

106TH CONGRESS
1ST SESSION

S. 1592

To amend the Nicaraguan Adjustment and Central American Relief Act to provide to certain nationals of El Salvador, Guatemala, Honduras, and Haiti an opportunity to apply for adjustment of status under that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 1999

Mr. DURBIN (for himself and Mr. KENNEDY) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Nicaraguan Adjustment and Central American Relief Act to provide to certain nationals of El Salvador, Guatemala, Honduras, and Haiti an opportunity to apply for adjustment of status under that Act, and for other purposes.

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 “Central American and
5 Haitian Parity Act of 1999”.

1 **SEC. 2. ADJUSTMENT OF STATUS FOR CERTAIN NATIONALS**
 2 **FROM EL SALVADOR, GUATEMALA, HON-**
 3 **DURAS, AND HAITI.**

4 Section 202 of the Nicaraguan Adjustment and Cen-
 5 tral American Relief Act is amended—

6 (1) in the section heading, by striking “NICA-
 7 RAGUANS AND CUBANS” and inserting “NICA-
 8 RAGUANS, CUBANS, SALVADORANS, GUATEMALANS,
 9 HONDURANS, AND HAITIANS”;

10 (2) in subsection (a)(1)(A), by striking “2000”
 11 and inserting “2003”;

12 (3) in subsection (b)(1), by striking “Nicaragua
 13 or Cuba” and inserting “Nicaragua, Cuba, El Sal-
 14 vador, Guatemala, Honduras, or Haiti”; and

15 (4) in subsection (d)—

16 (A) in subparagraph (A), by striking
 17 “Nicaragua or Cuba” and inserting “Nica-
 18 ragua, Cuba, El Salvador, Guatamala, Hon-
 19 duras, or Haiti; and

20 (B) in subparagraph (E), by striking
 21 “2000” and inserting “2003”.

1 **SEC. 3. APPLICATIONS PENDING UNDER AMENDMENTS**
2 **MADE BY SECTION 203 OF THE NICARAGUAN**
3 **ADJUSTMENT AND CENTRAL AMERICAN RE-**
4 **LIEF ACT.**

5 An application for relief properly filed by a national
6 of Guatemala or El Salvador under the amendments made
7 by section 203 of the Nicaraguan Adjustment and Central
8 American Relief Act which was filed on or before the date
9 of enactment of this Act, and on which a final administra-
10 tive determination has not been made, shall, at the election
11 of the applicant, be considered to be an application for
12 adjustment of status under the provisions of section 202
13 of the Nicaraguan Adjustment and Central American Re-
14 lief Act, as amended by section 2 of this Act, upon the
15 payment of any fees, and in accordance with procedures,
16 that the Attorney General shall prescribe by regulation.
17 The Attorney General may not refund any fees paid in
18 connection with an application filed by a national of Gua-
19 temala or El Salvador under the amendments made by
20 section 203 of that Act.

21 **SEC. 4. APPLICATIONS PENDING UNDER THE HAITIAN REF-**
22 **UGEE IMMIGRATION FAIRNESS ACT OF 1998.**

23 An application for adjustment of status properly filed
24 by a national of Haiti under the Haitian Refugee Immi-
25 gration Fairness Act of 1998 which was filed on or before
26 the date of enactment of this Act, and on which a final

1 administrative determination has not been made, may be
 2 considered by the Attorney General, in the unreviewable
 3 discretion of the Attorney General, to also constitute an
 4 application for adjustment of status under the provisions
 5 of section 202 of the Nicaraguan Adjustment and Central
 6 American Relief Act, as amended by section 2 of this Act.

7 **SEC. 5. TECHNICAL AMENDMENTS TO THE NICARAGUAN**
 8 **ADJUSTMENT AND CENTRAL AMERICAN RE-**
 9 **LIEF ACT.**

10 (a) IN GENERAL.—Section 202 of the Nicaraguan
 11 Adjustment and Central American Relief Act is
 12 amended—

13 (1) in subsection (a)—

14 (A) by inserting before the period at the
 15 end of paragraph (1)(B) the following: “, and
 16 the Attorney General may, in the unreviewable
 17 discretion of the Attorney General, waive the
 18 grounds of inadmissibility specified in section
 19 212(a)(1) (A)(i) and (6)(C) of such Act for hu-
 20 manitarian purposes, to assure family unity, or
 21 when it is otherwise in the public interest”;

22 (B) by redesignating paragraph (2) as
 23 paragraph (3);

24 (C) by inserting after paragraph (1) the
 25 following:

1 “(2) INAPPLICABILITY OF CERTAIN PROVI-
2 SIONS.—In determining the eligibility of an alien de-
3 scribed in subsection (b) or (d) for either adjustment
4 of status under this section or other relief necessary
5 to establish eligibility for such adjustment, the provi-
6 sions of section 241(a)(5) of the Immigration and
7 Nationality Act shall not apply. In addition, an alien
8 who would otherwise be inadmissible pursuant to
9 section 212(a)(9) (A) or (C) of such Act may apply
10 for the Attorney General’s consent to reapply for ad-
11 mission without regard to the requirement that the
12 consent be granted prior to the date of the alien’s
13 reembarkation at a place outside the United States
14 or attempt to be admitted from foreign contiguous
15 territory, in order to qualify for the exception to
16 those grounds of inadmissibility set forth in section
17 212(a)(9) (A)(iii) and (C)(ii) of such Act.”; and

18 (D) by amending paragraph (3) (as redes-
19 ignated by subparagraph (B)) to read as fol-
20 lows:

21 “(3) RELATIONSHIP OF APPLICATION TO CER-
22 TAIN ORDERS.—An alien present in the United
23 States who has been ordered excluded, deported, or
24 removed, or ordered to depart voluntarily from the
25 United States under any provision of the Immigra-

1 tion and Nationality Act may, notwithstanding such
2 order, apply for adjustment of status under para-
3 graph (1). Such an alien may not be required, as a
4 condition of submitting or granting such application,
5 to file a separate motion to reopen, reconsider, or
6 vacate such order. Such an alien may be required to
7 seek a stay of such an order in accordance with sub-
8 section (c) to prevent the execution of that order
9 pending the adjudication of the application for ad-
10 justment of status. If the Attorney General denies a
11 stay of a final order of exclusion, deportation, or re-
12 moval, or if the Attorney General renders a final ad-
13 ministrative determination to deny the application
14 for adjustment of status, the order shall be effective
15 and enforceable to the same extent as if the applica-
16 tion had not been made. If the Attorney General
17 grants the application for adjustment of status, the
18 Attorney General shall cancel the order.”;

19 (2) in subsection (b)(1), by adding at the end
20 the following: “Subsection (a) shall not apply to an
21 alien lawfully admitted for permanent residence, un-
22 less the alien is applying for relief under that sub-
23 section in deportation or removal proceedings.”;

24 (3) in subsection (c)(1), by adding at the end
25 the following: “Nothing in this Act requires the At-

1 torney General to stay the removal of an alien who
2 is ineligible for adjustment of status under this
3 Act.”;

4 (4) in subsection (d)—

5 (A) by amending the subsection heading to
6 read as follows: “SPOUSES, CHILDREN, AND
7 UNMARRIED SONS AND DAUGHTERS.—”;

8 (B) by amending the heading of paragraph
9 (1) to read as follows: “ADJUSTMENT OF STA-
10 TUS.—”;

11 (C) by amending paragraph (1)(A) to read
12 as follows:

13 “(A) the alien entered the United States
14 on or before the date of enactment of the Cen-
15 tral American and Haitian Parity Act of
16 1999;”;

17 (D) in paragraph (1)(B), by striking “ex-
18 cept that in the case of” and inserting the fol-
19 lowing: “except that—

20 “(i) in the case of such a spouse, step-
21 child, or unmarried stepson or step-
22 daughter, the qualifying marriage was en-
23 tered into before the date of enactment of
24 the Central American and Haitian Parity
25 Act of 1999; and

1 “(ii) in the case of”; and

2 (E) by adding at the end the following new
3 paragraph:

4 “(3) ELIGIBILITY OF CERTAIN SPOUSES AND
5 CHILDREN FOR ISSUANCE OF IMMIGRANT VISAS.—

6 “(A) IN GENERAL.—In accordance with
7 regulations to be promulgated by the Attorney
8 General and the Secretary of State, upon ap-
9 proval of an application for adjustment of sta-
10 tus to that of an alien lawfully admitted for
11 permanent residence under subsection (a), an
12 alien who is the spouse or child of the alien
13 being granted such status may be issued a visa
14 for admission to the United States as an immi-
15 grant following to join the principal applicant,
16 if the spouse or child—

17 “(i) meets the requirements in para-
18 graphs (1) (B) and (1) (D); and

19 “(ii) applies for such a visa within a
20 time period to be established by such regu-
21 lations.

