

108TH CONGRESS
2D SESSION

H. R. 3918

To amend the Immigration and Nationality Act to reunify families, permit earned access to permanent resident status, provide protection against unfair immigration-related employment practices, reform the diversity visa program, provide adjustment of status for Haitians and Liberian nationals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2004

Ms. JACKSON-LEE of Texas (for herself and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to reunify families, permit earned access to permanent resident status, provide protection against unfair immigration-related employment practices, reform the diversity visa program, provide adjustment of status for Haitians and Liberian nationals, 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 “Comprehensive Immi-
5 gration Fairness Reform Act of 2004”.

TITLE I—FAMILY REUNIFICATION

SEC. 101. PERMANENT APPLICATION OF SECTION 245(i).

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

(1) by inserting “and” at the end of paragraph (1)(A);

(2) by amending paragraph (1)(B) to read as follows:

“(B) who is the beneficiary (including a spouse or child of the principal alien) of—

“(i) a petition for classification under section 204; or

“(ii) an application for a labor certification under section 212(a)(5)(A);”;

(3) by striking paragraph (1)(C); and

(4) by striking “Attorney General” each place such term appears and inserting “Secretary of Homeland Security”.

1 **SEC. 102. DISCRETIONARY WAIVER OF INADMISSIBILITY**
2 **BASED ON UNLAWFUL PRESENCE, FAILURE**
3 **TO ATTEND REMOVAL PROCEEDINGS, AND**
4 **MISREPRESENTATIONS.**

5 (a) IN GENERAL.—Section 212(i) of the Immigration
6 and Nationality Act (8 U.S.C. 1182(i)) is amended to read
7 as follows:

8 “(i) The Secretary of Homeland Security may waive
9 the application of subparagraph (A)(i) or (B), or clause
10 (i) or (ii) of subparagraph (C), of subsection (a)(6) in the
11 case of an immigrant who is the parent, spouse, son, or
12 daughter of a United States citizen or of an alien lawfully
13 admitted to the United States for permanent residence,
14 if it is established to the satisfaction of the Secretary that
15 the refusal of admission to the United States of such im-
16 migrant would result in hardship to the immigrant or to
17 such citizen or lawful permanent resident parent, spouse,
18 son, or daughter.”.

19 (b) CONFORMING AMENDMENTS.—Section 212(a)(6)
20 of such Act (8 U.S.C. 1182(a)(6)) is amended—

21 (1) in subparagraph (A), by adding at the end
22 the following:

23 “(iii) WAIVER AUTHORIZED.—For a
24 provision authorizing the waiver of clause
25 (i), see subsection (i).”;

26 (2) in subparagraph (B)—

1 (A) by inserting “(i)” after the subpara-
 2 graph heading; and

3 (B) by adding at the end the following:

4 “(ii) WAIVER AUTHORIZED.—For a
 5 provision authorizing the waiver of clause
 6 (i), see subsection (i).”; and

7 (3) in subparagraph (C)(iii), by inserting “or
 8 (ii)” after “(i)”.

9 **SEC. 103. GENERAL WAIVER FOR ALIENS PREVIOUSLY RE-**
 10 **MOVED AND FOR THE UNLAWFUL PRESENCE**
 11 **BARS.**

12 (a) IN GENERAL.—Section 212(d) of the Immigra-
 13 tion and Nationality Act (8 U.S.C. 1182(d)) is amended
 14 by adding at the end the following:

15 “(14) The Secretary of Homeland Security may, in
 16 the discretion of the Secretary, for humanitarian purposes,
 17 to assure family unity, or when it is otherwise in the public
 18 interest, waive the application of subparagraph (A) or
 19 (B)(i) of subsection (a)(9).”.

20 (b) CONFORMING AMENDMENT.—Section
 21 212(a)(9)(B) of such Act (8 U.S.C. 1182(a)(9)(B)) is
 22 amended by striking clause (v).

