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107TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
107–254

TO EXTEND ELIGIBILITY FOR REFUGEE STATUS OF UNMARRIED SONS AND DAUGHTERS OF CERTAIN VIETNAMESE REFUGEES

OCTOBER 29, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 1840]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1840) to extend eligibility for refugee status of unmarried sons and daughters of certain Vietnamese refugees, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. ELIGIBILITY FOR REFUGEE STATUS.

(a) ELIGIBILITY FOR IN-COUNTRY REFUGEE PROCESSING IN VIETNAM.—For purposes of eligibility for in-country refugee processing for nationals of Vietnam during fiscal years 2002 and 2003, an alien described in subsection (b) shall be considered

to be a refugee of special humanitarian concern to the United States (within the meaning of section 207 of the Immigration and Nationality Act (8 U.S.C. 1157)) and shall be admitted to the United States for resettlement if the alien would be admissible as an immigrant under the Immigration and Nationality Act (except as provided in section 207(c)(3) of that Act).

(b) ALIENS COVERED.—An alien described in this subsection is an alien who—

(1) is the son or daughter of a qualified national;

(2) is 21 years of age or older; and

(3) was unmarried as of the date of acceptance of the alien's parent for resettlement under the Orderly Departure Program or through the United States Consulate General in Ho Chi Minh City.

(c) QUALIFIED NATIONAL.—The term "qualified national" in subsection (b)(1) means a national of Vietnam who—

(1)(A) was formerly interned in a re-education camp in Vietnam by the Government of the Socialist Republic of Vietnam; or

(B) is the widow or widower of an individual described in subparagraph (A);

(2)(A) qualified for refugee processing under the Orderly Departure Program re-education subprogram; and

(B) is or was accepted under the Orderly Departure Program or through the United States Consulate General in Ho Chi Minh City—

(i) for resettlement as a refugee; or

(ii) for admission to the United States as an immediate relative immigrant; and

(3)(A) is presently maintaining a residence in the United States or whose surviving spouse is presently maintaining such a residence; or

(B) was approved for refugee resettlement or immigrant visa processing and is awaiting departure formalities from Vietnam or whose surviving spouse is awaiting such departure formalities.

PURPOSE AND SUMMARY

The purpose of this Act is to extend eligibility for refugee status of unmarried sons and daughters of certain Vietnamese refugees. The Act extends the time period that the State Department and the Immigration and Naturalization Service (INS) have to process eligible adult, unmarried sons and daughters through fiscal year 2003. It removes the date of April 1, 1995, imposed by the McCain Amendment,[1] so that the cases of sons and daughters processed after April 1, 1995, are adjudicated in the same manner as those cases processed prior to that date. The Act permits the INS to reconsider cases that were previously denied for failure of proof of family relationship, rather than just those cases that were denied based on the issue of co-habitation with the principal alien. Finally, the Act expands eligibility to adult, unmarried sons and daughters whose principal parent has died, but whose surviving parent is maintaining a residence in the United States or is awaiting departure formalities from Vietnam.

BACKGROUND AND NEED FOR THE LEGISLATION

BACKGROUND

The Orderly Departure Program (ODP) was established in 1979 to give eligible nationals of Vietnam an alternative method of emigrating to a foreign country, rather than undertake illegal, hazardous departures by boat or land. In 1989, the INS began adjudicating applications for refugee status in Vietnam for certain Vietnamese nationals who had been in re-education camps for at least 3 years and widows of Vietnamese nationals who had died as a result of confinement in re-education camps. The INS included un-

[1] Sec. 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, Division A of H.R. 3610; Pub. L. No. 104–208; 110 Stat. 3009–171.

married sons and daughters 21 years and older based on case eligibility guidelines set up by the State Department 10 years earlier. However, this contradicted immigration regulations. INS had been treating these unmarried sons/daughters as derivative refugees, but the immigration regulations define derivative refugees as spouses and unmarried children under 21 years of age. After extensively announcing that registration for the ODP would draw to a close, registration for the ODP ceased on September 30, 1994.

