To amend the Immigration and Nationality Act to permit certain long-term permanent resident aliens to seek cancellation of removal under such Act, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2005

Mr. Frank of Massachusetts introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Immigration and Nationality Act to permit certain long-term permanent resident aliens to seek cancellation of removal under such Act, 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 “Family Reunification Act of 2005”.
SEC. 2. CANCELLATION OF REMOVAL FOR LONG-TERM PERMANENT RESIDENT ALIENS.

Section 240A(a) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)) is amended to read as follows:

“(a) CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT RESIDENTS.—

“(1) PERMANENT RESIDENTS NOT CONVICTED OF ANY AGGRAVATED FELONY.—The Secretary of Homeland Security may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

“(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

“(B) resided in the United States continuously for 7 years after having been admitted in any status; and

“(C) has not been convicted of any aggravated felony.

“(2) PERMANENT RESIDENTS CONVICTED OF A NONVIOLENT AGGRAVATED FELONY.—The Secretary of Homeland Security may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—
“(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

“(B) satisfies the residence requirements of paragraph (6);

“(C) has never been convicted of—

“(i) an act of murder, rape, or sexual abuse of a minor;

“(ii) any crime of violence (as defined in section 16 of title 18, United States Code); or

“(iii) an attempt or conspiracy to commit an offense described in clause (i) or (ii);

“(D) has been convicted of—

“(i) a single aggravated felony for which the alien was sentenced to serve a term of imprisonment of 4 years or less;

“(ii) multiple aggravated felonies arising out of a single scheme of criminal misconduct for which the alien was sentenced to serve, in the aggregate, a term of imprisonment of 4 years or less; or

“(iii) 2 aggravated felonies arising out of separate schemes of criminal misconduct
for which the alien was sentenced to serve,
in the aggregate, a term of imprisonment
of 4 years or less, but for neither of which
the alien was actually incarcerated;

“(E) was not, in the commission of the ag-
gravated felony or felonies described in sub-
paragraph (D)—

“(i) an organizer, leader, manager, or
supervisor of others; or

“(ii) engaged in a continuing criminal
enterprise (as defined in section 408(c) of
the Controlled Substances Act (21 U.S.C.
848(c)));

“(F) has never been incarcerated for any
offense except—

“(i) the offense described in clause (i)
of subparagraph (D), or another offense
that was committed in the course of the
same scheme of criminal misconduct; or

“(ii) an offense that was committed in
the course of the scheme or schemes de-
scribed in clause (ii) or (iii) of such sub-
paragraph; and

“(G) has not been the subject of a timely
certification described in paragraph (7) with re-
spect to the aggravated felony or felonies described in subparagraph (D), unless such certification has been revoked pursuant to such paragraph.

“(3) PERMANENT RESIDENTS CONVICTED OF AN AGGRAVATED FELONY CLASSIFIED AS A CRIME OF VIOLENCE.—The Secretary of Homeland Security may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

“(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

“(B) satisfies the residence requirements of paragraph (6);

“(C) has never been convicted of—

“(i) an act of murder, rape, or sexual abuse of a minor; or

“(ii) an attempt or conspiracy to commit an offense described in clause (i);

“(D) has never been convicted of any aggravated felony that resulted in death or serious bodily injury to any person other than the alien;

“(E) has been convicted of—
“(i) a single aggravated felony for which the alien was sentenced to serve a term of imprisonment of 2 years or less;

“(ii) multiple aggravated felonies arising out of a single scheme of criminal misconduct for which the alien was sentenced to serve, in the aggregate, a term of imprisonment of 2 years or less; or

“(iii) 2 aggravated felonies arising out of separate schemes of criminal misconduct for which the alien was sentenced to serve, in the aggregate, a term of imprisonment of 2 years or less, but for neither of which the alien was actually incarcerated;

“(F) was not, in the commission of the aggravated felony or felonies described in subparagraph (E)—

