

107TH CONGRESS  
1ST SESSION

# H. R. 1345

To amend the Immigration and Nationality Act to establish a Board of Visa Appeals within the Department of State to review decisions of consular officers concerning visa applications, revocations, and cancellations.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2001

Mr. FRANK 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 establish a Board of Visa Appeals within the Department of State to review decisions of consular officers concerning visa applications, revocations, and cancellations.

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 “Consular Review Act  
5       of 2001”.

1 **SEC. 2. ESTABLISHMENT OF A BOARD OF VISA APPEALS.**

2 (a) IN GENERAL.—The Immigration and Nationality  
3 Act is amended by inserting after section 224 the following  
4 new section:

5 “BOARD OF VISA APPEALS

6 “SEC. 225. (a) ESTABLISHMENT.—The Secretary of  
7 State shall establish within the Department of State a  
8 Board of Visa Appeals. The Board shall be composed of  
9 5 members who shall be appointed by the Secretary. Not  
10 more than 2 members of the Board may be consular offi-  
11 cers. The Secretary shall designate a member who shall  
12 be chairperson of the Board.

13 “(b) AUTHORITY AND FUNCTIONS.—The Board shall  
14 have authority to review any discretionary decision of a  
15 consular officer with respect to an alien concerning the  
16 denial, revocation, or cancellation of an immigrant visa or  
17 of a nonimmigrant visa or petition, or the denial of an  
18 application for waiver of one or more grounds of inadmis-  
19 sibility under section 212. The review of the Board shall  
20 be made upon the record for decision of the consular offi-  
21 cer, including all documents, notes, and memoranda filed  
22 with the consular officer, supplemented by affidavits and  
23 other writings if offered by the consular officer or alien.  
24 Upon a conclusive showing that the decision of the con-  
25 sular official is contrary to the preponderance of the evi-  
26 dence, the Board shall have authority to overrule, or re-

1 mand for further consideration, the decision of such con-  
2 sular officer.

3 “(c) PROCEDURE.—Proceedings before the Board  
4 shall be in accordance with such regulations, not incon-  
5 sistent with this Act and sections 556 and 557 of title  
6 5, United States Code, as the Secretary of State shall pre-  
7 scribe. Such regulations shall include requirements that  
8 provide that—

9 “(1) at the time of any decision of a consular  
10 officer under subsection (b), an alien, attorney of  
11 record, and any interested party defined in sub-  
12 section (d) shall be given notice of the availability of  
13 the review process and the necessary steps to re-  
14 quest such review;

15 “(2) a written record of the proceedings and de-  
16 cision of the consular officer (in accordance with sec-  
17 tions 556 and 557 of title 5, United States Code)  
18 shall be available to the Board, and on payment of  
19 lawfully prescribed costs, shall be made available to  
20 the alien;

21 “(3) upon receipt of request for review under  
22 this section, the Board shall, within 30 days, notify  
23 the consular officer with respect to whose decision  
24 review is sought, and, upon receipt of such notice,  
25 such officer shall promptly (but in no event more

1       than 30 days after such receipt) forward to the  
2       Board the record of proceeding as described in sub-  
3       section (b);

4               “(4) the appellant shall be given notice, reason-  
5       able under all the circumstances of the time and  
6       place at which the Board proceedings will be held;

7               “(5) the appellant may be represented (at no  
8       expense to the Government) by such counsel, author-  
9       ized to practice in such proceedings, as the appellant  
10      shall choose; and

11              “(6) a request for review under this section  
12      must be made in writing to the Board within 60  
13      days after receipt of notice of the denial, revocation,  
14      or cancellation.

15              “(d) INTERESTED PARTIES.—The Board shall review  
16      each decision described in subsection (b) upon request of  
17      the alien or any of the following interested parties:

18              “(1) The petitioner or beneficiary of an immi-  
19      grant visa petition approved under section 203(a),  
20      203(b)(1), 203(b)(4), 203(b)(5), or 203(c), or the  
21      petitioner of an immigrant visa petition approved  
22      under section 203(b)(2) or 203(b)(3).

23              “(2) The petitioner of a nonimmigrant visa pe-  
24      tition.

1           “(3) The postsecondary educational institution  
2           approved for the attendance of nonimmigrant stu-  
3           dents under section 101(a)(15)(F)(i) or  
4           101(a)(15)(M)(i) which has provided notice of the  
5           acceptance of the alien in its program.

6           “(4) A recognized international agency or orga-  
7           nization approved as a program sponsor under sec-  
8           tion 101(a)(15)(J) which has provided notice of the  
9           acceptance of the alien in its program.

10          “(5) A treaty investor or trader individual or  
11          organization in the United States that, under section  
12          101(a)(15)(E), has made an offer of employment to  
13          an alien to perform executive or supervisory manage-  
14          ment functions.

15          “(e) LIMITATION.—A review may not be requested  
16          under this section more than once in any 24-month period.

17          “(f) CONSTRUCTION.—This section may not be con-  
18          strued to restrict any right to further administrative or  
19          judicial review established under any other provision of  
20          law.

21          “(g) FEES.—The Secretary of State shall charge, and  
22          collect, an appropriate fee associated with a request to the  
23          Board for a review. Such fee shall be sufficient to cover  
24          the cost of the administration of this section.”.

25          (b) EFFECTIVE DATES.—

1           (1) The amendment made by subsection (a)  
2       shall take effect 120 days after the date of the en-  
3       actment of this Act.

4           (2) Proposed regulations with respect to the  
5       amendment made by subsection (a) shall be promul-  
6       gated not later than 30 days after the date of the  
7       enactment of this Act.

8           (3) Members of the Board of Visa Appeals  
9       under section 225 of the Immigration and Nation-  
10      ality Act (as inserted by subsection (a)) shall be ap-  
11      pointed not later than 120 days after the date of the  
12      enactment of this Act.

13      (c) TECHNICAL AMENDMENTS.—

14           (1) Section 222(f) of the Immigration and Na-  
15      tionality Act (8 U.S.C. 1202(f)) is amended—

16           (A) by striking “except that” and all that  
17      follows up to the period; and

18           (B) by adding at the end: “An interested  
19      party under section 225(d) or court shall be  
20      permitted to inspect the record of proceeding as  
21      described in subsections (c)(2) and (c)(3) of  
22      section 225.”.

23           (2) Section 104(a)(1) of such Act (8 U.S.C.  
24      1104(a)(1)) is amended by striking the “except” and  
25      inserting “including”.

- 1           (3) The table of contents of such Act is amend-  
2           ed by inserting after the item relating to section 224  
3           the following new item:

“Sec. 225. Board of Visa Appeals.”.