In April 1995, the INS, with concurrence of the State Department, modified its criteria of who could be included on the refugee claim to exclude unmarried, adult sons and daughters. In response to this modification, legislation (the "McCain Amendment") was enacted to re-establish refugee eligibility to unmarried, adult sons and daughters of the qualifying Vietnamese nationals. The legislation was retroactive to April 1, 1995, the date on which the modification had taken effect. The McCain Amendment provided legal authority to the INS to consider and approve individuals who were not properly classifiable as derivatives. This Amendment was extended in 1998 (as section 255 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act for fiscal years 2000 and 2001).[2]

The INS has denied derivative refugee status to those unmarried sons and daughters who failed to prove their family relationship with the principal applicant. The INS mistakenly denied some for no proof of family relationship when the applicant could not show he or she continuously resided with the parent. After determining that it was incorrectly denying some derivatives based on co-residency, the INS identified the entire caseload of improperly adjudicated derivative family member cases. The agency had until September 30, 2001, to correct the cases adjudicated on or after April 1, 1995, where the original denial was based solely on the issue of co-residency with the principal applicant.

THE BILL

The INS needs additional time to adjudicate pending cases under the McCain Amendment. As such, H.R. 1840 extends the time to adjudicate those cases by two years.

The intent of H.R. 1840 is to extend the same eligibility criteria applied to cases currently being processed under the McCain Amendment to individuals whose parent's case was processed prior to April 1, 1995. Accordingly, the Act removes the date of April 1, 1995, imposed by the McCain Amendment.

In addition to failure to prove co-residency, the INS has denied some cases because the applicants were unable to prove their family relationship to a principal applicant. Due to new identification methods, such as DNA, H.R. 1840 permits the INS to reconsider cases that were previously denied for failure of proof, rather than just those cases that were denied based on the issue of co-habitation with the principal alien.

Finally, some sons and daughters have been denied derivative refugee status because their principal applicant parent has died, although their surviving parent resides in the United States or is awaiting departure formalities from Vietnam. Accordingly, H.R.

[2] Sec. 255 of Division A of H.R. 3427; Pub. L. No. 106–113, appendix G; 113 Stat. 1501A–432.

1840 expands eligibility to include these adult, unmarried sons and daughters.

HEARINGS

No hearings were held on H.R. 1840.

COMMITTEE CONSIDERATION

On June 27, 2001, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported the bill H.R. 1840, as amended, by a vote of 6 to 3, a quorum being present. On October, 10, 2001, the Committee met in open session and ordered favorably reported the bill H.R. 1840 with amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 1840 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House of Representatives is inapplicable.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1840, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 12, 2001.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1840, a bill to extend eligibility for refugee status of unmarried sons and daughters of certain Vietnamese refugees.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 1840—A bill to extend eligibility for refugee status of unmarried sons and daughters of certain Vietnamese refugees.

CBO estimates that enacting H.R. 1840 would result in no significant cost to the Federal Government. The bill could affect direct spending, so pay-as-you-go procedures would apply, but we estimate that any such effects would be insignificant. H.R. 1840 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no significant costs on state, local, or tribal governments.

Until September 30, 2001, unmarried adult children of certain Vietnamese nationals were eligible for admission to the United States as refugees of special humanitarian concern. H.R. 1840 would renew their eligibility through the end of fiscal year 2003. Enacting the bill would lead to an increase in refugee admissions, which would increase administrative costs to the Immigration and Naturalization Service and increase spending for certain benefit programs. However, CBO expects the bill would aid no more than 1,000 persons annually, so any increases in direct spending would not be significant.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 4 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

SEC. 1. ELIGIBILITY FOR REFUGEE STATUS

Section 1(a) Eligibility for In-Country Refugee Processing in Vietnam. Section 1(a) permits in-country refugee processing by the State Department and the INS to continue through fiscal year 2003. It states that aliens described in subsection 1(b) are considered to be refugees of special humanitarian concern to the United States within the meaning of section 207 of the Immigration and Nationality Act (INA) (referring to refugees) and should be admitted to reside in the U.S. if the alien would be admissible as an immigrant under the Immigration and Nationality Act (except as provided in section 207(c)(3) of the INA).

