

108TH CONGRESS
1ST SESSION

H. R. 2364

To amend the Immigration and Nationality Act in regard to Caribbean-born immigrants.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2003

Mr. ENGEL introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act in regard to Caribbean-born immigrants.

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 “Caribbean Amnesty
5 and Relief Act”.

1 **TITLE I—CLARIFICATION OF ELI-**
2 **GIBILITY FOR RELIEF FROM**
3 **REMOVAL AND DEPORTATION**
4 **FOR CERTAIN ALIENS**

5 **SEC. 101. ADJUSTMENT OF STATUS OF CERTAIN CARIB-**
6 **BEANS.**

7 (a) ADJUSTMENT OF STATUS.—

8 (1) IN GENERAL.—Notwithstanding section
9 245(c) of the Immigration and Nationality Act, the
10 status of any alien described in subsection (b) shall
11 be adjusted by the Secretary of Homeland Security
12 to that of an alien lawfully admitted for permanent
13 residence, if the alien—

14 (A) applies for such adjustment before
15 April 1, 2004; and

16 (B) is otherwise eligible to receive an im-
17 migrant visa and is otherwise admissible to the
18 United States for permanent residence, except
19 in determining such admissibility the grounds
20 for inadmissibility specified in paragraphs (4),
21 (5), (6)(A) and (7)(A) of section 212(a) of the
22 Immigration and Nationality Act shall not
23 apply.

24 (2) RELATIONSHIP OF APPLICATION TO CER-
25 TAIN ORDERS.—An alien present in the United

1 States who has been ordered excluded, deported, re-
2 moved or ordered to depart voluntarily from the
3 United States under any provision of the Immigra-
4 tion and Nationality Act may, notwithstanding such
5 order, apply for adjustment of status under para-
6 graph (1). Such an alien may not be required, as a
7 condition of submitting or granting such application,
8 to file a separate motion to reopen, reconsider, or
9 vacate such an order. If the Secretary of Homeland
10 Security grants the application, the Secretary shall
11 cancel the order. If the Secretary renders a final ad-
12 ministrative decision to deny the application, the
13 order shall be effective and enforceable to the same
14 extent as if the application had not been made.

15 (b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-
16 TUS.—

17 (1) IN GENERAL.—The benefits provided by
18 subsection (a) shall apply to any alien who is a na-
19 tional of countries of the Caribbean and who has
20 been physically present in the United States for a
21 continuous period, beginning not later than Sep-
22 tember 30, 1996 and ending earlier than the date
23 the application for adjustment under such subsection
24 is filed, except an alien shall not be considered to
25 have failed to maintain continuous physical presence

1 by reason of an absence, or absences, from the
2 United States for any periods in the aggregate not
3 exceeding 180 days.

4 (2) PROOF OF COMMENCEMENT OF CONTIN-
5 UOUS PRESENCE.—For purposes of establishing that
6 the period of continuous physical presence referred
7 to in paragraph (1) commenced not later than Sep-
8 tember 30, 1996, an alien—

9 (A) shall demonstrate that the alien, prior
10 to September 30, 1996 performed service, or
11 engaged in a trade or business, within the
12 United States; or

13 (B) shall make such other demonstration
14 of physical presence as the Secretary of Home-
15 land Security may provide for by regulation.

16 (c) STAY OF REMOVAL; WORK AUTHORIZATION.—

17 (1) IN GENERAL.—The Secretary of Homeland
18 Security shall provide by regulation for an alien sub-
19 ject to a final order of deportation or removal to
20 seek a stay of such order based on the filing of an
21 application under subsection (a).

22 (2) DURING CERTAIN PROCEEDINGS.—Notwith-
23 standing any provision of the Immigration and Na-
24 tionality Act, the Secretary shall not order any alien
25 to be removed from the United States, if the alien

1 is in exclusion, deportation, or removal proceedings
2 under any provision of such an Act and has applied
3 for adjustment of status under subsection (a), except
4 where the Secretary has rendered a final administra-
5 tive determination to deny the application.

6 (3) WORK AUTHORIZATION.—The Secretary
7 may authorize an alien who has applied for adjust-
8 ment of status under subsection (a) to engage in
9 employment in the United States during the pend-
10 ency of such application and may provide the alien
11 with an “employment authorization” endorsement or
12 other appropriate document signifying authorization
13 of employment, except that if such application is
14 pending for a period exceeding 180 days, and has
15 not been denied, the Secretary shall authorize such
16 employment.

