

108TH CONGRESS
1ST SESSION

H. R. 440

To amend the Immigration and Nationality Act to adjust the status of certain aliens with longstanding ties to the United States to that of an alien lawfully admitted to permanent residence, to promote family unity, to improve national security, to modify provisions of such Act affecting removal of aliens from the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 2003

Mr. GUTIERREZ (for himself, Mrs. NAPOLITANO, Mr. PASTOR, Mr. SERRANO, Ms. SOLIS, Mr. GRIJALVA, and Mr. ACEVEDO-VILÁ) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to adjust the status of certain aliens with longstanding ties to the United States to that of an alien lawfully admitted to permanent residence, to promote family unity, to improve national security, to modify provisions of such Act affecting removal of aliens from the United States, 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—

1 (1) the “Unity, Security, Accountability, and
2 Family Act”; or

3 (2) the “U.S.A. Family Act”.

4 **SEC. 2. REFERENCES.**

5 Except as otherwise expressly provided, whenever in
6 this Act an amendment or repeal is expressed in terms
7 of an amendment to, or repeal of, a section or other provi-
8 sion, the reference shall be considered to be made to a
9 section or other provision of the Immigration and Nation-
10 ality Act.

11 **SEC. 3. FINDINGS AND PURPOSE.**

12 (a) FINDINGS.—The Congress finds that—

13 (1) immigrants play a vital role in filling voids
14 in our workforce and adding strength and stability
15 to our economy;

16 (2) the Labor Department estimates that the
17 total number of jobs requiring only short-term train-
18 ing will increase from 53,200,000 in 2000 to
19 60,900,000 by 2010, a net increase of 7,700,000
20 jobs;

21 (3) the number of workers currently available
22 and able to fill jobs that require short-term training
23 continues to fall because of an aging workforce and
24 rising education levels;

1 (4) the National Academy of Sciences reports
2 that immigrant households paid \$133,000,000,000
3 in direct taxes to Federal, State, and local govern-
4 ments in 1997, and that a typical immigrant and his
5 or her descendants pay an estimated \$80,000 more
6 in taxes than they receive in local, State, and Fed-
7 eral benefits over their lifetimes;

8 (5) separating families can be damaging to a
9 household's financial and emotional well-being and
10 efforts should be taken to keep husbands and wives,
11 parents, and children together;

12 (6) a mechanism that provides workers the op-
13 portunity for legal permanent residence in the
14 United States would save the Federal Government
15 billions of dollars each year in enforcement initia-
16 tives and allow thousands of government personnel
17 to concentrate their efforts on safeguarding the
18 homeland and fighting terrorism; and

19 (7) men and women entering the United States
20 to fill vacancies in the workforce and provide for
21 their families are being exploited and injured in in-
22 creasing numbers because the current system and
23 market realities have crated a violent and lucrative
24 human border smuggling operation.

1 (b) PURPOSE.—The purpose of this Act is to create
2 a system that recognizes and reflects the enormous con-
3 tributions immigrants make to our workforce and econ-
4 omy, helps hardworking families stay together, and pro-
5 tects our homeland by—

6 (1) creating an improved system of account-
7 ability that allows critical resources and manpower
8 to be redirected to fight the war on terror;

9 (2) providing legal permanent residence to im-
10 migrants who have been living in the United States
11 for 5 years or more;

12 (3) granting conditional legal status and work
13 authorization to all law-abiding immigrants living in
14 the United States for less than 5 years; and

15 (4) repealing provisions that bar certain alien
16 from admission into the United States for a period
17 of 3 to 10 years or that place aliens at risk of re-
18 moval from the United States for having committed
19 minor nonviolent offenses.

TITLE I—LEGALIZATION OF STATUS

SEC. 101. ADJUSTMENT OF STATUS OF CERTAIN 5-YEAR RESIDENTS TO THAT OF PERSON ADMITTED FOR LAWFUL PERMANENT RESIDENCE.