1 **SEC. 104. ADDRESSING THE PROBLEM OF VISA NUMBER**
2 **BACKLOGS FOR THE FAMILY MEMBERS OF**
3 **CITIZENS AND LAWFUL PERMANENT RESI-**
4 **DENTS.**

5 (a) CLASSES OF NONIMMIGRANT ALIENS.—Section
6 101(a)(15)(K) of the Immigration and Nationality Act (8
7 U.S.C. 1101(a)(15)(K)) is amended—

8 (1) by striking “or” at the end of clause (ii);

9 (2) by adding “or” at the end of clause (iii);

10 and

11 (3) by adding at the end the following:

12 “(iv)(I) has concluded a valid mar-
13 riage with an alien lawfully admitted for
14 permanent residence, is the parent of a cit-
15 izen of the United States, or is the son or
16 daughter of an alien lawfully admitted for
17 permanent residence or a citizen of the
18 United States; (II) is the beneficiary of a
19 petition to accord immigrant status on the
20 basis of such family relationship that was
21 filed under section 204 by such family
22 member; (III) has waited more than 6
23 months for the approval of such petition or
24 the availability to the alien of an immi-
25 grant visa; and (IV) seeks to enter the
26 United States to await the approval of

1 such petition and the availability to the
2 alien of an immigrant visa;”.

3 (b) ADMISSION OF NONIMMIGRANTS.—Section
4 214(d) of such Act (8 U.S.C. 1184(d)) is amended—

5 (1) by striking “(d)” and inserting “(d)(1)”;
6 and

7 (2) by adding at the end the following:

8 “(2) A visa shall not be issued under the provisions
9 of section 101(a)(15)(K)(iv) until the consular officer has
10 received a petition filed in the United States by the lawful
11 permanent resident or citizen relative of the applying alien
12 and approved by the Secretary of Homeland Security. The
13 petition shall be in such form and contain such informa-
14 tion as the Secretary shall, by regulation, prescribe.”.

15 **SEC. 105. WAIVER OF AGGRAVATED FELONY CON-**
16 **SEQUENCES.**

17 Section 101 of the Immigration and Nationality Act
18 (8 U.S.C. 1101) is amended by adding at the end the fol-
19 lowing:

20 “(j) For purposes of this Act, and notwithstanding
21 subsection (a)(43), the Secretary of Homeland Security
22 may treat any conviction that did not result in incarcer-
23 ation for more than 1 year as if such conviction were not
24 a conviction for an aggravated felony. This discretion may

1 be exercised for humanitarian purposes, to assure family
 2 unity, or when it is otherwise in the public interest.”.

3 **SEC. 106. AGE-OUT PROTECTION FOR CHILDREN.**

4 (a) IN GENERAL.—Chapter 1 of title IV of the Immi-
 5 gration and Nationality Act (8 U.S.C. 1101 note) is
 6 amended by adding at the end the following:

7 “AGE-OUT PROTECTION FOR CHILDREN

8 “SEC. 408. (a) IN GENERAL.—In the case of an ap-
 9 plication initially to grant a benefit under this Act (other
 10 than an application for naturalization) that otherwise
 11 would be granted only after a determination that the bene-
 12 ficiary of the application is a child (such as classification
 13 as an immediate relative under section 201(b)(2)(A)(i)),
 14 if the application is neither approved nor denied (on proce-
 15 dural or substantive grounds) during the 90-day period
 16 beginning on the date of the filing of the application, the
 17 beneficiary shall be considered to be a child for all pur-
 18 poses related to the receipt of the benefit if the beneficiary
 19 was a child on the last day of such 90-day period, and
 20 the beneficiary shall not otherwise be prejudiced with re-
 21 spect to such determination by such delay, and shall be
 22 considered to be a child under this Act for all purposes
 23 related to such application.

24 “(b) TERMINATION OF BENEFIT.—Subsection (a)
 25 shall remain in effect until the termination of the 1-year

1 period beginning on the date on which the application de-
 2 scribed in such paragraph is approved.”.

3 (b) CLERICAL AMENDMENT.—The table of contents
 4 for the Immigration and Nationality Act is amended by
 5 inserting after the item relating to section 407 the fol-
 6 lowing:

“408. Age-out protection for children.”.

