-
14 gration Reform and Immigrant Responsibility Act of 1996
15 (8 U.S.C. 1623) is repealed.

16 (b) EFFECTIVE DATE.—The repeal described in sub-
17 section (a) shall take effect as if included in the enactment
18 of the Illegal Immigration Reform and Immigrant Respon-
19 sibility Act of 1996.

20 **SEC. 4. CANCELLATION OF REMOVAL AND ADJUSTMENT OF**
21 **STATUS OF CERTAIN LONG-TERM RESIDENTS**
22 **WHO ENTERED THE UNITED STATES AS CHIL-**
23 **DREN.**

24 (a) SPECIAL RULE FOR ALIENS IN QUALIFIED INSTI-
25 TUTIONS OF HIGHER EDUCATION.—

1 (1) IN GENERAL.—Notwithstanding any other
2 provision of law and except as otherwise provided in
3 this Act, the Secretary of Homeland Security may
4 cancel removal of, and adjust to the status of an
5 alien lawfully admitted for permanent residence,
6 subject to the conditional basis described in section
7 5, an alien who is inadmissible or deportable from
8 the United States, if the alien demonstrates that—

9 (A) the alien has been physically present in
10 the United States for a continuous period of
11 not less than 5 years immediately preceding the
12 date of enactment of this Act, and had not yet
13 reached the age of 16 years at the time of ini-
14 tial entry;

15 (B) the alien has been a person of good
16 moral character since the time of application;

17 (C) the alien—

18 (i) is not inadmissible under para-
19 graph (2), (3), (6)(B), (6)(C), (6)(E),
20 (6)(F), or (6)(G) of section 212(a) of the
21 Immigration and Nationality Act (8 U.S.C.
22 1182(a)), or, if inadmissible solely under
23 subparagraphs (C) and (F) of paragraph
24 (6) of such section by reason of a false
25 representation of United States citizenship,

1 the alien was under the age of 16 years
2 when the representation was made and was
3 not the principal applicant in the fraudu-
4 lent or false application for benefit under
5 the Immigration and Nationality Act (8
6 U.S.C. 1101 et seq.); and

7 (ii) is not deportable under paragraph
8 (1)(E), (1)(G), (2), (3)(B), (3)(C), (3)(D),
9 (4), or (6) of section 237(a) of the Immi-
10 gration and Nationality Act (8 U.S.C.
11 1227(a));

12 (D) the alien, at the time of application,
13 has been admitted to an institution of higher
14 education, or has earned a high school diploma
15 or obtained a general education development
16 certificate; and

17 (E) the alien has never been under a final
18 administrative or judicial order of exclusion, de-
19 portation, or removal, unless the alien has re-
20 mained in the United States under color of law
21 or received the order before attaining the age of
22 16 years.

23 (F) The Secretary of Homeland Security
24 may waive the grounds of ineligibility under
25 section 212(a)(6) of the Immigration and Na-

1 tionality Act and the grounds of deportability
2 under paragraphs (1), (3), and (6) of section
3 237(a) of that Act for humanitarian purposes
4 or family unity or when it is otherwise in the
5 public interest.

6 (2) PROCEDURES.—The Secretary of Homeland
7 Security shall provide a procedure by regulation al-
8 lowing eligible individuals to apply affirmatively for
9 the relief available under this subsection without
10 being placed in removal proceedings.

11 (b) TERMINATION OF CONTINUOUS PERIOD.—For
12 purposes of this section, any period of continuous resi-
13 dence or continuous physical presence in the United States
14 of an alien who applies for cancellation of removal under
15 this section shall not terminate when the alien is served
16 a notice to appear under section 239(a) of the Immigra-
17 tion and Nationality Act (8 U.S.C. 1229(a)).

18 (c) TREATMENT OF CERTAIN BREAKS IN PRES-
19 ENCE.—

20 (1) IN GENERAL.—An alien shall be considered
21 to have failed to maintain continuous physical pres-
22 ence in the United States under subsection (a) if the
23 alien has departed from the United States for any
24 period in excess of 90 days or for any periods in the
25 aggregate exceeding 180 days.