“(i) an organizer, leader, manager, or supervisor of others; or

“(ii) engaged in a continuing criminal enterprise (as defined in section 408(c) of the Controlled Substances Act (21 U.S.C. 848(c)));

“(G) has never been incarcerated for any offense except—
“(i) the offense described in clause (i) of subparagraph (E), or another offense that was committed in the course of the same scheme of criminal misconduct; or

“(ii) an offense that was committed in the course of the scheme or schemes described in clause (ii) or (iii) of such subparagraph; and

“(H) has not been the subject of a timely certification described in paragraph (7) with respect to the aggravated felony or felonies described in subparagraph (E), unless such certification has been revoked pursuant to such paragraph.

“(4) Permanent residents admitted before age 10.—The Secretary of Homeland Security may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

“(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

“(B) resided in the United States continuously for 7 years after having been admitted in
any status when the alien was under 10 years of age;

“(C) has never been convicted of—

“(i) an act of murder, rape, or sexual abuse of a minor; or

“(ii) an attempt or conspiracy to commit an offense described in clause (i); and

“(D) has never been incarcerated for a third (or succeeding) aggravated felony, except that multiple felonies arising out of a single scheme of criminal misconduct shall be considered a single felony for purposes of this subparagraph.

“(5) PERMANENT RESIDENTS ADMITTED BEFORE AGE 16.—The Secretary of Homeland Security may cancel removal in the case of an alien who is inadmissible to, or deportable from, the United States, if the alien—

“(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

“(B) resided in the United States continuously for 7 years—

“(i) before the alien committed any aggravated felony; and
“(ii) after having been admitted in any status when the alien was under 16 years of age;

“(C) has never been convicted of—

“(i) an act of murder, rape, or sexual abuse of a minor; or

“(ii) an attempt or conspiracy to commit an offense described in clause (i); and

“(D) has never been incarcerated for a third (or succeeding) aggravated felony, except that multiple felonies arising out of a single scheme of criminal misconduct shall be considered a single felony for purposes of this subparagraph.

“(6) RESIDENCE REQUIREMENTS FOR CERTAIN ALIENS.—In the case of an alien seeking relief under paragraph (2) or (3), the residence requirements described in this paragraph are as follows:

“(A) If the alien has been convicted of any aggravated felony committed after the date of the enactment of the Family Reunification Act of 2005, the alien is required to have resided in the United States—

“(i) continuously for 7 years after having been admitted in any status and
prior to the commission of such aggravated felony; or

“(ii) continuously for 10 years after having been admitted in any status, except that, if the alien is incarcerated with respect to such aggravated felony, the period beginning on the date on which such aggravated felony was committed and ending on the last day of such term of incarceration shall be excluded in determining continuous residence under this clause.

“(B) If the alien has not been convicted of an aggravated felony committed after the date of the enactment of the Family Reunification Act of 2005, but has otherwise been incarcerated for any aggravated felony, the alien is required to have resided in the United States—

“(i) continuously for 7 years after having been admitted in any status and prior to the commencement of such term of incarceration; or

“(ii) continuously for 10 years after having been admitted in any status, except that any term of incarceration for any aggravated felony shall be excluded in deter-
mining continuous residence under this clause.

“(C) If the alien is not described in subparagraph (A) or (B), the alien is required to have resided in the United States continuously for 7 years after having been admitted in any status.

“(7) CERTIFICATIONS.—

“(A) IN GENERAL.—In the case of an alien seeking relief under paragraph (2) or (3), not later than 2 weeks after the alien files an application for such relief, the Secretary of Homeland Security may notify each agency that prosecuted an aggravated felony referred to in paragraph (2)(D) or (3)(E), as the case may be.

“(B) CONTENTS.—The notification shall inform the agency that it has an opportunity—

“(i) to certify to the Secretary of Homeland Security, not later than 60 days after the date on which the notification is mailed, that the alien has not truthfully provided to the agency all information and evidence the alien has concerning such felony or felonies, and any other offense or offenses that were part of the same scheme
of criminal misconduct as such felony or
felonies; and

“(ii) on those grounds, to object to
cancellation of removal.