7 **TITLE II—EARNED ACCESS TO** 8 **LEGALIZATION**

9 **SEC. 201. ADJUSTMENT OF STATUS ON THE BASIS OF** 10 **EARNED ACCESS TO LEGALIZATION.**

11 (a) IN GENERAL.—Chapter 5 of title II of the Immi-
 12 gration and Nationality Act (8 U.S.C. 1255 et seq.) is
 13 amended by inserting after section 245A the following:

14 “ADJUSTMENT OF STATUS ON THE BASIS OF EARNED 15 ACCESS TO LEGALIZATION

16 “SEC. 245B. (a) IN GENERAL.—The Secretary of
 17 Homeland Security may adjust the status of an alien to
 18 that of an alien lawfully admitted for permanent residence
 19 if the alien—

20 “(1) was physically present in the United
 21 States for a continuous period of not less than 5
 22 years immediately preceding the date on which this
 23 provision was enacted and has maintained contin-
 24 uous physical presence since then;

1 “(2) has at all times been a person of good
2 moral character;

3 “(3) has never been convicted of a criminal of-
4 fense in the United States;

5 “(4) in the case of an alien who is 18 years of
6 age or older, but who is not over the age of 65, has
7 successfully completed a course on reading, writing,
8 and speaking words in ordinary usage in the English
9 language, unless unable to do so on account of phys-
10 ical or developmental disability or mental impair-
11 ment;

12 “(5) in the case of an alien 18 years of age or
13 older, has accepted the values and cultural life of the
14 United States; and

15 “(6) in the case of an alien 18 years of age or
16 older, has performed at least 40 hours of community
17 service.

18 “(b) TREATMENT OF BRIEF, CASUAL, AND INNO-
19 CENT ABSENCES.—An alien shall not be considered to
20 have failed to maintain a continuous presence in the
21 United States for purposes of subsection (a)(1) by virtue
22 of brief, casual, and innocent absences from the United
23 States.

24 “(c) ADMISSIBLE AS IMMIGRANT.—

1 “(1) IN GENERAL.—The alien shall establish
2 that the alien is admissible to the United States as
3 immigrant, except as otherwise provided in para-
4 graph (2).

5 “(2) EXCEPTIONS.—The provisions of para-
6 graphs (5), (6)(A), (6)(B), (6)(C), (6)(F), (6)(G),
7 (7)(A), (9)(B), and (9)(C)(i)(I) of section 212(a)
8 shall not apply in the determination of an alien’s ad-
9 missibility under this section.

10 “(d) SECURITY AND LAW ENFORCEMENT CLEAR-
11 ANCES.—The alien, if over 15 years of age, shall submit
12 fingerprints in accordance with procedures established by
13 the Secretary of Homeland Security. Such fingerprints
14 shall be submitted to relevant Federal agencies to be
15 checked against existing databases for information relat-
16 ing to criminal, national security, or other law enforce-
17 ment actions that would render the alien ineligible for ad-
18 justment of status under this section. The Secretary of
19 Homeland Security shall provide a process for challenging
20 the accuracy of matches that result in a finding of ineligi-
21 bility for adjustment of status.

22 “(e) INAPPLICABILITY OF NUMERICAL LIMITA-
23 TIONS.—When an alien is granted lawful permanent resi-
24 dent status under this subsection, the number of immi-
25 grant visas authorized to be issued under any provision

1 of this Act shall not be reduced. The numerical limitations
 2 of sections 201 and 202 shall not apply to adjustment of
 3 status under this section.

4 “(f) TERMINATION OF PROCEEDINGS.—The Sec-
 5 retary of Homeland Security may terminate removal pro-
 6 ceedings without prejudice pending the outcome of an
 7 alien’s application for adjustment of status under this sec-
 8 tion on the basis of a prima facie showing of eligibility
 9 for relief under this section.”.

10 (b) CLERICAL AMENDMENT.—The table of contents
 11 for the Immigration and Nationality Act is amended by
 12 inserting after the item relating to section 245A the fol-
 13 lowing:

“245B. Adjustment of status on the basis of earned access to legalization.”.