17 (d) ADJUSTMENT OF STATUS FOR STATUS FOR
18 SPOUSES AND CHILDREN.—

19 (1) IN GENERAL.—Notwithstanding section
20 245(c) of the Immigration and Nationality Act, the
21 status of an alien shall be adjusted by the Secretary
22 of Homeland Security to that of an alien lawfully
23 admitted for permanent residence, if—

24 (A) the alien is a national of a Caribbean
25 country;

1 (B) the spouse, child, or unmarried son or
2 daughter, of an alien whose status is adjusted
3 to that of an alien lawfully admitted for perma-
4 nent residence under subsection (a), except that
5 in the case of such an unmarried son or daugh-
6 ter, the son or daughter shall be required to es-
7 tablish that they have been physically present in
8 the United States for a continuous period, be-
9 ginning not later than December 1, 1995, and
10 ending not earlier than the date the application
11 for adjustment is filed;

12 (C) the alien applies for such adjustment
13 and is physically present in the United States
14 on the date the application is filed;

15 (D) the alien is otherwise eligible to receive
16 an immigrant visa and is otherwise admissible
17 to the United States for permanent residence,
18 except in determining such admissibility the
19 grounds for exclusion specified in paragraphs
20 (4), (5), (6)(A), and (7)(A) of section 212(a) of
21 the Immigration and Nationality Act shall not
22 apply; and

23 (E) applies for such adjustment before
24 April 1, 2004.

1 (2) PROOF OF CONTINUOUS PRESENCE.—For
2 purposes of establishing the period of continuous
3 physical presence referred to in paragraph (1)(B),
4 an alien—

5 (A) shall demonstrate that such period
6 commenced not later than December 1, 1995,
7 in a manner consistent with subsection (b)(2);
8 and

9 (B) shall not be considered to have failed
10 to maintain continuous physical presence by
11 reason of an absence, or absences, from the
12 United States for any period in the aggregate
13 not exceeding 180 days.

14 (e) AVAILABILITY OF ADMINISTRATIVE REVIEW.—
15 The Secretary of Homeland Security shall provide to ap-
16 plicants for adjustment of status under subsection (a) the
17 same right to, and procedures for, administrative review
18 as are provided to—

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

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

24 (f) LIMITATION ON JUDICIAL REVIEW.—A deter-
25 mination by the Secretary of Homeland Security as to

1 whether the status of any alien should be adjusted under
2 this section is final and shall not be subject to review by
3 any court.

4 (g) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—
5 When an alien is granted the status of having been law-
6 fully admitted for permanent residence pursuant to this
7 section, the Secretary of State shall not be required to re-
8 duce the number of immigrant visas authorized to be
9 issued under any provision of the Immigration and Na-
10 tionality Act.

11 (h) APPLICATION OF IMMIGRATION AND NATION-
12 ALITY ACT PROVISIONS.—Except as otherwise specifically
13 provided in this section, the definitions contained in the
14 Immigration and Nationality Act shall apply in the admin-
15 istration of this section. Nothing contained in this section
16 shall be held to repeal, amend, alter, modify, affect, or
17 restrict the powers, duties, functions, or authority of the
18 Secretary of Homeland Security in the administration and
19 enforcement of such Act or any other law relating to immi-
20 gration, nationality, or naturalization. The fact that an
21 alien may be eligible to be granted the status of having
22 been lawfully admitted for permanent residence under this
23 section shall not preclude the alien from seeking such sta-
24 tus under any other provision of law for which the alien
25 may be eligible.

1 **TITLE II—VISA FAIRNESS**
2 **COMMISSION**

3 **SEC. 201. ESTABLISHMENT.**

4 There is established in the Department of Homeland
5 Security’s Bureau of Citizenship and Immigration Serv-
6 ices a commission to be known as the Visa Fairness Com-
7 mission (hereafter in this title referred to as the “Commis-
8 sion”).

9 **SEC. 202. DUTIES.**

10 (a) DATA COLLECTION.— The Commission, in con-
11 sultation with the Director of the Bureau of Citizenship
12 and Immigration Services, shall gather empirical data on
13 economic and racial profiling by the Consular Affairs of-
14 fice in American embassies and by Customs and immigra-
15 tion inspectors at US points of entry. In carrying out the
16 preceding sentence, the Commission and the Director
17 shall, to the extent practicable, avoid duplication of admin-
18 istration efforts.

19 (b) IN GENERAL.—Section 376 of the Immigration
20 and Nationality Act (8 U.S.C. 1351) is amended by add-
21 ing in subsection (a) the following:

22 “(3) FEE WAIVER—The Secretary of State
23 shall waive the visa fee for those who can prove in
24 forma pauperis status.”.

