

Calendar No. 343

105TH CONGRESS
2D SESSION**S. 1504**

To adjust the immigration status of certain Haitian nationals who were provided refuge in the United States.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 9, 1997

Mr. GRAHAM (for himself, Mr. MACK, Mr. KENNEDY, Mr. ABRAHAM, Ms. MOSELEY-BRAUN, Mr. MOYNIHAN, Mr. DURBIN, Mr. KERRY, Mrs. FEINSTEIN, and Mr. D'AMATO) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

APRIL 23, 1998

Reported by Mr. HATCH, with an amendment in the nature of a substitute

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To adjust the immigration status of certain Haitian nationals who were provided refuge in the United States.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Haitian Refugee Immi-
5 gration Fairness Act of 1997”.

1 **SEC. 2. ADJUSTMENT OF STATUS OF CERTAIN HAITIAN NA-**
2 **TIONALS.**

3 ~~(a) ADJUSTMENT OF STATUS.—~~

4 ~~(1) IN GENERAL.—~~Notwithstanding section
5 245(c) of the Immigration and Nationality Act, the
6 status of any alien described in subsection (b) shall
7 be adjusted by the Attorney General to that of an
8 alien lawfully admitted for permanent residence, if
9 the alien—

10 ~~(A) applies for such adjustment before~~
11 ~~April 1, 2000; and~~

12 ~~(B) is otherwise eligible to receive an im-~~
13 ~~migrant visa and is otherwise admissible to the~~
14 ~~United States for permanent residence, except~~
15 ~~in determining such admissibility the grounds~~
16 ~~for inadmissibility specified in paragraphs (4),~~
17 ~~(5), (6)(A), and (7)(A) of section 212(a) of the~~
18 ~~Immigration and Nationality Act shall not~~
19 ~~apply.~~

20 ~~(2) RELATIONSHIP OF APPLICATION TO CER-~~
21 ~~TAIN ORDERS.—~~An alien present in the United
22 States who has been ordered excluded, deported, re-
23 moved, or ordered to depart voluntarily from the
24 United States under any provision of the Immigra-
25 tion and Nationality Act may, notwithstanding such
26 order, apply for adjustment of status under para-

graph (1). Such an alien may not be required, as a condition on submitting or granting such application, to file a motion to reopen, reconsider, or vacate such order. If the Attorney General grants the application, the Attorney General shall cancel the order. If the Attorney General renders a final administrative decision to deny the application, the order shall be effective and enforceable to the same extent as if the application had not been made.

(b) ~~ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.~~—The benefits provided by subsection (a) shall apply to any alien who is a national of Haiti—

(1) who filed for asylum before December 31, 1995, or was paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest, and

(2) has been physically present in the United States for at least 1 year and is physically present in the United States on the date the application for such adjustment is filed, except an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence, or ab-

1 sences, from the United States for any periods in
2 the aggregate not exceeding 180 days.

3 ~~(c) STAY OF REMOVAL.—~~

4 ~~(1) IN GENERAL.—~~The Attorney General shall
5 provide by regulation for an alien subject to a final
6 order of deportation or removal or exclusion to seek
7 a stay of such order based on the filing of an appli-
8 cation under subsection (a).

9 ~~(2) DURING CERTAIN PROCEEDINGS.—~~Notwith-
10 standing any provision of the Immigration and Na-
11 tionality Act, the Attorney General shall not order
12 any alien to be removed from the United States, if
13 the alien is in exclusion, deportation, or removal pro-
14 ceedings under any provision of such Act and raises
15 as a defense to such an order the eligibility of the
16 alien to apply for adjustment of status under sub-
17 section (a), except where the Attorney General has
18 rendered a final administrative determination to
19 deny the application.

20 ~~(3) WORK AUTHORIZATION.—~~The Attorney
21 General may authorize an alien who has applied for
22 adjustment of status under subsection (a) to engage
23 in employment in the United States during the
24 pendency of such application and may provide the
25 alien with an “employment authorized” endorsement

1 or other appropriate document signifying authoriza-
2 tion of employment, except that if such application
3 is pending for a period exceeding 180 days, and has
4 not been denied, the Attorney General shall author-
5 ize such employment.