14 **TITLE III—EMPLOYEE** 15 **PROTECTIONS**

16 **SEC. 301. UNFAIR IMMIGRATION-RELATED EMPLOYMENT** 17 **PRACTICES.**

18 Section 274B of the Immigration and Nationality Act
 19 (8 U.S.C. 1324b) is amended—

20 (1) in subsection (a)(5)—

21 (A) by amending the paragraph heading to
 22 read “PROHIBITION OF INTIMIDATION, RETAL-
 23 IATION, OR UNLAWFUL DISCRIMINATION IN EM-
 24 PLOYMENT”;

1 (B) by moving the text down and to the
2 right 2 ems;

3 (C) by inserting before such text the fol-
4 lowing: “(A) IN GENERAL.—”; and

5 (D) by adding at the end the following:

6 “(B) FEDERAL LABOR OR EMPLOYMENT
7 LAWS.—It is an unfair employment practice for
8 any employer to directly or indirectly threaten
9 any individual with removal or any other ad-
10 verse consequences pertaining to that individ-
11 ual’s immigration status or employment bene-
12 fits for the purpose of intimidating, pressuring,
13 or coercing any such individual not to exercise
14 any right protected by state or federal labor or
15 employment law (including section 7 of the Na-
16 tional Labor Relations Act (29 U.S.C. 157)), or
17 for the purpose of retaliating against any such
18 individual for having exercised or having stated
19 an intention to exercise any such right.

20 “(C) DISCRIMINATION BASED ON IMMIGRA-
21 TION STATUS.—It is an unfair employment
22 practice for any employer, except to the extent
23 specifically authorized or required by law, to
24 discriminate in any term or condition of em-
25 ployment against any individual employed by

1 such employer on the basis of such individual's
2 immigration status.”; and

3 (2) in subsection (c)(2), by adding at the end
4 the following: “The Special Counsel shall not dis-
5 close to the Secretary of Homeland Security or any
6 other government agency or employee, and shall not
7 cause to be published in a manner that discloses to
8 the Secretary of Homeland Security or any other
9 government agency or employee, any information ob-
10 tained by the Special Counsel in any manner con-
11 cerning the immigration status of any individual who
12 has filed a charge under this section, or the identity
13 of any individual or entity that is a party or witness
14 to a proceeding brought pursuant to such charge.
15 The Secretary of Homeland Security may not rely,
16 in whole or in part, in any enforcement action or re-
17 moval proceeding, upon any information obtained as
18 a result of the filing or prosecution of an unfair im-
19 migration-related employment practice charge. For
20 purposes of this paragraph, the term ‘Special Coun-
21 sel’ includes individuals formerly appointed to the
22 position of Special Counsel and any current or
23 former employee of the office of the Special Counsel.
24 Whoever knowingly uses, publishes, or permits infor-

1 mation to be used in violation of this paragraph
2 shall be fined not more than \$10,000.”.

3 **SEC. 302. DEPARTMENT OF LABOR TASK FORCE.**

4 The Secretary of Labor, in consultation with the At-
5 torney General and the Secretary of Homeland Security,
6 shall conduct a national study of American workplaces to
7 determine the causes, extent, circumstances, and con-
8 sequences, of exploitation of undocumented alien workers
9 by their employers. As part of this study, the Secretary
10 of Labor shall create a plan for targeted review of federal
11 labor law enforcement in industries with a substantial im-
12 migrant workforce, for the purpose of identifying, moni-
13 toring, and deterring frequent or egregious violators of
14 wage and hour, anti-discrimination, National Labor Rela-
15 tions Act, and workplace safety and health requirements.
16 Not later than 18 months after the date of the enactment
17 of this Act, the Secretary of Labor shall submit to the
18 Congress a report describing the results of the study and
19 the Secretary’s recommendations based on the study.