Section 1(b) Aliens Covered. Section 1(b) describes the beneficiaries under this Act. An alien must be (1) the son or daughter of a qualified national (defined in subsection 1(c)); (2) 21 years of age or older; and (3) be unmarried as of the date of acceptance of

the alien's parent for resettlement under the Orderly Departure Program or through the U.S. Consulate General in Ho Chi Minh City.

Section 1(c) Qualified National. Subsection 1(c) defines the term "qualified national" in subsection (b)(1) as a national of Vietnam who:

(1)(A) was formerly interned in a re-education camp in Vietnam by the Socialist Republic of Vietnam Government; or

(B) is the widow or widower of an individual described in subparagraph (1)(A);

(2)(A) qualified for refugee processing under the Orderly Departure Program re-education subprogram; and

(B) is or was accepted under the Orderly Departure Program or through the U.S. Consulate General in Ho Chi Minh City for

(i) resettlement as a refugee; or

(ii) admission to the U.S. as an immediate relative immigrant; and

(3)(A) is presently maintaining a residence in the U.S. or whose surviving spouse is presently maintaining such a residence; or

(B) was approved for refugee resettlement or immigrant visa processing and is awaiting departure formalities from Vietnam or whose surviving spouse is awaiting such departure formalities.

AGENCY VIEWS

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General Washington, D.C. 20530

October 2, 2001

Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515-6216

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Immigration and Claims

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Judiciary

Dear Mr. Chairman:

The Department of Justice has carefully reviewed H.R. 1840, a bill to extend eligibility for refugee status to unmarried sons and daughters of certain Vietnamese refugees by providing a new sunset date for section 255 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (section 255 of division A of H.R. 3427, as enacted into law by section 1000(a)(7) of Public Law 106-1113, appendix G; 113 Stat. 1501A-460) (the "McCain Amendment"), and making other changes to that provision. We thank you for allowing us to offer our views on this bill.

We support H.R. 1840. We understand that discussions between Congressional staff actively involved with this bill and the Department of State, which manages the refugee admissions program, have resulted in agreement that enactment of H.R. 1840 would simply eliminate a provision that excludes sons and daughters whose parents were accepted prior to April 1, 1995. It would neither compel any change in INS or Orderly Departure Program practices with respect to sons and daughters covered by current law, nor would it mandate different procedures with respect to sons and daughters whose parents were accepted for resettlement before April 1, 1995. Under the provisions of the bill, sons and daughters who were originally named as family members by the qualified-national on his or her application would be eligible for consideration whether or not they were previously found not eligible by officers of the INS or the Orderly Departure Program. It is our understanding that appropriate administrative procedures will be developed for sons and daughters whose names are not contained in a parent's case file

but whose parent applies for the son's or daughter's resettlement. We want to assure you, however, that the INS will do its utmost to ensure that its determinations on these issues, and on any other issues affecting an applicant's eligibility under this bill, are fair and accurate.

Finally, in order to ensure family unity and fairness, we recommend amending the bill so as to allow the son or daughter of a qualified-national parent who has died to be eligible for consideration for resettlement in the U.S. if his or her other parent is residing in the U.S. or awaiting exit formalities for U.S. resettlement.