6 (d) ADJUSTMENT OF STATUS FOR SPOUSES AND
7 CHILDREN.—

8 (1) IN GENERAL.—Notwithstanding section
9 245(e) of the Immigration and Nationality Act, the
10 status of an alien shall be adjusted by the Attorney
11 General to that of an alien lawfully admitted for per-
12 manent residence, if—

13 (A) the alien is a national of Haiti;

14 (B) the alien is the spouse, child, or un-
15 married son or daughter, of an alien whose sta-
16 tus is adjusted to that of an alien lawfully ad-
17 mitted for permanent residence under sub-
18 section (a), except that in the case of such an
19 unmarried son or daughter, the son or daughter
20 shall be required to establish that they have
21 been physically present in the United States for
22 at least 1 year and is physically present in the
23 United States on the date the application for
24 such adjustment is filed.

1 (C) the alien applies for such adjustment
2 and is physically present in the United States
3 on the date the application is filed; and

4 (D) the alien is otherwise eligible to receive
5 an immigration visa and is otherwise admissible
6 to the United States for permanent residence;
7 except in determining such admissibility the
8 grounds for exclusion specified in paragraphs
9 (4), (5), (6)(A), and (7)(A) of section 212(a) of
10 the Immigration and Nationality Act shall not
11 apply.

12 (2) PROOF OF CONTINUOUS PRESENCE.—For
13 purposes of establishing the period of continuous
14 physical presence referred to in paragraph (1)(B),
15 an alien shall not be considered to have failed to
16 maintain continuous physical presence by reason of
17 an absence, or absences, from the United States for
18 any periods in aggregate not exceeding 180 days.

19 (e) AVAILABILITY OF ADMINISTRATIVE REVIEW.—

20 The Attorney General shall provide to applicants for ad-
21 justment of status under subsection (a) the same right to,
22 and procedures for, administrative review as are provided
23 to—

1 (1) applicants for adjustment of status under
2 section 245 of the Immigration and Nationality Act;
3 or

4 (2) aliens subject to removal proceedings under
5 section 240 of such Act.

6 (f) LIMITATION ON JUDICIAL REVIEW.—A deter-
7 mination by the Attorney General as to whether the status
8 of any alien should be adjusted under this section is final
9 and shall not be subject to review by any court.

10 (g) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—
11 When an alien is granted the status of having been law-
12 fully admitted for permanent resident pursuant to this
13 section, the Secretary of State shall not be required to re-
14 duce the number of immigrant visas authorized to be
15 issued under any provision of the Immigration and Na-
16 tionality Act.

17 (h) APPLICATION OF IMMIGRATION AND NATIONAL-
18 ITY ACT PROVISIONS.—Except as otherwise specifically
19 provided in this Act, the definitions contained in the Immi-
20 gration and Nationality Act shall apply in the administra-
21 tion of this section. Nothing contained in this Act shall
22 be held to repeal, amend, alter, modify, effect, or restrict
23 the powers, duties, functions, or authority of the Attorney
24 General in the administration and enforcement of such
25 Act or any other law relating to immigration, nationality,

1 ~~or naturalization. The fact that an alien may be eligible~~
 2 ~~to be granted the status of having been lawfully admitted~~
 3 ~~for permanent residence under this section shall not pre-~~
 4 ~~clude the alien from seeking such status under any other~~
 5 ~~provision of law for which the alien may be eligible.~~

6 **SECTION 1. SHORT TITLE.**

7 *This Act may be cited as the “Haitian Refugee Immigra-*
 8 *tion Fairness Act of 1998”.*

9 **SEC. 2. ADJUSTMENT OF STATUS OF CERTAIN HAITIAN NA-**
 10 **TIONALS.**

11 *(a) ADJUSTMENT OF STATUS.—*

12 *(1) IN GENERAL.—The status of any alien de-*
 13 *scribed in subsection (b) shall be adjusted by the At-*
 14 *torney General to that of an alien lawfully admitted*
 15 *for permanent residence, if the alien—*