“(C) Provision to alien.—The Sec-
retary of Homeland Security shall mail any cer-
tification timely made pursuant to subpara-
graph (B) with respect to an alien to such
alien. The alien shall have an opportunity, dur-
ing the 21-day period beginning on the date on
which the certification is mailed, to truthfully
provide to the agency all information and evi-
dence which the agency certifies has not been
provided.

“(D) Revocation of certification.—

“(i) In general.—The agency may,
during the 21-day period beginning after
the end of the period described in subpara-
graph (C), revoke any certification made
pursuant to subparagraph (B). Any rev-
ocation of a certification shall void such
certification.

“(ii) Untimely revocations.—A
revocation under this subparagraph that is
not timely made may be considered by the
Secretary of Homeland Security in the Secretary of Homeland Security’s discretion if it is made prior to the issuance of a final order of removal, but the absence of a timely revocation shall not be the basis for any continuance or delay of proceedings. Any determination to deny relief based in whole or in part on a revocation that is not made, or not timely made, shall not be subject to administrative or judicial review in any forum.

“(E) FORMS REQUIREMENT.—The Secretary of Homeland Security shall ensure that the consequences under this paragraph of failing to provide information or evidence with respect to aggravated felonies are clearly explained in any form promulgated by the Secretary of Homeland Security that may be used to apply for relief under paragraph (2) or (3).

“(F) CONSTRUCTION.—This paragraph, and paragraphs (2) and (3), shall not be construed to require the Secretary of Homeland Security to notify any agency under subparagraph (A). If the Secretary of Homeland Security fails to send, or fails timely to send, the no-
tification described in such subparagraph, the
alien shall be deemed not to be the subject of
a certification.

“(8) Clarification with respect to cer-
tain references.—Any reference in this sub-
section to a term of imprisonment or a sentence with
respect to an offense is deemed to include the period
of incarceration or confinement ordered by a court
of law, regardless of any suspension of the imposi-
tion or execution of that imprisonment or sentence
in whole or in part. However, a period of probation
is not a term of imprisonment or a sentence for pur-
poses of this subsection.

“(9) Limitation on delegation.—Cancellation
of removal under paragraph (2), (3), (4), or (5)
may be granted only by the Secretary of Homeland
Security or Deputy Secretary of Homeland Security.
No delegation of such authority to any other official
may be made.”.

SEC. 3. CHANGE IN CONDITIONS FOR TERMINATION OF PE-
RIOD OF CONTINUOUS RESIDENCE OR CON-
TINUOUS PHYSICAL PRESENCE.

Section 240A(d)(1) of the Immigration and Nation-
ality Act (8 U.S.C. 1229b(d)(1)) is amended to read as
follows:
“(1) Termination of continuous period.—

For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end, except in the case of an alien who applies for cancellation of removal under subsection (b)(2), when the alien is served a notice to appear under section 239(a).”.

SEC. 4. PERMITTING CERTAIN PERMANENT RESIDENT ALIENS TO RETURN WITHOUT SEEKING ADMISSION.

Section 101(a)(13)(C) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(13)(C)) is amended—

(1) by striking the comma at the end of each of clauses (i), (ii), (iii), and (iv) and inserting a semicolon at the end of each such clause;

(2) by amending clause (v) to read as follows:

“(v) has committed outside the United States an offense identified in section 212(a)(2), unless, since such offense, the alien has been granted relief under section 212(h) or 240A(a), or under section 212(c) (before its repeal by section 304(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009–597));”;

(3) by redesignating clause (vi) as clause (vii); and
(4) by inserting after clause (v) the following:

“(vi) has committed in the United States an offense identified in section 212(a)(2), and has been absent from the United States for a continuous period in excess of 30 days since committing such offense (or, if the absence after the 30th day was beyond the alien’s control, for a continuous period in excess of 60 days), unless, since such offense, the alien has been granted relief under section 212(h) or 240A(a), or under section 212(c) (before its repeal by section 304(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009–597)); or”.