(a) IN GENERAL.—Chapter 5 of title II (8 U.S.C. 1255 et seq.) is amended by inserting after section 245A the following:

“ADJUSTMENT OF STATUS OF CERTAIN 5-YEAR RESIDENTS TO THAT OF PERSON ADMITTED FOR LAWFUL PERMANENT RESIDENCE

“SEC. 245B. (a) RESIDENT STATUS.—

“(1) IN GENERAL.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for permanent residence if the alien meets the requirements of this subsection.

“(2) TIMELY APPLICATION.—

“(A) DURING APPLICATION PERIOD.—The alien must apply for such adjustment during the 24-month period beginning on the date final regulations are issued to carry out this section.

“(B) INFORMATION INCLUDED IN APPLICATION.—Each application under subparagraph (A) shall contain such information as the Attorney General may require, including information

1 on living relatives of the applicant with respect
2 to whom a petition for preference or other sta-
3 tus may be filed by the applicant at any later
4 date under section 204(a).

5 “(3) CONTINUOUS 5-YEAR RESIDENCE.—

6 “(A) IN GENERAL.—

7 “(i) 5 YEARS.—The alien must estab-
8 lish continuous residence in the United
9 States during the 5-year period ending on
10 January 29, 2003, and through the date
11 the application was filed.

12 “(ii) TREATMENT OF CERTAIN AB-
13 SENCES.—An alien shall not be considered
14 to have lost continuous residence by reason
15 of an absence from the United States per-
16 mitted under subsection (b)(9).

17 “(B) EXCHANGE VISITORS.—If the alien
18 was at any time a nonimmigrant exchange alien
19 (as defined in section 101(a)(15)(J)), the alien
20 must establish that the alien was not subject to
21 the two-year foreign residence requirement of
22 section 212(e) or has fulfilled that requirement
23 or received a waiver thereof.

24 “(4) CONTINUOUS PRESENCE.—

1 “(A) IN GENERAL.—The alien must estab-
2 lish that the alien has been continuously phys-
3 ically present in the United States since Janu-
4 ary 29, 2003.

5 “(B) TREATMENT OF BRIEF, CASUAL, AND
6 INNOCENT ABSENCES.—An alien shall not be
7 considered to have failed to maintain contin-
8 uous physical presence in the United States for
9 purposes of subparagraph (A) by virtue of brief,
10 casual, and innocent absences from the United
11 States.

12 “(C) ADMISSIONS.—Nothing in this section
13 shall be construed as authorizing an alien to
14 apply for admission to, or to be admitted to, the
15 United States in order to apply for adjustment
16 of status under this subsection.

17 “(5) ADMISSIBLE AS IMMIGRANT.—The alien
18 must establish that the alien—

19 “(A) is admissible to the United States as
20 an immigrant, except as otherwise provided
21 under subsection (c)(2);

22 “(B) has not been convicted of any felony
23 or three or more misdemeanors committed in
24 the United States;

1 “(C) has not assisted in the persecution of
2 any person or persons on account of race, reli-
3 gion, nationality, membership in a particular
4 group, or political opinion;

5 “(D) is registered or registering under the
6 Military Selective Service Act, if the alien is re-
7 quired to be so registered; and

8 “(E) has not received public cash assist-
9 ance.

10 “(b) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

11 “(1) CONDITIONS FOR ACCEPTANCE OF APPLI-
12 CATION.—An application shall be accepted under
13 this subsection upon a determination that the appli-
14 cant is prima facie eligible for adjustment of status
15 under subsection (a), which determination shall not
16 be made before, at a minimum, the identity of the
17 applicant has been checked against all appropriate
18 electronic databases maintained by the Attorney
19 General and by the Secretary of State and appro-
20 priate foreign entities or international law enforce-
21 ment databases to determine any grounds on which
22 the alien may be inadmissible to the United States
23 that may not be waived under subsection (c)(2).