22 “(B) RETENTION OF FEES FOR PROC-
23 ESSING APPLICATIONS.—The Secretary of State
24 may retain fees to recover the cost of immi-
25 grant visa application processing and issuance

1 for certain spouses and children of aliens whose
2 applications for adjustment of status under sub-
3 section (a) have been approved. Such fees—

4 “(i) shall be deposited as an offsetting
5 collection to any Department of State ap-
6 propriation to recover the cost of such
7 processing and issuance; and

8 “(ii) shall be available until expended
9 for the same purposes of such appropria-
10 tion to support consular activities.”;

11 (5) in subsection (g), by inserting “, or an im-
12 migrant classification,” after “for permanent resi-
13 dence”; and

14 (6) by adding at the end the following new sub-
15 section:

16 “(i) STATUTORY CONSTRUCTION.—Nothing in this
17 section authorizes any alien to apply for admission to, be
18 admitted to, be paroled into, or otherwise lawfully return
19 to the United States, to apply for, or to pursue an applica-
20 tion for adjustment of status under this section without
21 the express authorization of the Attorney General.”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 paragraphs (1)(D), (2), and (6) shall be effective as if in-
24 cluded in the enactment of the Nicaraguan and Central
25 American Relief Act. The amendments made by para-

1 graphs (1) (A)–(C), (3), (4), and (5) shall take effect on
 2 the date of enactment of this Act.

3 **SEC. 6. TECHNICAL AMENDMENTS TO THE HAITIAN REF-**
 4 **UGEE IMMIGRATION FAIRNESS ACT OF 1998.**

5 (a) IN GENERAL.—Section 902 of the Haitian Ref-
 6 ugee Immigration Fairness Act of 1998 is amended—

7 (1) in subsection (a)—

8 (A) by inserting before the period at the
 9 end of paragraph (1)(B) the following: “, and
 10 the Attorney General may, in the unreviewable
 11 discretion of the Attorney General, waive the
 12 grounds of inadmissibility specified in section
 13 212(a) (1)(A)(i) and (6)(C) of such Act for hu-
 14 manitarian purposes, to assure family unity, or
 15 when it is otherwise in the public interest”;

16 (B) by redesignating paragraph (2) as
 17 paragraph (3);

18 (C) by inserting after paragraph (1) the
 19 following:

20 “(2) INAPPLICABILITY OF CERTAIN PROVI-
 21 SIONS.—In determining the eligibility of an alien de-
 22 scribed in subsection (b) or (d) for either adjustment
 23 of status under this section or other relief necessary
 24 to establish eligibility for such adjustment, or for
 25 permission to reapply for admission to the United

1 States for the purpose of adjustment of status under
2 this section, the provisions of section 241(a)(5) of
3 the Immigration and Nationality Act shall not apply.
4 In addition, an alien who would otherwise be inad-
5 missible pursuant to section 212(a)(9) (A) or (C) of
6 such Act may apply for the Attorney General's con-
7 sent to reapply for admission without regard to the
8 requirement that the consent be granted prior to the
9 date of the alien's reembarkation at a place outside
10 the United States or attempt to be admitted from
11 foreign contiguous territory, in order to qualify for
12 the exception to those grounds of inadmissibility set
13 forth in section 212(a)(9) (A)(iii) and (C)(ii) of such
14 Act.”; and

15 (D) by amending paragraph (3) (as redes-
16 ignated by subparagraph (B)) to read as fol-
17 lows:

18 “(3) RELATIONSHIP OF APPLICATION TO CER-
19 TAIN ORDERS.—An alien present in the United
20 States who has been ordered excluded, deported, re-
21 moved, or ordered to depart voluntarily from the
22 United States under any provision of the Immigra-
23 tion and Nationality Act may, notwithstanding such
24 order, apply for adjustment of status under para-
25 graph (1). Such an alien may not be required, as a

1 condition of submitting or granting such application,
2 to file a separate motion to reopen, reconsider, or
3 vacate such order. Such an alien may be required to
4 seek a stay of such an order in accordance with sub-
5 section (c) to prevent the execution of that order
6 pending the adjudication of the application for ad-
7 justment of status. If the Attorney General denies a
8 stay of a final order of exclusion, deportation, or re-
9 moval, or if the Attorney General renders a final ad-
10 ministrative determination to deny the application
11 for adjustment of status, the order shall be effective
12 and enforceable to the same extent as if the applica-
13 tion had not been made. If the Attorney General
14 grants the application for adjustment of status, the
15 Attorney General shall cancel the order.”;

16 (2) in subsection (b)(1), by adding at the end
17 the following: “Subsection (a) shall not apply to an
18 alien lawfully admitted for permanent residence, un-
19 less the alien is applying for such relief under that
20 subsection in deportation or removal proceedings.”;

21 (3) in subsection (c)(1), by adding at the end
22 the following: “Nothing in this Act shall require the
23 Attorney General to stay the removal of an alien
24 who is ineligible for adjustment of status under this
25 Act.”;

1 (4) in subsection (d)—

2 (A) by amending the subsection heading to
3 read as follows: “SPOUSES, CHILDREN, AND
4 UNMARRIED SONS AND DAUGHTERS.—”;

5 (B) by amending the heading of paragraph
6 (1) to read as follows: “ADJUSTMENT OF STA-
7 TUS.—”;

8 (C) by amending paragraph (1)(A), to read
9 as follows:

10 “(A) the alien entered the United States
11 on or before the date of enactment of the Cen-
12 tral American and Haitian Parity Act of
13 1999;”;

14 (D) in paragraph (1)(B), by striking “ex-
15 cept that in the case of” and inserting the fol-
16 lowing: “except that—

17 “(i) in the case of such a spouse, step-
18 child, or unmarried stepson or step-
19 daughter, the qualifying marriage was en-
20 tered into before the date of enactment of
21 the Central American and Haitian Parity
22 Act of 1999; and

23 “(ii) in the case of”;

24 (E) by adding at the end of paragraph (1)
25 the following new subparagraph:

1 “(E) the alien applies for such adjustment
2 before April 3, 2003.”; and

3 (F) by adding at the end the following new
4 paragraph:

5 “(3) ELIGIBILITY OF CERTAIN SPOUSES AND
6 CHILDREN FOR ISSUANCE OF IMMIGRANT VISAS.—

7 “(A) IN GENERAL.—In accordance with
8 regulations to be promulgated by the Attorney
9 General and the Secretary of State, upon ap-
10 proval of an application for adjustment of sta-
11 tus to that of an alien lawfully admitted for
12 permanent residence under subsection (a), an
13 alien who is the spouse or child of the alien
14 being granted such status may be issued a visa
15 for admission to the United States as an immi-
16 grant following to join the principal applicant,
17 if the spouse or child—

18 “(i) meets the requirements in para-
19 graphs (1)(B) and (1)(D); and

20 “(ii) applies for such a visa within a
21 time period to be established by such regu-
22 lations.

23 “(B) RETENTION OF FEES FOR PROC-
24 ESSING APPLICATIONS.—The Secretary of State
25 may retain fees to recover the cost of immi-

1 grant visa application processing and issuance
2 for certain spouses and children of aliens whose
3 applications for adjustment of status under sub-
4 section (a) have been approved. Such fees—

5 “(i) shall be deposited as an offsetting
6 collection to any Department of State ap-
7 propriation to recover the cost of such
8 processing and issuance; and

9 “(ii) shall be available until expended
10 for the same purposes of such appropria-
11 tion to support consular activities.”;

12 (5) in subsection (g), by inserting “, or an im-
13 migrant classification,” after “for permanent resi-
14 dence”;

15 (6) by redesignating subsections (i), (j), and (k)
16 as subsections (j), (k), and (l), respectively; and

17 (7) by inserting after subsection (h) the fol-
18 lowing new subsection:

19 “(i) STATUTORY CONSTRUCTION.—Nothing in this
20 section authorizes any alien to apply for admission to, be
21 admitted to, be paroled into, or otherwise lawfully return
22 to the United States, to apply for, or to pursue an applica-
23 tion for adjustment of status under this section without
24 the express authorization of the Attorney General.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 paragraphs (1)(D), (2), and (6) shall be effective as if in-
3 cluded in the enactment of the Haitian Refugee Immigra-
4 tion Fairness Act of 1998. The amendments made by
5 paragraphs (1) (A)–(C), (3), (4), and (5) shall take effect
6 on the date of enactment of this Act.

7 **SEC. 7. MOTIONS TO REOPEN.**

8 (a) NATIONALS OF HAITI.—Notwithstanding any
9 time and number limitations imposed by law on motions
10 to reopen, a national of Haiti who, on the date of enact-
11 ment of this Act, has a final administrative denial of an
12 application for adjustment of status under the Haitian
13 Refugee Immigration Fairness Act of 1998, and is made
14 eligible for adjustment of status under that Act by the
15 amendments made by this Act, may file one motion to re-
16 open an exclusion, deportation, or removal proceeding to
17 have the application reconsidered. Any such motion shall
18 be filed within 180 days of the date of enactment of this
19 Act. The scope of any proceeding reopened on this basis
20 shall be limited to a determination of the alien’s eligibility
21 for adjustment of status under the Haitian Refugee Immi-
22 gration Fairness Act of 1998.

23 (b) NATIONALS OF CUBA.—Notwithstanding any
24 time and number limitations imposed by law on motions
25 to reopen, a national of Cuba or Nicaragua who, on the

1 date of enactment of the Act, has a final administrative
2 denial of an application for adjustment of status under
3 the Nicaraguan Adjustment and Central American Relief
4 Act, and who is made eligible for adjustment of status
5 under that Act by the amendments made by this Act, may
6 file one motion to reopen an exclusion, deportation, or re-
7 moval proceeding to have the application reconsidered.
8 Any such motion shall be filed within 180 days of the date
9 of enactment of this Act. The scope of any proceeding re-
10 opened on this basis shall be limited to a determination
11 of the alien's eligibility for adjustment of status under the
12 Nicaraguan Adjustment and Central American Relief Act.

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