With this understanding, we support H.R. 1840. Thank you for your attention to this matter. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

United States Department of State

Washington, D.C. 20520

OCT -5 2001

Dear Mr. Chairman:

This is in response to your committee's request for views on whether the four groups of Vietnamese nationals described in Representative Davis' August 2 letter would be eligible for relief under either current procedures for considering certain adult children of former re-education camp detainees (commonly referred to as the HO program) for refugee resettlement in the United States or under the substitute amendment to HR 1840 attached to your letter.

The substitute amendment would extend the McCain Amendment until September 30, 2003. We support this extension in order to provide additional time to resolve fairly and humanely all pending cases.

Current procedures are governed by Section 255 of Division A of H.R. 3427, as enacted into law by Section 1000(a)(7) of P.L. 106-113 (commonly referred to as the McCain Amendment). The intent of this Amendment, first enacted in October 1996, and primarily governing cases processed on or after April 1, 1995, is to restore the *status quo ante* regarding the eligibility for refugee resettlement of the unmarried adult children who were included on their parent's HO case.

Under current procedures and regardless of the date of their parent's refugee interview, individuals identified in Group 1 are not eligible for relief. Historically, the identification of family members to be included in the case has been the responsibility of the principal HO applicant. The HO applicant provides USG caseworkers or INS officers the names of his children and their marital status or

The Honorable
Jim Sensenbrenner, Jr., Chairman,
Committee on the Judiciary,
House of Representatives.

other information to establish processing eligibility. Since its passage, eligibility for consideration under the McCain Amendment has been limited to only those individuals who were originally named as family members by the HO applicant.

Current processing procedures provide for the consideration of individuals in Group 2. However, we are unaware of any cases where an otherwise interview-eligible son or daughter was refused access to an INS interview. Current procedures also provide relief for some of the children identified in Group 3. Specifically, children found ineligible to accompany their parents prior to April 1, 1995 because of co-residency or dependency issues. Current procedures do not, however, provide relief for children rejected because of questions pertaining to their relationship to the principal applicant or marital status. Current law also does not provide for the consideration of individuals described in Group 4.

The substitute amendment, does not provide for the consideration of individuals in Groups 1 and 4, but does provide relief for individuals in Group 2. In Group 3, the substitute amendment covers adult children previously found ineligible because of relationship and residency issues, but it does not cover individuals rejected for resettlement consideration because of issues related to their marital status. The amendment also does not provide relief for individuals described in Group 4. In order to provide relief for all individuals described in Group 3 and 4, the substitute amendment would have to be amended.

It is our understanding that the intent of HR 1840 is to extend the same eligibility criteria applied to cases currently being processed under the McCain Amendment to individuals whose parent's case was processed prior to April 1, 1995. We support this objective. However, we had been concerned that HR 1840 is too expansive in that it would reopen a program that closed on September 30, 1994 to individuals who were never registered with the Orderly Departure Program or considered eligible for processing.

However, following additional discussions with Congressional staff actively involved with this bill, we have reached agreement concerning the scope of processing eligibility under the provisions of the bill. As noted earlier in this letter, historical practice has been only to process for resettlement consideration those children who were originally named as family members by the HO applicant. Based on these staff discussions we understand that enactment of HR 1840 in its original form would neither compel a change in this practice nor mandate a different practice with respect to sons and daughters whose parents were accepted for resettlement before April 1, 1995. Based on this understanding, we support the bill.

Finally, in order to cover individuals identified in Group 4 and to ensure family unity we suggest that the Committee consider amending HR 1840. We recommend amending the bill so as to allow the son or daughter of a qualified-national parent who has died to be eligible for consideration for resettlement in the U.S. if his or her other parent is residing in the U.S. or awaiting exit formalities for U.S. resettlement. Attached to this letter is suggested language for such an amendment.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this letter.

I hope this information is useful to you. Please do not hesitate to call if we can be of further assistance. The point of contact within the Department is Pamela H. Lewis in the Bureau of Population, Refugees, and Migration. She can be reached at (202) 663-1026.

Sincerely,

Paul V. Kelly

Paul V. Kelly
Assistant Secretary
Legislative Affairs

Attachment: As stated.