24 “(2) TO WHOM MAY BE MADE.—

1 “(A) IN GENERAL.—The Attorney General
2 shall provide that applications for adjustment of
3 status under subsection (a) may be filed—

4 “(i) with the Attorney General; or

5 “(ii) with a qualified designated enti-
6 ty, but only if the applicant consents to the
7 forwarding of the application to the Attor-
8 ney General.

9 “(B) DEFINITION.—As used in this sec-
10 tion, the term ‘qualified designated entity’
11 means an organization or person designated
12 under paragraph (3).

13 “(3) DESIGNATION OF QUALIFIED ENTITIES TO
14 RECEIVE APPLICATIONS.—For purposes of assisting
15 in the program of legalization provided under this
16 section, the Attorney General—

17 “(A) shall designate qualified voluntary or-
18 ganizations and other qualified State, local, and
19 community organizations; and

20 “(B) may designate such other persons as
21 the Attorney General determines are qualified
22 and have substantial experience, demonstrated
23 competence, and traditional long-term involve-
24 ment in the preparation and submittal of appli-
25 cations for adjustment of status under section

1 209 or 245, Public Law 89–732, or Public Law
2 95–145.

3 “(4) TREATMENT OF APPLICATIONS BY DES-
4 IGNATED ENTITIES.—Each qualified designated enti-
5 ty must agree to forward to the Attorney General
6 applications filed with it in accordance with para-
7 graph (2)(A)(ii) but not to forward to the Attorney
8 General applications filed with it unless the appli-
9 cant has consented to such forwarding. No such en-
10 tity may make a determination required by this sec-
11 tion to be made by the Attorney General.

12 “(5) LIMITATION ON ACCESS TO INFORMA-
13 TION.—Files and records of qualified designated en-
14 tities relating to an alien’s seeking assistance or in-
15 formation with respect to filing an application under
16 this section are confidential and the Attorney Gen-
17 eral and the Service shall not have access to such
18 files or records relating to an alien without the con-
19 sent of the alien.

20 “(6) CONFIDENTIALITY OF INFORMATION.—

21 “(A) IN GENERAL.—Except as provided in
22 this paragraph, neither the Attorney General,
23 nor any other official or employee of the De-
24 partment of Justice, or bureau or agency there-
25 of, may—

1 “(i) use the information furnished by
2 the applicant pursuant to an application
3 filed under this section for any purpose
4 other than to make a determination on the
5 application, for enforcement of paragraph
6 (7);

7 “(ii) make any publication whereby
8 the information furnished by any par-
9 ticular applicant can be identified; or

10 “(iii) permit anyone other than the
11 sworn officers and employees of the De-
12 partment or bureau or agency or, with re-
13 spect to applications filed with a des-
14 ignated entity, that designated entity, to
15 examine individual applications.

16 “(B) REQUIRED DISCLOSURES.—The At-
17 torney General shall provide the information
18 furnished under this section, and any other in-
19 formation derived from such furnished informa-
20 tion, to a duly recognized law enforcement enti-
21 ty in connection with a criminal investigation or
22 prosecution, when such information is requested
23 in writing by such entity, or to an official cor-
24 oner for purposes of affirmatively identifying a

1 deceased individual (whether or not such indi-
2 vidual is deceased as a result of a crime).

3 “(C) AUTHORIZED DISCLOSURES.—The
4 Attorney General may provide, in the Attorney
5 General’s discretion, for the furnishing of infor-
6 mation furnished under this section in the same
7 manner and circumstances as census informa-
8 tion may be disclosed by the Secretary of Com-
9 merce under section 8 of title 13, United States
10 Code.

11 “(D) CONSTRUCTION.—

12 “(i) IN GENERAL.—Nothing in this
13 paragraph shall be construed to limit the
14 use, or release, for immigration enforce-
15 ment purposes or law enforcement pur-
16 poses of information contained in files or
17 records of the Service pertaining to an ap-
18 plication filed under this section, other
19 than information furnished by an applicant
20 pursuant to the application, or any other
21 information derived from the application,
22 that is not available from any other source.