1 **SEC. 203. MEMBERSHIP.**

2 (a) NUMBER AND APPOINTMENT.—The Commission
3 shall be composed of 15 members appointed by the Direc-
4 tor of the Bureau of Citizenship and Immigration Serv-
5 ices. Members on the Commission shall be broadly rep-
6 resentative of the ethnic, religious, majority and minority
7 groups comprising the United States.

8 (b) WAIVER OF LIMITATION ON EXECUTIVE SCHED-
9 ULE POSITIONS.—Appointments may be made under this
10 section without regard to section 5311(b) of title 5, United
11 States Code.

12 (c) POLITICAL AFFILIATION.—Not more than 8
13 members appointed may be of the same political party.

14 (d) TERMS.—

15 (1) IN GENERAL.—Each member shall be ap-
16 pointed for a term of two years, except as provided.

17 (e) BASIC PAY.—

18 (1) RATES OF PAY.—Except as provided in
19 paragraph (2), member shall serve without pay.

20 (2) PROHIBITION OF COMPENSATION OF FED-
21 ERAL EMPLOYEES.—Members of the Commission
22 who are full-time officers or employees of the United
23 States may not receive additional pay, allowances, or
24 benefits by reason of their services on the Commis-
25 sion.

1 (f) TRAVEL EXPENSES.—Each member shall receive
2 travel expenses, including per diem in lieu of subsistence,
3 in accordance with sections 5702 and 5703 of title 5,
4 United States Code.

5 (g) QUORUM.—Eight members of the Commission
6 shall constitute a quorum but a lesser number may hold
7 hearings.

8 (h) CHAIRMAN; VICE CHAIRMAN.—The Chairman
9 and Vice Chairman of the Commission shall be designated
10 by the Director of the Bureau of Citizenship and Immigra-
11 tion Services at the time of the appointment.

12 (i) MEETINGS.—The Commission shall meet at the
13 call of the Chairman or a majority of its members.

14 **SEC. 204. DIRECTOR AND STAFF OF COMMISSION; EXPERTS**
15 **AND CONSULTANTS.**

16 (a) DIRECTOR.—The Commission shall, without re-
17 gard to section 5311(b) of title 5, United States Code,
18 have a Director who shall be appointed by the Commis-
19 sion. The Director shall be paid at a rate not to exceed
20 the rate of basic pay payable for level V of the Executive
21 Schedule.

22 (b) STAFF.—Subject to rules prescribed by the Com-
23 mission, and without regard to section 5311(b) of title 5,
24 United States Code, the Director may appoint additional
25 personnel as the Director considers appropriate.

1 (c) APPLICABILITY OF CERTAIN CIVIL SERVICE
2 LAWS.—The Director and staff of the Commission shall
3 be appointed subject to the provisions of title 5, United
4 State Code, governing appointments in the competitive
5 service, and shall be paid in accordance with the provisions
6 of chapter 51 and subchapter III of chapter 53 of that
7 title relating to classification and General Schedule pay
8 rates.

9 (d) EXPERTS AND CONSULTANTS.—Subject to rules
10 prescribed by the Commission, the Director may procure
11 temporary and intermittent services under section 3109(b)
12 of title 5, United States Code, but at rates for individuals
13 not to exceed the daily equivalent of the rate basic pay
14 payable for level V of the Executive Schedule.

15 (e) STAFF OF FEDERAL AGENCIES.—Upon request
16 of the Director, the head of any Federal department or
17 agency may detail, on a reimbursable basis, any of the
18 personnel of that department or agency to the Commission
19 to assist it in carrying out its duties under this Act.

20 **SEC. 205. POWERS OF COMMISSION.**

21 (a) HEARINGS AND SESSIONS.—The Commission
22 may, for the purpose of carrying out this Act, hold hear-
23 ings, sit and act at times and places, take testimony, and
24 receive evidence as the Commission considers appropriate.

1 The Commission may administer oaths or affirmations to
2 witnesses appearing before it.

3 (b) POWERS OF MEMBERS AND AGENTS.—Any mem-
4 ber or agent of the Commission may, if authorized by the
5 Commission take any action which the Commission is au-
6 thorized to take by this section.

7 (c) OBTAINING OFFICIAL DATA.—The Commission
8 may secure directly from any department or agency of the
9 United States information necessary to enable it to carry
10 out this Act. Upon request of the Chairman or Vice Chair-
11 man of the Commission, the head of the department or
12 agency shall furnish that information to the Commission,
13 the head of that department or agency shall furnish that
14 information to the Commission.