20 **SEC. 303. RECRUITMENT OF AMERICAN WORKERS.**

21 Section 214 of the Immigration and Nationality Act
22 is amended—

23 (1) by redesignating subsections (m) (as added
24 by section 105 of Public Law 106–313), (n) (as
25 added by section 107(e) of Public Law 106–386),

1 (o) (as added by section 1513(c) of Public Law 106–
2 386), (o) (as added by section 1102(b) of the Legal
3 Immigration Family Equity Act), and (p) (as added
4 by section 1503(b) of the Legal Immigration Family
5 Equity Act) as subsections (n), (o), (p), (q), and (r),
6 respectively; and

7 (2) by adding at the end the following:

8 “(s)(1) No petition to accord employment status
9 under any nonimmigrant classification described in section
10 101(a)(15) shall be granted in the absence of an affidavit
11 from the petitioner describing the efforts that were made
12 to recruit an alien lawfully admitted for permanent resi-
13 dence or a citizen of the United States before resorting
14 to a petition to obtain a foreign employee. The recruitment
15 efforts must have included substantial attempts to find
16 employees in minority communities.

17 “(2)(A) The Secretary of Homeland Security shall re-
18 serve 3 percent of all fees collected for petitions to accord
19 employment status and shall use these funds to establish
20 an employment training program which will include unem-
21 ployed workers in the United States who need to be
22 trained or retrained. The purpose of this program shall
23 be to increase the number of lawful permanent residents
24 and citizens of the United States who are available for

1 employment in the occupations that are the subjects of
2 such petitions.

3 “(B) The Secretary of Homeland Security shall re-
4 serve and make available to the Secretary of Labor a por-
5 tion of the funds collected under this paragraph. Such
6 funds shall be used by the Secretary of Labor to establish
7 an ‘Office to Preserve American Jobs’ within the Depart-
8 ment of Labor. The purpose of this office shall be to estab-
9 lish policies intended to ensure that employers in the
10 United States will hire available workers in the United
11 States before resorting to foreign labor, giving substantial
12 emphasis to hiring minority workers in the United
13 States.”.

14 **TITLE IV—DIVERSITY VISAS**

15 **SEC. 401. INCREASE IN WORLDWIDE LEVEL OF DIVERSITY** 16 **IMMIGRANTS.**

17 Section 201(e) of the Immigration and Nationality
18 Act (8 U.S.C. 1151(e)) is amended by striking “55,000”
19 and inserting “110,000”.

20 **SEC. 402. PERIOD DESIGNATED FOR APPLICATION.**

21 Section 203(e)(1) of the Immigration and Nationality
22 Act (8 U.S.C. 1153(e)(1)) is amended—

23 (1) by striking “Attorney General” each place
24 such term appears and inserting “Secretary of
25 Homeland Security”; and

SEC. 501. ADJUSTMENT OF STATUS FOR HAITIANS.

(a) IN GENERAL.—After section 245B of the Immigration and Nationality Act (as added by section 201 of this Act) insert the following:

“SEC. 245C. Notwithstanding the provisions of section 245(c), the status of any alien who is a national or citizen of Haiti, and who has been physically present in the United States for at least one year, may be adjusted by the Secretary of Homeland Security, in the Secretary’s discretion and under such regulations as the Secretary may prescribe, to that of an alien lawfully admitted for

1 permanent residence, if the alien makes an application for
2 such adjustment and the alien is eligible to receive an im-
3 migrant visa and is admissible to the United States for
4 permanent residence. Upon approval of such an applica-
5 tion for adjustment of status, the Secretary shall create
6 a record of the alien's admission for permanent residence
7 as of a date 30 months prior to the filing of such an appli-
8 cation or the date of the alien's last arrival into the United
9 States, whichever date is later. The provisions of this Act
10 shall be applicable to the spouse and child of any alien
11 described in this section, regardless of their citizenship
12 and place of birth, if the spouse or child is residing with
13 such alien in the United States.”.

14 (b) CLERICAL AMENDMENT.—The table of contents
15 for the Immigration and Nationality Act is amended by
16 inserting after the item relating to section 245B the fol-
17 lowing:

“Sec. 245C. Adjustment of status of certain Haitian nationals.”.

18 (c) SUNSET.—The amendments made by this section
19 shall cease to be effective on the date that is 3 years after
20 the date of the enactment of this Act.