23 “(ii) CRIMINAL CONVICTIONS.—Infor-
24 mation concerning whether the applicant
25 has at any time been convicted of a crime

1 may be used or released for immigration
2 enforcement or law enforcement purposes.

3 “(E) CRIME.—Whoever knowingly uses,
4 publishes, or permits information to be exam-
5 ined in violation of this paragraph shall be fined
6 not more than \$10,000.

7 “(7) PENALTIES FOR FALSE STATEMENTS IN
8 APPLICATIONS.—Whoever files an application for ad-
9 justment of status under this section and knowingly
10 and willfully falsifies, misrepresents, conceals, or
11 covers up a material fact or makes any false, ficti-
12 tious, or fraudulent statements or representations,
13 or makes or uses any false writing or document
14 knowing the same to contain any false, fictitious, or
15 fraudulent statement or entry, shall be fined in ac-
16 cordance with title 18, United States Code, or im-
17 prisoned not more than five years, or both.

18 “(8) APPLICATION FEES.—

19 “(A) FEE SCHEDULE.—The Attorney Gen-
20 eral shall provide for a schedule of fees to be
21 charged for the filing of applications for adjust-
22 ment under this section. Such fees shall not ex-
23 ceed the Attorney General’s costs in adjudi-
24 cating the applications.

1 “(B) USE OF FEES.—The Attorney Gen-
2 eral shall deposit payments received under this
3 paragraph in a separate account and amounts
4 in such account shall be available, without fiscal
5 year limitation, to cover administrative and
6 other expenses incurred in connection with the
7 review of applications filed under this sub-
8 section.

9 “(9) AUTHORIZED TRAVEL AND EMPLOY-
10 MENT.—During the period after an alien has sub-
11 mitted an application under this subsection and be-
12 fore the Attorney General has rendered a decision to
13 accept or reject such application, and during the pe-
14 riod after the acceptance of an alien’s application
15 under this subsection and before the Attorney Gen-
16 eral has rendered a final decision granting or deny-
17 ing such application, the Attorney General—

18 “(A) shall not remove the alien from the
19 United States;

20 “(B) shall, in accordance with regulations,
21 permit the alien to return to the United States
22 after such brief and casual trips abroad as re-
23 flect an intention on the part of the alien to ad-
24 just to lawful permanent resident status under
25 subsection (a) and after brief temporary trips

1 abroad occasioned by a family obligation involv-
2 ing an occurrence such as the illness or death
3 of a close relative or other family need; and

4 “(C) shall, not later than 90 days after the
5 alien’s application under this subsection has
6 been accepted under paragraph (1), grant the
7 alien authorization to engage in employment in
8 the United States and provide to the alien an
9 ‘employment authorized’ endorsement or other
10 appropriate work permit.

11 “(c) WAIVER OF NUMERICAL LIMITATIONS AND CER-
12 TAIN GROUNDS FOR INADMISSIBILITY.—

13 “(1) NUMERICAL LIMITATIONS DO NOT
14 APPLY.—The numerical limitations of sections 201
15 and 202 shall not apply to the adjustment of aliens
16 to lawful permanent resident status under subsection
17 (a) or (g).

18 “(2) TREATMENT OF GROUNDS FOR INADMIS-
19 SIBILITY.—

20 “(A) INAPPLICABLE GROUNDS FOR INAD-
21 MISSIBILITY.—In the determination of an
22 alien’s admissibility under subsection (a), the
23 provisions of paragraphs (4), (5), (6)(A),
24 (6)(C), (6)(F), (6)(G), (7)(A), (9)(B), and
25 (9)(C) of section 212(a) shall not apply.

1 “(B) WAIVER OF GROUNDS FOR INADMISS-
2 SIBILITY.—

3 “(i) IN GENERAL.—Except as pro-
4 vided in clause (ii), the Attorney General
5 may waive any other provision of section
6 212(a) in the case of individual aliens for
7 humanitarian purposes, to assure family
8 unity, or when it is otherwise in the public
9 interest.