SEC. 5. RELEASE OF NONDANGEROUS ALIENS.

(a) In General.—Section 236(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(2)) is amended to read as follows:

“(2) Release.—

“(A) In General.—The Secretary of Homeland Security may release an alien described in paragraph (1) only in accordance with subparagraph (B) or (C). A decision relating to release under this paragraph shall take place in accordance with a procedure that con-
siders the severity of any offense committed by
the alien.

“(B) Protection for witnesses, poten-
tial witnesses, and persons cooper-
ating with criminal investigations.—The
Secretary of Homeland Security may release an
alien described in paragraph (1) if—

“(i) the Secretary of Homeland Secu-

rity decides pursuant to section 3521 of
title 18, United States Code, that release
of the alien from custody is necessary to
provide protection to a witness, a potential
witness, a person cooperating with an in-
vestigation into major criminal activity, or
an immediate family member or close asso-
ciate of a witness, potential witness, or
person cooperating with such an investiga-
tion; and

“(ii) the alien satisfies the Secretary
of Homeland Security that the alien will
not pose a danger to the national security
of the United States or the safety of per-
sons or property and is likely to appear for
any scheduled proceeding:
“(C) PERMANENT RESIDENT ALIENS ELIGIBLE FOR CANCELLATION OF REMOVAL.—The Secretary of Homeland Security may release an alien described in paragraph (1) if the alien demonstrates, by a preponderance of the evidence, that the alien—

“(i) has prima facie evidence sufficient to establish that the alien is eligible for cancellation of removal under section 240A(a); and

“(ii) will not pose a danger to the national security of the United States or the safety of persons or property and is likely to appear for any scheduled proceeding.”.

(b) APPLICATION TO ALIENS DETAINED ON EFFECTIVE DATE.—In the case of an alien detained under section 241(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(2)) on the date of the enactment of this Act, if the alien has prima facie evidence sufficient to establish that the alien is eligible for cancellation of removal under section 240A(a) of such Act (8 U.S.C. 1229b(a)), as amended by section 2 of this Act (and subject to the other amendments made by this Act), the alien may seek release from detention under section 236(c)(2)(C) of such Act (8 U.S.C. 1226(c)(2)(C)), as added by this section.
SEC. 6. CLARIFICATION OF EFFECT OF VACATION OF CONVICTION.

Section 101(a)(48) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(48)) is amended by adding at the end the following:

“(C) Any conviction entered by a court that otherwise would be considered a conviction under this paragraph shall continue to be so considered notwithstanding a vacation of that conviction, unless the conviction is vacated—

“(i) on the merits; or

“(ii) on grounds relating to a violation of a statutory or constitutional right in the underlying criminal proceeding.”.

SEC. 7. EFFECTIVE DATE; SPECIAL APPLICABILITY RULE.

(a) IN GENERAL.—The amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to aliens who—

(1) are in removal proceedings under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on or after such date;

(2) were in such proceedings before such date, were ineligible for cancellation of removal under section 240A(a) of such Act (8 U.S.C. 1229b(a)) before such date, but would have been eligible for cancellation of removal under such section if the amend-
ments made by this Act had been in effect during
the entire pendency of such proceedings; or

(3) were in exclusion or deportation proceedings
under such Act before such date, and were ineligible
for relief under section 212(c) of such Act (as in ef-
fect on March 31, 1997, before its repeal by section
304(b) of the Illegal Immigration Reform and Immig-
grant Responsibility Act of 1996 (110 Stat. 3009–
597)) by reason of the amendments made by section
440(d) of the Antiterrorism and Effective Death
Penalty Act of 1996 (Public Law 104–132; 110
Stat. 1277).