21 **SEC. 502. LIMITATION OF ATTORNEY GENERAL'S BOND DIS-**
22 **CRETION.**

23 Section 236 of the Immigration and Nationality Act
24 (8 U.S.C. 1226) is amended by adding at the end the fol-
25 lowing:

1 “(f) EXERCISE OF AUTHORITY FOR ARREST, DETEN-
 2 TION, AND RELEASE.—The Secretary of Homeland Secu-
 3 rity shall exercise the discretion afforded under subsection
 4 (a) on a case-by-case basis. If bond is to be denied on
 5 the ground that the alien’s release would give rise to ad-
 6 verse consequences for national security or national immi-
 7 gration policy, the finding of such adverse consequences
 8 shall be based on circumstances pertaining to the indi-
 9 vidual alien whose release is being considered.”.

10 **SEC. 503. ELIMINATION OF MANDATORY DETENTION IN EX-**
 11 **PEDITED REMOVAL PROCEEDINGS.**

12 Section 235(b)(1)(B)(iii)(IV) of the Immigration and
 13 Nationality Act (8 U.S.C. 1225(b)(1)(B)(iii)(IV)) is
 14 amended to read as follows:

15 “(IV) DETENTION.—Aliens sub-
 16 ject to the procedures under this
 17 clause shall be detained in accordance
 18 with section 236.”.

19 **SEC. 504. AMENDMENTS TO HAITIAN AND IMMIGRANT**
 20 **FAIRNESS ACT OF 1998.**

21 (a) GROUND FOR INADMISSIBILITY FOR DOCUMENT
 22 FRAUD DOES NOT APPLY.—The Haitian Refugee Immi-
 23 gration Fairness Act of 1998 (8 U.S.C. 1255 note) is
 24 amended in subsections (a)(1)(B) and (d)(1)(D) of section
 25 902 by inserting “(6)(C)(i),” after “(6)(A),”.

1 (b) DETERMINATIONS WITH RESPECT TO CHIL-
2 DREN.—Section 902(d) of such Act is amended by adding
3 at the end the following:

4 “(3) DETERMINATIONS WITH RESPECT TO
5 CHILDREN.—

6 “(A) USE OF APPLICATION FILING
7 DATE.—Determinations made under this sub-
8 section as to whether an individual is a child of
9 a parent shall be made using the age and status
10 of the individual on the date of the enactment
11 of this section.

12 “(B) APPLICATION SUBMISSION BY PAR-
13 ENT.—Notwithstanding paragraph (1)(C), an
14 application under this subsection filed based on
15 status as a child may be filed for the benefit of
16 such child by a parent or guardian of the child,
17 if the child is physically present in the United
18 States on such filing date.”.

19 **SEC. 505. NEW APPLICATIONS AND MOTIONS TO REOPEN.**

20 (a) NEW APPLICATIONS.—Notwithstanding section
21 902(a)(1)(A) of the Haitian and Immigrant Fairness Act
22 of 1998, an alien who is eligible for adjustment of status
23 under such Act, as amended by section 504 of this Act,
24 may submit an application for adjustment of status under
25 such Act not later than the later of—

1 (1) 2 years after the date of the enactment of
2 this Act; and

3 (2) 1 year after the date on which final regula-
4 tions implementing section 504 are promulgated.

5 (b) MOTIONS TO REOPEN.—The Secretary of Home-
6 land Security shall establish procedures for the reopening
7 and reconsideration of applications for adjustment of sta-
8 tus under the Haitian Refugee Immigration Fairness Act
9 of 1998 that are affected by the amendments under sec-
10 tion 504 of this Act.

11 (c) RELATIONSHIP OF APPLICATION TO CERTAIN OR-
12 DERS.—Section 902(a)(3) of the Haitian and Immigrant
13 Fairness Act of 1998 shall apply to an alien present in
14 the United States who has been ordered excluded, de-
15 ported, removed, or ordered to depart voluntarily, and who
16 files an application under subsection (a), or a motion
17 under subsection (b), in the same manner as such section
18 902(a)(3) applied to aliens filing applications for adjust-
19 ment of status under such Act before April 1, 2000.