SUGGESTED LANGUAGE FOR AMENDING SECTION (c)(1)(B) and (c) (3)(A) and (B)

(c)(1)(B) is the widow or widower of an individual described in subparagraph (A) **and;**

(c)(3)(A) is presently maintaining a residence in the United States **or whose surviving spouse is maintaining a residence in the United States;** or

(c)(3)(B) was approved for refugee resettlement or immigrant visa processing and is awaiting departure formalities from Vietnam **or whose surviving spouse is awaiting departure formalities from Vietnam.**

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, OCTOBER 10, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to call, at 2:35 p.m., in Room 2141 Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The next item on the agenda is H.R. 1840, to extend the eligibility for refugee status of unmarried sons and daughters of certain Vietnamese refugees. The Chair recognizes the gentleman from Pennsylvania, Mr. Gekas, the Chairman of the Subcommittee on Immigration and Claims.

Mr. GEKAS. Mr. Chairman, the Subcommittee on Immigration and Claims reports favorably the bill, H.R. 1840, with a single amendment in the nature of a substitute, and moves its favorable recognition to the full House.

[The bill, H.R. 1840, follows:]

I

107TH CONGRESS
1ST SESSION

H. R. 1840

To extend eligibility for refugee status of unmarried sons and daughters of certain Vietnamese refugees.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2001

Mr. TOM DAVIS of Virginia (for himself, Mr. DELAY, Mr. SMITH of New Jersey, Mr. ROHRABACHER, and Ms. SANCHEZ) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To extend eligibility for refugee status of unmarried sons and daughters of certain Vietnamese refugees.

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

SECTION 1. ELIGIBILITY FOR REFUGEE STATUS.

Section 255 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (section 255 of division A of H.R. 3427, as enacted into law by section 1000(a)(7) of Public Law 106–113, appendix G; 113 Stat. 1501A–460) is amended—

(1) in subsection (a) by striking "and 2001," and inserting "2001, 2002, and 2003,";

(2) in subsection (c)(2)(B), by striking "except as provided in subsection (d), on or after April 1, 1995,"; and

(3) by striking subsection (d).

○

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point, and the Subcommittee amendment in the nature of a substitute, which the Members have before them, will be considered as read and be considered as the original text for purposes of amendment.

The Chair recognizes the gentleman from Pennsylvania to offer a substitute which has been negotiated since the Subcommittee markup and to explain the substitute.

Mr. GEKAS. I thank the Chairman. This amendment——

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment in the nature of a substitute to the Subcommittee amendment to H.R. 1840, offered by Mr. Gekas.

[The amendment follows:]

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO THE SUBCOMMITTEE AMENDMENT
TO H.R. 1840
OFFERED BY MR. GEKAS

Strike all after the enacting clause and insert the following:

SECTION 1. ELIGIBILITY FOR REFUGEE STATUS.

(a) ELIGIBILITY FOR IN-COUNTRY REFUGEE PROCESSING IN VIETNAM.—For purposes of eligibility for in-country refugee processing for nationals of Vietnam during fiscal years 2002 and 2003, an alien described in subsection (b) shall be considered to be a refugee of special humanitarian concern to the United States (within the meaning of section 207 of the Immigration and Nationality Act (8 U.S.C. 1157)) and shall be admitted to the United States for resettlement if the alien would be admissible as an immigrant under the Immigration and Nationality Act (except as provided in section 207(c)(3) of that Act).

(b) ALIENS COVERED.—An alien described in this subsection is an alien who—

(1) is the son or daughter of a qualified national;

(2) is 21 years of age or older; and

(3) was unmarried as of the date of acceptance of the alien's parent for resettlement under the Orderly Departure Program or through the United States Consulate General in Ho Chi Minh City.