10 “(ii) GROUNDS THAT MAY NOT BE
11 WAIVED.—The following provisions of sec-
12 tion 212(a) may not be waived by the At-
13 torney General under clause (i):

14 “(I) Paragraphs (2)(A) and
15 (2)(B) (relating to criminals).

16 “(II) Paragraph (2)(C) (relating
17 to drug offenses), except for so much
18 of such paragraph as relates to a sin-
19 gle offense of simple possession of 30
20 grams or less of marijuana.

21 “(III) Paragraph (3) (relating to
22 security and related grounds).

23 “(C) MEDICAL EXAMINATION.—The alien
24 shall be required, at the alien’s expense, to un-
25 dergo such a medical examination (including a

1 determination of immunization status) as is ap-
2 propriate and conforms to generally accepted
3 professional standards of medical practice.

4 “(d) TEMPORARY STAY OF DEPORTATION AND
5 WORK AUTHORIZATION BEFORE APPLICATION PERIOD.—
6 The Attorney General may provide that in the case of an
7 alien who is apprehended before the beginning of the ap-
8 plication period described in subsection (a)(2)(A) and who
9 can establish a prima facie case of eligibility to have his
10 status adjusted under subsection (a) or (g) (but for the
11 fact that the alien may not apply for such adjustment until
12 the beginning of such period), until the alien has had the
13 opportunity during the first 180 days of the application
14 period to complete the filing of an application for adjust-
15 ment, the alien—

16 “(1) may not be removed from the United
17 States; and

18 “(2) shall be granted authorization to engage in
19 employment in the United States and be provided an
20 ‘employment authorized’ endorsement or other ap-
21 propriate work permit.

22 “(e) ADMINISTRATIVE AND JUDICIAL REVIEW.—

23 “(1) ADMINISTRATIVE AND JUDICIAL RE-
24 VIEW.—There shall be no administrative or judicial
25 review of a determination respecting an application

1 for adjustment of status under subsection (a) or (g)
2 except in accordance with this subsection.

3 “(2) ADMINISTRATIVE REVIEW.—

4 “(A) SINGLE LEVEL OF ADMINISTRATIVE
5 APPELLATE REVIEW.—The Attorney General
6 shall establish an appellate authority to provide
7 for a single level of administrative appellate re-
8 view of a determination described in paragraph
9 (1).

10 “(B) STANDARD FOR REVIEW.—Such ad-
11 ministrative appellate review shall be based
12 solely upon the administrative record estab-
13 lished at the time of the determination on the
14 application and upon such additional or newly
15 discovered evidence as may not have been avail-
16 able at the time of the determination.

17 “(3) JUDICIAL REVIEW.—

18 “(A) LIMITATION TO REVIEW OF DEPOR-
19 TATION.—There shall be judicial review of such
20 a denial only in the judicial review of an order
21 of removal under section 242.

22 “(B) STANDARD FOR JUDICIAL REVIEW.—
23 Such judicial review shall be based solely upon
24 the administrative record established at the
25 time of the review by the appellate authority

1 and the findings of fact and determinations
2 contained in such record shall be conclusive un-
3 less the applicant can establish abuse of discre-
4 tion or that the findings are directly contrary to
5 clear and convincing facts contained in the
6 record considered as a whole.

7 “(f) IMPLEMENTATION OF SECTION.—

8 “(1) REGULATIONS.—The Attorney General,
9 after consultation with the Committees on the Judi-
10 ciary of the House of Representatives and of the
11 Senate, shall prescribe—

12 “(A) regulations establishing a definition
13 of the term ‘continuous residence’, as used in
14 this section, and the evidence needed to estab-
15 lish that an alien has resided continuously in
16 the United States for purposes of this section;
17 and

18 “(B) such other regulations as may be nec-
19 essary to carry out this section.

20 “(2) CONSIDERATIONS.—In prescribing regula-
21 tions described in paragraph (1)(A), the following
22 requirements shall apply:

23 “(A) PERIODS OF CONTINUOUS RESI-
24 DENCE.—The Attorney General shall specify
25 periods of absence from the United States

1 which will be considered to break a period of
2 continuous residence in the United States and
3 shall not take into account absences due merely
4 to brief and casual trips abroad.