1 (2) EXTENSIONS FOR EXCEPTIONAL CIR-
2 CUMSTANCES.—The Secretary of Homeland Security
3 may extend the time periods described in paragraph
4 (1) if the alien demonstrates that the failure to time-
5 ly return to the United States was due to excep-
6 tional circumstances. The exceptional circumstances
7 determined sufficient to justify an extension should
8 be no less compelling than serious illness of the
9 alien, or death or serious illness of a parent, grand-
10 parent, sibling, or child.

11 (d) EXEMPTION FROM NUMERICAL LIMITATIONS.—
12 Nothing in this section may be construed to apply a nu-
13 merical limitation on the number of aliens who may be
14 eligible for cancellation of removal or adjustment of status
15 under this section.

16 (e) REGULATIONS.—

17 (1) PROPOSED REGULATIONS.—Not later than
18 180 days after the date of enactment of this Act, the
19 Secretary of Homeland Security shall publish pro-
20 posed regulations implementing this section. Such
21 regulations shall be effective immediately on an in-
22 terim basis, but are subject to change and revision
23 after public notice and opportunity for a period for
24 public comment.

1 (2) INTERIM, FINAL REGULATIONS.—Within a
2 reasonable time after publication of the interim reg-
3 ulations in accordance with paragraph (1), the Sec-
4 retary of Homeland Security shall publish final regu-
5 lations implementing this section.

6 (f) REMOVAL OF ALIEN.—The Secretary of Home-
7 land Security shall not remove any alien who has a pend-
8 ing application for conditional status under this Act.

9 **SEC. 5. CONDITIONAL PERMANENT RESIDENT STATUS.**

10 (a) IN GENERAL.—

11 (1) CONDITIONAL BASIS FOR STATUS.—Not-
12 withstanding any other provision of law, and except
13 as provided in section 6, an alien whose status has
14 been adjusted under section 4 to that of an alien
15 lawfully admitted for permanent residence shall be
16 considered to have obtained such status on a condi-
17 tional basis subject to the provisions of this section.
18 Such conditional resident status shall be valid for a
19 period of 6 years, subject to termination under sub-
20 section (b).

21 (2) NOTICE OF REQUIREMENTS.—

22 (A) AT TIME OF OBTAINING PERMANENT
23 RESIDENCE.—At the time an alien obtains per-
24 manent resident status on a conditional basis
25 under paragraph (1), the Secretary of Home-

1 land Security shall provide for notice to the
2 alien regarding the provisions of this section
3 and the requirements of subsection (c)(1) to
4 have the conditional basis of such status re-
5 moved.

6 (B) EFFECT OF FAILURE TO PROVIDE NO-
7 TICE.—The failure of the Secretary of Home-
8 land Security to provide a notice under this
9 paragraph—

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

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

15 (b) TERMINATION OF STATUS.—

16 (1) IN GENERAL.—The Secretary of Homeland
17 Security shall terminate the conditional permanent
18 resident status of any alien who obtained such sta-
19 tus under this Act, if the Secretary determines that
20 the alien—

21 (A) has violated any provision of subpara-
22 graph (B) or (C) of section 4(a)(1);

23 (B) has become a public charge; or

24 (C) in the case of an alien who received
25 conditional permanent resident status under

1 section 4(a)(1)(B), has received a dishonorable
2 or other than honorable discharge from the
3 Armed Forces of the United States.

4 (2) RETURN TO PREVIOUS IMMIGRATION STA-
5 TUS.—Any alien whose permanent resident status is
6 terminated under paragraph (1) shall return to the
7 immigration status the alien had immediately prior
8 to receiving conditional permanent resident status
9 under this Act.