(c) QUALIFIED NATIONAL.—The term "qualified national" in subsection (b)(1) means a national of Vietnam who—

(1)(A) was formerly interned in a re-education camp in Vietnam by the Government of the Socialist Republic of Vietnam; or

(B) is the widow or widower of an individual described in subparagraph (A);

(2)(A) qualified for refugee processing under the Orderly Departure Program re-education subprogram; and

(B) is or was accepted under the Orderly Departure Program or through the United States Consulate General in Ho Chi Minh City—

(i) for resettlement as a refugee; or

(ii) for admission to the United States as an immediate relative immigrant; and

(3)(A) is presently maintaining a residence in the United States or whose surviving spouse is presently maintaining such a residence; or

(B) was approved for refugee resettlement or immigrant visa processing and is awaiting departure formalities from Vietnam or whose surviving spouse is awaiting such departure formalities.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read and open for amendment at any point, and the gentleman from Pennsylvania is recognized for 5 minutes.

Mr. GEKAS. Thank you, Mr. Chairman.

The amendment in the nature of a substitute is very similar to the underlying bill because it benefits all those adult unmarried children of reeducation camp survivors, the Vietnamese brand, who deserve our consideration. This amendment was drafted by the Administration and has the full support of the Justice and State Departments, as well as the support of Representative Davis, the gentleman from Virginia, the author of the bill.

In keeping with that, I ask unanimous consent, Mr. Chairman, that the record receive two statements approving of the language, one from the Department of Justice and the other from the Department of State. I ask unanimous consent that they be included in the record.

Chairman SENSENBRENNER. Without objection.

Mr. GEKAS. Like the underlying bill, it extends the time INS has to process the derivative reconsideration cases to the end of fiscal year 2003. Like the underlying bill, it deletes the April 1, 1995 date so that cases adjudicated prior to that date may be reconsidered. And like H.R. 1840, it permits cases that were denied for any reason, not just based on cohabitation with the parent, to be reconsidered.

The amendment does two additional things. It strikes the cap language inserted at Subcommittee and, number two, it permits the son or daughter of a qualified national parent who has died to be eligible for consideration for resettlement in the U.S. if his or her other parent is residing in the U.S. or awaiting exit papers for U.S. resettlement.

I urge my colleagues to join the Administration and the author of the bill to support this amendment. I yield back the balance of my time.

Chairman SENSENBRENNER. Does the minority wish to make a statement on the substitute?

Ms. JACKSON LEE. Yes, Mr. Chairman.

Chairman SENSENBRENNER. The gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. I thank the Chairman very much. I rise to support the substitute because it supports the underlying legisla-

tion, H.R. 1840, which is Representative Tom Davis's bill to restore refugee eligibility for certain sons and daughters of Vietnamese re-education camp survivors.

I think it is important that the legislation, underlying legislation, fixes the devastating problem of what happened to our long-standing friends of the Vietnam War, the Vietnamese soldiers, combat soldiers, who fought with us and suffered long terms in reeducation camps because of their wartime association with the United States. This imposed a particularly harsh burden on the refugees and their children. These children had already been without their fathers throughout the time they were in reeducation camps, in some cases for 10 to 15 years. Then the refugees were given a choice between living forever in a communist dictatorship or leaving their children behind.

This legislation allows these families to be reunited in the United States under provisions dated in April 1995, and the amendment is very helpful, inasmuch as it clears up factual problems dealing with the family relationships that will allow these particular individuals to be reunited. There were some past Administration changes that I think hurt the bill and hurt the process. I believe the manager's amendment as well as the underlying legislation clears up an obligation that I believe is so important, making good on our friends, helping these combat soldiers to be reunited with their 21-year-old-plus family members, children who have remained unmarried and who are living with them.

With that, Mr. Chairman, I ask my colleagues to support the amendment and the underlying legislation.

[The statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Thank you Mr. Chairman.