5 “(B) ABSENCES CAUSED BY REMOVAL.—If
6 a waiver is granted pursuant to subsection
7 (c)(2)(B) for an alien who is inadmissible under
8 section 212(a)(9)(A) due to having been or-
9 dered removed, or having departed the United
10 States while an order of removal was out-
11 standing, the Attorney General shall provide
12 that any period of time during which the alien
13 is outside the United States because of such re-
14 moval or departure shall be disregarded in de-
15 termining any period of continuous residence or
16 presence in the United States for purposes of
17 this section.

18 “(C) ABSENCES CAUSED BY ADVANCE PA-
19 ROLE.—The Attorney General shall provide
20 that any period of time during which an alien
21 is outside the United States pursuant to the ad-
22 vance parole procedures of the Service shall not
23 be considered as part of the period of time dur-
24 ing which an alien is outside the United States
25 for purposes of this section.

1 “(D) WAIVERS OF CERTAIN ABSENCES.—

2 The Attorney General shall provide for a waiv-
3 er, in the discretion of the Attorney General, of
4 the periods specified under subparagraph (A) in
5 the case of an absence from the United States
6 due merely to a brief temporary trip abroad re-
7 quired by emergency or extenuating cir-
8 cumstances outside the control of the alien.

9 “(E) USE OF CERTAIN DOCUMENTA-
10 TION.—The Attorney General shall provide that
11 the applicant may submit evidence to establish
12 his or her continuous residence, including—

13 “(i) attestations;

14 “(ii) photographs;

15 “(iii) rental records;

16 “(iv) medical records;

17 “(v) employment;

18 “(vi) school records;

19 “(vii) bank records; and

20 “(viii) attestations from community

21 leaders, religious leaders, coworkers, or so-

22 cial service providers.

23 “(g) FAMILY UNIFICATION.—

24 “(1) IN GENERAL.—The status of an alien shall

25 be adjusted by the Attorney General to that of an

1 alien lawfully admitted for permanent residence con-
2 currently with the adjustment of the principal alien,
3 if—

4 “(A) the alien is the spouse or child of an
5 alien whose status is adjusted to that of an
6 alien lawfully admitted for permanent residence
7 under subsection (a);

8 “(B) the alien is otherwise admissible to
9 the United States for permanent residence, ex-
10 cept in determining such admissibility the
11 grounds for inadmissibility specified in para-
12 graphs (4), (5), (6)(A), (6)(C), (6)(F), (6)(G),
13 (7)(A), (9)(B), and (9)(C) of section 212(a)
14 shall not apply; and

15 “(C) the spouse or child was included in
16 the application required under subsection (a).

17 “(2) DETERMINATION OF WHETHER APPLICANT
18 IS A CHILD.—For purposes of paragraph (1)(A), a
19 determination of whether an alien is a child shall be
20 made using the age of the alien on the date on
21 which the application under subsection (a) is filed.

22 “(h) INAPPLICABILITY OF REMOVAL ORDER REIN-
23 STATEMENT.—Section 241(a)(5) shall not apply with re-
24 spect to an alien who is applying for adjustment of status
25 under this section.

1 “(i) DISSEMINATION OF INFORMATION ON LEGAL-
 2 IZATION PROGRAM.—Beginning not later than the first
 3 day of the application period described in subsection
 4 (a)(2)(A), the Attorney General, in cooperation with quali-
 5 fied designated entities, shall broadly disseminate informa-
 6 tion respecting the benefits which aliens may receive under
 7 this section and section 245C and the requirements to ob-
 8 tain such benefits.”.

9 (b) CLERICAL AMENDMENT.—The table of contents
 10 is amended by inserting after the item relating to section
 11 245A the following:

“Sec. 245B. Adjustment of status of certain 5-year residents to that of person
 admitted for lawful residence.”.