10 (c) REQUIREMENTS OF TIMELY PETITION FOR RE-
11 MOVAL OF CONDITION.—

12 (1) IN GENERAL.—In order for the conditional
13 basis of permanent resident status obtained by an
14 alien under subsection (a) to be removed, the alien
15 must file with the Secretary of Homeland Security,
16 in accordance with paragraph (3), a petition which
17 requests the removal of such conditional basis and
18 which states, under penalty of perjury, the facts and
19 information described in subsection (d)(1).

20 (2) ADJUDICATION OF PETITION TO REMOVE
21 CONDITION.—

22 (A) IN GENERAL.—If a petition is filed in
23 accordance with paragraph (1), the Secretary of
24 Homeland Security shall make a determination
25 as to whether the facts and information de-

1 scribed in subsection (d)(1) and alleged in the
2 petition are true with respect to the eligibility
3 of the alien.

4 (B) REMOVAL OF CONDITIONAL BASIS IF
5 FAVORABLE DETERMINATION.—If the Secretary
6 of Homeland Security determines that the facts
7 and information alleged in the petition are true,
8 the Secretary of Homeland Security shall so no-
9 tify the alien and shall immediately remove the
10 conditional basis of the status of the alien.

11 (C) TERMINATION IF ADVERSE DETER-
12 MINATION.—If the Secretary of Homeland Se-
13 curity determines that such facts and informa-
14 tion alleged in the petition are not true, the
15 Secretary of Homeland Security shall so notify
16 the alien and shall terminate the permanent
17 resident status of the alien as of the date of the
18 determination.

19 (3) TIME TO FILE PETITION.—An alien may pe-
20 tition to remove the conditional basis to lawful resi-
21 dent status during the period beginning 180 days
22 before and ending 2 years after either the date that
23 is 6 years after the date of the granting of condi-
24 tional resident status or any other expiration date of
25 the conditional resident status as extended by the

1 Secretary of Homeland Security in accordance with
2 this Act. The alien shall be deemed in lawful status
3 in the United States during the period in which the
4 petition is pending.

5 (d) DETAILS OF PETITION.—

6 (1) CONTENTS OF PETITION.—Each petition
7 under subsection (c)(1) shall contain the following
8 facts and information:

9 (A) The alien maintained good moral char-
10 acter during the entire period the alien has
11 been a conditional permanent resident.

12 (B) The alien continues to be in compli-
13 ance with subparagraphs (B) and (C) of section
14 4(a)(1).

15 (C) The alien has maintained continuous
16 physical residence in the United States since
17 adjustment of status to that of a conditional
18 permanent resident. For the purpose of deter-
19 mining continuous physical presence under this
20 subparagraph, section 4(c) shall apply.

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

23 (i) The alien has acquired a degree
24 from an institution of higher education or
25 has been a student in good standing for at

1 least 2 years in a program for a bachelor's
2 degree or higher degree.

3 (ii) The alien has served in the Armed
4 Forces of the United States for at least 2
5 years and, if discharged, has received an
6 honorable discharge.

7 (iii) The alien has performed at least
8 910 hours of volunteer community service
9 in a program of an organization that has
10 been determined to be eligible to receive
11 funds from the Combined Federal Cam-
12 paign administered by the United States
13 Office of Personnel Management or a pro-
14 gram approved by the Secretary of Home-
15 land Security in consultation with the Di-
16 rector of U.S.A. Freedom Corps.

17 (2) HARDSHIP EXCEPTION.—

18 (A) IN GENERAL.—The Secretary of
19 Homeland Security may, in the Secretary's dis-
20 cretion, remove the conditional status of an
21 alien if the alien—

22 (i) satisfies the requirements of sub-
23 paragraphs (A), (B), and (C) of paragraph
24 (1);

1 (ii) demonstrates compelling cir-
2 cumstances for the inability to complete
3 the requirements described in paragraph
4 (1)(D); and

5 (iii) demonstrates that the alien's re-
6 moval from the United States would result
7 in exceptional and extremely unusual hard-
8 ship to the alien or the alien's spouse, par-
9 ent, or child who is a citizen or a lawful
10 permanent resident of the United States.