I support H.R. 1840—which is Rep. Tom Davis's bill to restore refugee eligibility for certain sons and daughters of Vietnamese re-education camp survivors as originally introduced. I also support the Manager's amendment offered today.

Until April 1, 1995, refugees accepted for resettlement in the U.S. were allowed to bring their sons and daughters, even those above the age of 21, so long as they had never married and were members of the refugee parent's household.

On April 1, 1995, INS changed its interpretation of the then-existing law, to exclude children who were over 21, even if they were unmarried and living with their parents.

In the case of South Vietnamese combat veterans and others who had suffered long terms in "re-education camps" because of their wartime associations with the United States, this imposed a particularly harsh burden on the refugees and their children. These children had already been without their fathers throughout the time they were in re-education camps, in some cases for 10 or 15 years. Then the refugees were given a choice between living forever in a Communist dictatorship or leaving their children behind. These children were marked as members of a "counterrevolutionary family", denied educational and employment opportunities, and would be sure to go on suffering in Viet Nam.

Recognizing these realities, Congress has three times adopted the "McCain Amendment" which changes the INS interpretation of the law, so that refugees who are survivors of re-education camps can once again be accompanied by their unmarried sons and daughters. The latest extension of the McCain amendment will expire on September 30. The Davis bill would extend the McCain amendment for an additional two years.

During consideration of the current version of the McCain amendment—enacted in 1999 as part of the Foreign Relations Authorization Act for FY 2000 and 2001—proponents of the provision tried to fix a drafting problem in the original language of the amendment. This original language—apparently drafted by executive branch

employees during previous Clinton-era renewals of the amendment—excluded sons and daughters who were mistakenly rejected before April 1, 1995.

The Davis bill will fix this problem once and for all, simply by enacting the very same rules for pre-April 1995 cases that already apply to later cases.

The same executive branch employees who suggested the earlier restrictive language have now drafted a restrictive amendment to the Davis bill, which a Judiciary Committee member is expected to offer at Committee markup. This language would extend the protection of the McCain amendment to a few sons and daughters whose parents were accepted prior to April 1, 1995. By requiring an affirmative "rejection" by INS, however, it would still exclude sons and daughters who were denied access to an INS interview by vindictive or corrupt Communist officials, or who were wrongly "screened out" by U.S. officials or contractors prior to the interview.

There is no "floodgates of immigration" issue with the original Davis bill. The Davis bill only applies the same INS rules and procedures to pre-April 1995 cases that already apply to post-April 1995 cases, which have generated no such floodgates. The best estimate is that this amendment would apply to a few hundred people, or at most to 1000–2000. If INS properly implements the law, we can reunite these families quickly and no further extension should be necessary after 2003.

Under the original language of the Davis bill, INS is not compelled to admit a single new immigrant or refugee—it is merely given the authority to correct past mistakes, if and only if it determines that a mistake was really made. So there is no need for a new set of restrictions to keep the numbers low. This bill provides much-needed relief to a small and carefully defined group of people, and INS already has the authority, the skills, and the resources it needs to prevent the provision from being taken advantage of by other, undeserving applicants.

Thank you Mr. Chairman. I yield back the balance of my time.

Chairman SENSENBRENNER. Does the gentlewoman yield back now?

Ms. JACKSON LEE. I yield back. Thank you.

Chairman SENSENBRENNER. Are there any amendments to the amendment in the nature of a substitute?

Hearing none, the question is on the amendment in the nature of a substitute offered by the gentleman from Pennsylvania, Mr. Gekas. Those in favor will signify by saying aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment in the nature of a substitute is adopted.

A reporting quorum is present. The question is now on reporting the bill favorably, as amended. Those in favor will signify by saying aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the bill is reported favorably, as amended by the amendment in the nature of a substitute.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days by the House rules in which to submit additional, dissenting, supplemental, or minority views.

[Intervening business.]

And the Committee stands adjourned.

[Whereupon, at 5:12 p.m., the Committee was adjourned.]

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