16 *(A) applies for such adjustment before April*
 17 *1, 2000; and*

18 *(B) is otherwise admissible to the United*
 19 *States for permanent residence, except that, in*
 20 *determining such admissibility, the grounds for*
 21 *inadmissibility specified in paragraphs (4), (5),*
 22 *(6)(A), (7)(A), and (9)(B) of section 212(a) of*
 23 *the Immigration and Nationality Act shall not*
 24 *apply.*

1 (2) *RELATIONSHIP OF APPLICATION TO CERTAIN*
2 *ORDERS.*—*An alien present in the United States who*
3 *has been ordered excluded, deported, removed, or or-*
4 *dered to depart voluntarily from the United States*
5 *under any provision of the Immigration and Nation-*
6 *ality Act may, notwithstanding such order, apply for*
7 *adjustment of status under paragraph (1). Such an*
8 *alien may not be required, as a condition on submit-*
9 *ting or granting such application, to file a separate*
10 *motion to reopen, reconsider, or vacate such order. If*
11 *the Attorney General grants the application, the At-*
12 *torney General shall cancel the order. If the Attorney*
13 *General makes a final decision to deny the applica-*
14 *tion, the order shall be effective and enforceable to the*
15 *same extent as if the application had not been made.*

16 (b) *ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-*
17 *TUS.*—*The benefits provided by subsection (a) shall apply*
18 *to any alien who is a national of Haiti who—*

19 (1) *was present in the United States on Decem-*
20 *ber 31, 1995, who—*

21 (A) *filed for asylum before December 31,*
22 *1995,*

23 (B) *was paroled into the United States*
24 *prior to December 31, 1995, after having been*
25 *identified as having a credible fear of persecu-*

tion, or paroled for emergent reasons or reasons deemed strictly in the public interest, or

(C) was a child (as defined in the text above subparagraph (A) of section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1) at the time of arrival in the United States and on December 31, 1995, and who—

(i) arrived in the United States without parents in the United States and has remained without parents in the United States since such arrival,

(ii) became orphaned subsequent to arrival in the United States, or

(iii) was abandoned by parents or guardians prior to April 1, 1998 and has remained abandoned since such abandonment; and

(2) has been physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending not earlier than the date the application for such adjustment is filed, except that an alien shall not be considered to have failed to maintain continuous physical presence by reasons of an absence or absences, from the United

1 *States for any period or periods amounting in the ag-*
2 *gregate to not more than 180 days.*

3 *(c) STAY OF REMOVAL.—*

4 *(1) IN GENERAL.—The Attorney General shall*
5 *provide by regulation for an alien who is subject to*
6 *a final order of deportation or removal or exclusion*
7 *to seek a stay of such order based on the filing of an*
8 *application under subsection (a).*

9 *(2) DURING CERTAIN PROCEEDINGS.—Notwith-*
10 *standing any provision of the Immigration and Na-*
11 *tionality Act, the Attorney General shall not order*
12 *any alien to be removed from the United States, if the*
13 *alien is in exclusion, deportation, or removal proceed-*
14 *ings under any provision of such Act and has applied*
15 *for adjustment of status under subsection (a), except*
16 *where the Attorney General has made a final deter-*
17 *mination to deny the application.*

18 *(3) WORK AUTHORIZATION.—The Attorney Gen-*
19 *eral may authorize an alien who has applied for ad-*
20 *justment of status under subsection (a) to engage in*
21 *employment in the United States during the pendency*
22 *of such application and may provide the alien with*
23 *an “employment authorized” endorsement or other*
24 *appropriate document signifying authorization of em-*
25 *ployment, except that if such application is pending*

1 *for a period exceeding 180 days, and has not been de-*
 2 *nied, the Attorney General shall authorize such em-*
 3 *ployment.*

4 *(d) ADJUSTMENT OF STATUS FOR SPOUSES AND CHIL-*
 5 *DREN.—*

6 *(1) IN GENERAL.—The status of an alien shall be*
 7 *adjusted by the Attorney General to that of an alien*
 8 *lawfully admitted for permanent residence, if—*