(b) SPECIAL APPLICABILITY RULE.—

(1) IN GENERAL.—Notwithstanding any other
provision of law, aliens described in subsection (a)(3)
shall be considered to be, or to have been, in removal
proceedings under the Immigration and Nationality
Act (8 U.S.C. 1101 et seq.) to the extent necessary
to permit them to apply, and be considered eligible,
for cancellation of removal under section 240A(a) of
such Act (8 U.S.C. 1229b(a)), as amended by this
Act.

(2) RELIEF.—If the Secretary of Homeland Se-
curity determines that an alien described in sub-
section (a)(3) should be provided relief pursuant to
this Act, the Secretary of Homeland Security shall take such steps as may be necessary to terminate any proceedings to exclude or deport the alien that may be pending, and shall grant or restore to the alien the status of an alien lawfully admitted to the United States for permanent residence.

SEC. 8. MOTIONS TO REOPEN.

(a) IN GENERAL.—Not later than 1 year after the effective date of the final regulations issued under section 9(b) of this Act, and in accordance with such regulations, an alien described in subsection (b) may file a motion to reopen removal, deportation, or exclusion proceedings in order to apply for cancellation of removal under section 240A(a) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)) pursuant to the amendments made by this Act.

(b) ALIENS DESCRIBED.—An alien is described in this subsection if the alien—

(1) is described in subsection (a) of section 7; and

(2) is otherwise unable to apply, or reapply, for cancellation of removal under section 240A(a) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)) by reason of the procedural posture of the exclusion, deportation, or removal proceedings that
are, or were, pending against the alien (including the fact that such proceedings are finally concluded).

(c) EVIDENCE.—A motion filed under subsection (a) shall describe or set forth prima facie evidence sufficient to establish that the alien is eligible for cancellation of removal under section 240A(a) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)), as amended by this Act.

(d) NO REENTRY OR READMISSION TO FILE OR PROSECUTE MOTION.—No alien may be admitted or otherwise authorized to enter the United States solely to file or prosecute a motion to reopen under this section or otherwise to apply for relief under this Act or the amendments made by this Act, except as the Secretary of Homeland Security may provide pursuant to the sole and unreviewable discretion of the Secretary of Homeland Security. Hearings held pursuant to this Act and the amendments made by this Act may be held in the United States or abroad, with the alien appearing in person or by video phone or similar device.

(e) DISCRETION.—The grant or denial of any motion to reopen filed under this section shall be in the sole and unreviewable discretion of the Secretary of Homeland Security.

(f) NO JUDICIAL REVIEW.—No court shall have jurisdiction to review any decision of the Secretary of Home-
land Security denying a motion to reopen under this section.

SEC. 9. RULES.

(a) ISSUANCE OF ADVANCE NOTICE OF PROPOSED RULEMAKING.—The Secretary of Homeland Security shall issue an advance notice of proposed rulemaking pertaining to this Act, and the amendments made by this Act, not later than 60 days after the date of the enactment of this Act.

(b) ISSUANCE OF FINAL REGULATIONS.—The Secretary of Homeland Security shall issue the final regulations to carry out this Act not later than 90 days after the date of the enactment of this Act, specifying an effective date that is not more than 15 days after the date of publication of such final regulations.

SEC. 10. SUNSET.

This Act, and the amendments made by this Act, shall cease to have effect on December 31, 2008, or 3 years after the date on which final regulations to carry out this Act are issued, whichever occurs later.

SEC. 11. ANNUAL REPORT.

The Secretary of Homeland Security annually shall submit to the Committee on the Judiciary of the United States House of Representatives and the Committee on the Judiciary of the Senate a report with respect to this
Act and the amendments made by this Act. The report shall contain information on—

(1) the number of aliens who applied for cancellation of removal, release from detention, or any other immigration benefit, based on this Act or the amendments made by this Act;

(2) the crimes committed by the aliens described in paragraph (1);

(3) the number of applications described in paragraph (1) that were granted; and

(4) any other subject the Secretary of Homeland Security considers relevant.