11 (B) EXTENSION.—Upon a showing of good
12 cause, the Secretary of Homeland Security may
13 also extend the validity period of the conditional
14 resident status for the purpose of completing
15 the requirements described in paragraph
16 (1)(D).

17 (e) TREATMENT OF PERIOD FOR PURPOSES OF NAT-
18 URALIZATION.—For purposes of title III of the Immigra-
19 tion and Nationality Act (8 U.S.C. 1401 et seq.), in the
20 case of an alien who is in the United States as a lawful
21 permanent resident on a conditional basis under this sec-
22 tion, the alien shall be considered to have been admitted
23 as an alien lawfully admitted for permanent residence and
24 to be in the United States as an alien lawfully admitted
25 to the United States for permanent residence. However,

1 the conditional basis must be removed before the alien
2 may apply for naturalization.

3 **SEC. 6. RETROACTIVE BENEFITS UNDER THIS ACT.**

4 An alien who, prior to the date of enactment of this
5 Act, has satisfied all the requirements of both sections 4
6 and 5, may petition the Secretary of Homeland Security
7 for permanent resident status without first becoming a
8 conditional resident.

9 **SEC. 7. EXCLUSIVE JURISDICTION.**

10 (a) IN GENERAL.—The Secretary of Homeland Secu-
11 rity shall have exclusive jurisdiction to determine eligibility
12 for relief under this Act, except where the alien has been
13 placed into deportation, exclusion, or removal proceedings
14 either prior to or after filing an application for relief under
15 this Act, in which case the Attorney General shall have
16 exclusive jurisdiction and shall assume all the powers and
17 duties of the Secretary of Homeland Security until pro-
18 ceedings are terminated, or if a final order of deportation,
19 exclusion, or removal is entered the Secretary of Home-
20 land Security shall resume all powers and duties delegated
21 to the Secretary of Homeland Security under this Act.

22 (b) STAY OF REMOVAL OF CERTAIN ALIENS EN-
23 ROLLED IN PRIMARY OR SECONDARY SCHOOL.—The At-
24 torney General shall stay the removal proceedings of any
25 alien who—

1 **SEC. 9. CONFIDENTIALITY OF INFORMATION.**

2 (a) PROHIBITION.—No officer or employee of the
3 United States may—

4 (1) use the information furnished by the appli-
5 cant pursuant to an application filed under this Act
6 for any purpose other than to make a determination
7 on the application;

8 (2) make any publication whereby the informa-
9 tion furnished by any particular individual pursuant
10 to an application under this Act can be identified; or

11 (3) permit anyone other than an officer or em-
12 ployee of the Department of Justice or, in the case
13 of applications filed under this Act with a designated
14 entity, that designated entity, to examine applica-
15 tions filed under this Act.

16 (b) PENALTY.—Whoever knowingly uses, publishes,
17 or permits information to be examined in violation of this
18 section shall be fined not more than \$10,000.

19 **SEC. 10. EXPEDITED PROCESSING OF APPLICATIONS; PRO-**
20 **HIBITION ON FEES.**

21 Regulations promulgated under this Act shall provide
22 that applications under this Act will be considered on an
23 expedited basis and without a requirement for the pay-
24 ment by the applicant of any additional fee for such expe-
25 dited processing.

1 **SEC. 11. GAO REPORT.**

2 Seven years after the date of enactment of this Act,
3 the Comptroller General of the United States shall submit
4 a report to the Committees on the Judiciary of the Senate
5 and the House of Representatives setting forth—

6 (1) the number of aliens who were eligible for
7 cancellation of removal and adjustment of status
8 during the application period described in section
9 4(a)(1)(A);

10 (2) the number of aliens who applied for adjust-
11 ment of status under section 4(a);

12 (3) the number of aliens who were granted ad-
13 justment of status under section 4(a); and

14 (4) the number of aliens with respect to whom
15 the conditional basis of their status was removed
16 under section 5.

○