9 *(A) the alien is a national of Haiti;*

10 *(B) the alien is the spouse, child, or unmar-*
 11 *ried son or daughter, of an alien whose status is*
 12 *adjusted to that of an alien lawfully admitted for*
 13 *permanent residence under subsection (a), except*
 14 *that, in the case of such an unmarried son or*
 15 *daughter, the son or daughter shall be required*
 16 *to establish that he or she has been physically*
 17 *present in the United States for a continuous pe-*
 18 *riod beginning not later than December 31,*
 19 *1995, and ending not earlier than the date the*
 20 *application for such adjustment is filed;*

21 *(C) the alien applies for such adjustment*
 22 *and is physically present in the United States on*
 23 *the date the application is filed; and*

24 *(D) the alien is otherwise admissible to the*
 25 *United States for permanent residence, except*

1 *that, in determining such admissibility, the*
2 *grounds for inadmissibility specified in para-*
3 *graphs (4), (5), (6)(A), (7)(A), and (9)(B) of sec-*
4 *tion 212(a) of the Immigration and Nationality*
5 *Act shall not apply.*

6 (2) *PROOF OF CONTINUOUS PRESENCE.—For*
7 *purposes of establishing the period of continuous*
8 *physical presence referred to in paragraph (1)(B), an*
9 *alien shall not be considered to have failed to main-*
10 *tain continuous physical presence by reason of an ab-*
11 *sence, or absences, from the United States for any pe-*
12 *riod or periods amounting in the aggregate to not*
13 *more than 180 days.*

14 (e) *AVAILABILITY OF ADMINISTRATIVE REVIEW.—The*
15 *Attorney General shall provide to applicants for adjustment*
16 *of status under subsection (a) the same right to, and proce-*
17 *dures for, administrative review as are provided to—*

18 (1) *applicants for adjustment of status under*
19 *section 245 of the Immigration and Nationality Act;*
20 *or*

21 (2) *aliens subject to removal proceedings under*
22 *section 240 of such Act.*

23 (f) *LIMITATION ON JUDICIAL REVIEW.—A determina-*
24 *tion by the Attorney General as to whether the status of*

1 *any alien should be adjusted under this section is final and*
2 *shall not be subject to review by any court.*

3 (g) *NO OFFSET IN NUMBER OF VISAS AVAILABLE.—*

4 *When an alien is granted the status of having been lawfully*
5 *admitted for permanent residence pursuant to this section,*
6 *the Secretary of State shall not be required to reduce the*
7 *number of immigrant visas authorized to be issued under*
8 *any provision of the Immigration and Nationality Act.*

9 (h) *APPLICATION OF IMMIGRATION AND NATIONALITY*
10 *ACT PROVISIONS.—Except as otherwise specifically pro-*
11 *vided in this Act, the definitions contained in the Immigra-*
12 *tion and Nationality Act shall apply in the administration*
13 *of this section. Nothing contained in this Act shall be held*
14 *to repeal, amend, alter, modify, effect, or restrict the powers,*
15 *duties, functions, or authority of the Attorney General in*
16 *the administration and enforcement of such Act or any*
17 *other law relating to immigration, nationality, or natu-*
18 *ralization. The fact that an alien may be eligible to be*
19 *granted the status of having been lawfully admitted for per-*
20 *manent residence under this section shall not preclude the*
21 *alien from seeking such status under any other provision*
22 *of law for which the alien may be eligible.*

1 **SEC. 3. COLLECTION OF DATA ON DETAINED ASYLUM SEEK-**
2 **ERS.**

3 (a) *IN GENERAL.*—*The Attorney General shall regu-*
4 *larly collect data on a nationwide basis with respect to asy-*
5 *lum seekers in detention in the United States, including*
6 *the following information:*

7 (1) *The number of detainees.*

8 (2) *An identification of the countries of origin of*
9 *the detainees.*

10 (3) *The percentage of each gender within the*
11 *total number of detainees.*

12 (4) *The number of detainees listed by each year*
13 *of age of the detainees.*

14 (5) *The location of each detainee by detention fa-*
15 *cility.*

16 (6) *With respect to each facility where detainees*
17 *are held, whether the facility is also used to detain*
18 *criminals and whether any of the detainees are held*
19 *in the same cells as criminals.*