20 **SEC. 506. SENSE OF CONGRESS REGARDING TEMPORARY**
21 **PROTECTED STATUS FOR HAITIANS.**

22 It is the sense of the Congress that the Secretary of
23 Homeland Security should be more liberal with respect to
24 Haiti in deciding whether to designate that country for
25 temporary protected status under section 244(b)(1)(A) of

1 the Immigration and Nationality (8 U.S.C.
2 1254(b)(1)(A)). It is the sense of the Congress that this
3 decision has sometimes been made without due regard to
4 the serious threat to personal safety that results from
5 sending Haitians back to Haiti during a period of ongoing
6 armed conflict in that country.

7 **TITLE VI—LIBERIAN REFUGEE**
8 **RELIEF**

9 **SEC. 601. ADJUSTMENT OF STATUS OF CERTAIN LIBERIAN**
10 **NATIONALS.**

11 (a) ADJUSTMENT OF STATUS.—

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

18 (A) applies for such adjustment before
19 April 1, 2005; and

20 (B) is otherwise eligible to receive an im-
21 migrant visa and is otherwise admissible to the
22 United States for permanent residence, except
23 in determining such admissibility the grounds
24 for inadmissibility specified in paragraphs (4),
25 (5), (6)(A), and (7)(A) of section 212(a) of the

1 Immigration and Nationality Act shall not
2 apply.

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

20 (b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-
21 TUS.—The benefits provided by subsection (a) shall apply
22 to any alien who—

23 (1) is a national of Liberia; and

24 (2)(A) who was granted temporary protected
25 status on or after March 27, 1991; or

1 (B) was eligible to apply for temporary pro-
2 tected status on or after March 27, 1991.

3 (c) STAY OF REMOVAL.—

4 (1) IN GENERAL.—The Secretary of Homeland
5 Security shall provide by regulation for an alien sub-
6 ject to a final order of deportation or removal or ex-
7 clusion to seek a stay of such order based on the fil-
8 ing of an application under subsection (a).

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

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

1 endorsement or other appropriate document signi-
2 fying authorization of employment, except that if
3 such application is pending for a period exceeding
4 180 days, and has not been denied, the Secretary of
5 Homeland Security shall authorize such employment.

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

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

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

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 Secretary of Homeland Security shall provide to ap-
21 plicants for adjustment of status under subsection (a) the
22 same right to, and procedures for, administrative review
23 as are provided 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 Secretary of Homeland Security as to
8 whether the status of any alien should be adjusted under
9 this section is final and shall not be subject to review by
10 any court.

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

18 (h) APPLICATION OF IMMIGRATION AND NATION-
19 ALITY ACT PROVISIONS.—Except as otherwise specifically
20 provided in this section, the definitions contained in the
21 Immigration and Nationality Act shall apply in the admin-
22 istration of this section. Nothing contained in this section
23 shall be held to repeal, amend, alter, modify, effect, or re-
24 strict the powers, duties, functions, or authority of the
25 Secretary of Homeland Security in the administration and

1 enforcement of such Act or any other law relating to immi-
 2 gration, nationality, or naturalization. The fact that an
 3 alien may be eligible to be granted the status of having
 4 been lawfully admitted for permanent residence under this
 5 section shall not preclude the alien from seeking such sta-
 6 tus under any other provision of law for which the alien
 7 may be eligible.

8 **TITLE VII—DISCRETION RE-**
 9 **GARDING RESIDENCY RE-**
 10 **QUIREMENTS FOR NATU-**
 11 **RALIZATION**

12 **SEC. 701. PHYSICAL PRESENCE REQUIREMENT.**

13 Section 316(a) of the Immigration and Nationality
 14 Act (8 U.S.C. 1427) is amended by adding at the end the
 15 following:

16 “When warranted by extraordinary circumstances, the
 17 Secretary of Homeland Security may reduce, by not more
 18 than 90 days, the physical presence requirement described
 19 in the preceding sentence.”.

20 **SEC. 702. ABSENCES FROM THE UNITED STATES.**

21 Section 316(b) of the Immigration and Nationality
 22 Act (8 U.S.C. 1427(b)) is amended—

23 (1) in the first sentence, by striking “one year”
 24 and inserting “18 months”; and

1 (2) in the second sentence, by striking “contin-
2 uous period of one year” and inserting “continuous
3 period of 18 months”.

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