15 (d) GIFTS, BEQUESTS, AND DEVISES.—The Commis-
16 sion may accept, use, and dispose of gifts, bequests, or
17 devises of services or property, both real and personal, for
18 the purpose of aiding or facilitating the work of the Com-
19 mission. Gifts, bequests, or devises of money and proceeds
20 from sales of other property received as gifts, bequests,
21 or devises shall be deposited in the Treasury and shall be
22 available for disbursement upon order of the Chairman.

23 (e) MAILS.—The Commission may use the United
24 States mails in the same manner and under the same con-

1 ditions as other departments and agencies of the United
2 States.

3 (f) ADMINISTRATIVE SUPPORT SERVICES.—Upon the
4 request of the Commission, the Administrator of General
5 Services shall provide to the Commission, on a reimburs-
6 able basis, the administrative support services necessary
7 for the Commission to carry out its responsibilities under
8 the Act.

9 (g) SUBPOENA POWER.—

10 (1) IN GENERAL.—The Commission may issue
11 subpoenas requiring the attendance and testimony of
12 witnesses and the production of any evidence relat-
13 ing to any matter under investigation by the Com-
14 mission. The attendance of witnesses and the pro-
15 duction of evidence may be required from any place
16 within the United States at any designated place of
17 hearing within the United States.

18 (2) FAILURE TO OBEY A SUBPOENA.—If a per-
19 son refuses to obey a subpoena issued under para-
20 graph (1), the Commission may apply to a United
21 States district court for an order requiring that per-
22 son to appear before the Commission to give testi-
23 mony, produce evidence, or both, relating to the
24 matter under investigation. The application may be
25 made within the judicial district where the hearing

1 is conducted or where that person is found, resides,
2 or transacts business. Any failure to obey the order
3 of the court may be punished by the court as civil
4 contempt.

5 (3) SERVICE OF SUBPOENAS.—The subpoenas
6 of the Commission shall be served in the manner
7 provided for subpoenas issued by a United States
8 district court under the Federal Rules of Civil Pro-
9 cedure for the United States district courts.

10 (4) SERVICE OF PROCESS.—All process of any
11 court to which application is made under paragraph
12 (2) may be served in the judicial district in which
13 the person required to be served resides or may be
14 found.

15 (h) IMMUNITY.—Except as provided in this sub-
16 section, a person may not be excused from testifying or
17 from producing evidence pursuant to a subpoena on the
18 ground that the testimony or evidence required by the sub-
19 poena may tend to incriminate or subject that person to
20 criminal prosecution. A person, after having claimed the
21 privilege against self-incrimination, may not be criminally
22 prosecuted by reason of any transaction, matter, or thing
23 about which that person is compelled to testify or relating
24 to which that person is compelled to produce evidence, ex-

1 cept that the person may be prosecuted for perjury com-
2 mitted during the testimony or made in the evidence.

3 (i) **CONTRACT AUTHORITY.**—The Commission may
4 contract with and compensate government and private
5 agencies or persons for property and services, without re-
6 gard to section 3709 of the Revised Statutes (41 U.S.C.
7 5).

8 **SEC. 206. ANNUAL REPORTS.**

9 The Commission shall transmit an annual report to
10 the Director of the Bureau of Citizenship and Immigration
11 Services and the Congress not later than December 31 of
12 each year. Each such report shall contain a detailed state-
13 ment of activities of the Commission during the fiscal year
14 ending in the year in which such report is required to be
15 submitted.

16 **SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated such sums
18 as may be necessary to complete the study.

19 **TITLE III—ELIGIBILITY FOR**
20 **ADJUSTMENT OF STATUS**

21 **SEC. 301. REMOVAL OF CERTAIN LIMITATIONS ON ELIGI-**
22 **BILITY FOR ADJUSTMENT OF STATUS UNDER**
23 **SECTION 245(i).**

24 Section 245(i) of the Immigration and Nationality
25 Act (8 U.S.C. 1255(i)) is amended—

1 (1) in paragraph (1), by striking “(i)(1)”
2 through “to that of an alien lawfully admitted for
3 permanent residence.” and inserting the following:

4 “(i)(1) Notwithstanding the provisions of subsections
5 (a) and (c) of this section, an alien physically present in
6 the United States who—

7 “(A) entered the United States without inspec-
8 tion; or

9 “(B) is within one of the classes enumerated in
10 subsection (c) of this section;

11 may apply to the Secretary of Homeland Security for the
12 adjustment of his or her status to that of an alien lawfully
13 admitted for permanent residence.”; and

14 (2) in paragraph (3)(B), by striking “, except
15 that” through “286(m)”.

○