20 (7) *The number and frequency of the transfers of*
21 *detainees between detention facilities.*

22 (8) *The average length of detention and the num-*
23 *ber of detainees by category of the length of detention.*

24 (9) *The rate of release from detention of detain-*
25 *ees for each district of the Immigration and Natu-*
26 *ralization Service.*

1 (10) *A description of the disposition of cases.*

2 (b) *ANNUAL REPORTS.*—*Beginning October 1, 1999,*
 3 *and not later than October 1 of each year thereafter, the*
 4 *Attorney General shall submit to the Committee on the Ju-*
 5 *diciary of each House of Congress a report setting forth the*
 6 *data collected under subsection (a) for the fiscal year ending*
 7 *September 30 of that year.*

8 (c) *AVAILABILITY TO PUBLIC.*—*Copies of the data col-*
 9 *lected under subsection (a) shall be made available to mem-*
 10 *bers of the public upon request pursuant to such regulations*
 11 *as the Attorney General shall prescribe.*

12 **SEC. 4. COLLECTION OF DATA ON OTHER DETAINED**
 13 **ALIENS.**

14 (a) *IN GENERAL.*—*The Attorney General shall regu-*
 15 *larly collect data on a Nationwide basis on other aliens*
 16 *being detained in the United States by the Immigration*
 17 *and Naturalization Service, including the following infor-*
 18 *mation:*

19 (1) *The number of detainees who are criminal*
 20 *aliens and the number of detainees who are noncrimi-*
 21 *nal aliens who are not seeking asylum;*

22 (2) *An identification of the ages, gender, and*
 23 *countries of origin of detainees within each of these*
 24 *categories; and*

1 (3) *The types of facilities, whether INS or other*
 2 *Federal, State, or local facilities, in which each of*
 3 *these categories of detainees are held.*

4 (b) *LENGTH OF DETENTION, TRANSFERS, AND DIS-*
 5 *POSITIONS.*—*With respect to detainees who are criminal*
 6 *aliens and detainees who are noncriminal aliens who are*
 7 *not seeking asylum, the Attorney General shall also collect*
 8 *data concerning—*

9 (1) *the number and frequency of transfers be-*
 10 *tween detention facilities for each category of de-*
 11 *tainee;*

12 (2) *the average length of detention of each cat-*
 13 *egory of detainee;*

14 (3) *for each category of detainee, the number of*
 15 *detainees who have been detained for the same length*
 16 *of time, in three-month increments;*

17 (4) *for each category of detainee, the rate of re-*
 18 *lease from detention for each district of the Immigra-*
 19 *tion and Naturalization Service; and*

20 (5) *for each category of detainee, the disposition*
 21 *of detention, including whether detention ended due to*
 22 *deportation, release on parole, or any other release.*

23 (c) *CRIMINAL ALIENS.*—*With respect to criminal*
 24 *aliens, the Attorney General shall also collect data concern-*
 25 *ing—*

1 (1) *the number of criminal aliens apprehended*
2 *under the immigration laws and not detained by the*
3 *Attorney General; and*

4 (2) *a list of crimes committed by criminal aliens*
5 *after the decision was made not to detain them, to the*
6 *extent this information can be derived by cross-check-*
7 *ing the list of criminal aliens not detained with other*
8 *databases accessible to the Attorney General.*

9 (d) *ANNUAL REPORTS.—Beginning on October 1,*
10 *1999, and not later than October 1 of each year thereafter,*
11 *the Attorney General shall submit to the Committee on the*
12 *Judiciary of each House of Congress a report setting forth*
13 *the data collected under subsections (a), (b), and (c), for*
14 *the fiscal year ending September 30 of that year.*

15 (e) *AVAILABILITY TO PUBLIC.—Copies of the data col-*
16 *lected under subsections (a), (b), and (c) shall be made*
17 *available to members of the public upon request pursuant*
18 *to such regulations as the Attorney General shall prescribe.*

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A BILL

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APRIL 23, 1998

Reported with an amendment in the nature of a
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