12 **SEC. 102. CONDITIONAL PERMANENT RESIDENT STATUS**
 13 **FOR CERTAIN OTHER ALIENS UNABLE TO**
 14 **SATISFY 5-YEAR RESIDENCE REQUIREMENT.**

15 (a) IN GENERAL.—Chapter 5 of title II, as amended
 16 by section 101, is further amended by inserting after sec-
 17 tion 245B the following:

18 “CONDITIONAL PERMANENT RESIDENT STATUS FOR CER-
 19 TAIN ALIENS INELIGIBLE FOR ADJUSTMENT UNDER
 20 SECTION 245B

21 “SEC. 245C. (a) IN GENERAL.—

22 “(1) CONDITIONAL BASIS.—In the case of an
 23 alien who has commenced a period of continuous
 24 residence in the United States, who timely applies

1 for adjustment of status under section 245B, and
2 who is otherwise eligible for adjustment of status
3 under subsection (a) of such section, except that the
4 alien is unable to satisfy the 5-year residence re-
5 quirement described in subsection (a)(3)(A)(i) of
6 such section, the Attorney General, notwithstanding
7 such inability—

8 “(A) shall accept the application in accord-
9 ance with subsection (b)(1) of such section if
10 the application otherwise satisfies the require-
11 ments of section 245B; and

12 “(B) shall adjust the status of the alien to
13 that of an alien lawfully admitted for perma-
14 nent residence on a conditional basis if the alien
15 otherwise satisfies the requirements of section
16 245B.

17 “(2) EXCEPTION.—The Attorney General shall
18 deem an alien described in paragraph (1) to have
19 satisfied the 5-year residence requirement described
20 in section 245B(a)(3)(A)(i), and shall adjust the sta-
21 tus of the alien under section 245B(a) and not
22 under this section, if the alien establishes, before the
23 application for adjustment of status under section
24 245B is adjudicated (and subject to section

1 245B(a)(3)(A)(ii)), that period of residence in the
2 United States—

3 “(A) has remained continuous for not less
4 than 5 years; or

5 “(B) will satisfy subparagraph (A) not
6 later than the end of the 90-day period begin-
7 ning on such adjudication date.

8 “(b) FAMILY UNIFICATION.—In the case of a spouse
9 or child of a principal alien who obtains permanent resi-
10 dent status on a conditional basis under subsection (a),
11 the Attorney General shall provide for the concurrent
12 granting of the same status to the spouse or child if, dis-
13 regarding the inability of the principal alien to satisfy the
14 5-year residence requirement described in section
15 245B(a)(3)(A)(i), the spouse or child is eligible for adjust-
16 ment of status under section 245B(g).

17 “(c) APPLICATION OF ADDITIONAL PROVISIONS.—
18 Except as otherwise provided in this section, the provisions
19 of subsections (b), (c), (d), (e), and (h) of section 245B
20 shall apply under this section in the same manner as such
21 provisions apply under section 245B.

22 “(d) NOTICE OF REQUIREMENTS.—

23 “(1) AT TIME OF OBTAINING PERMANENT RESI-
24 DENCE.—At the time an alien obtains permanent
25 resident status on a conditional basis under sub-

1 section (a) or (b), the Attorney General shall provide
2 for notice to such alien respecting the provisions of
3 this section and the requirements to have the condi-
4 tional basis of such status removed.

5 “(2) AT TIME OF REQUIRED PETITION.—In ad-
6 dition, the Attorney General shall attempt to provide
7 notice to such alien, at or about the beginning of the
8 90-day period described in subsection (e)(2), of such
9 provisions and requirements.

10 “(3) EFFECT OF FAILURE TO PROVIDE NO-
11 TICE.—The failure of the Attorney General to pro-
12 vide a notice under this subsection shall not affect
13 the enforcement of the provisions of this section with
14 respect to any alien.

15 “(e) REQUIREMENT OF TIMELY PETITION FOR RE-
16 MOVAL OF CONDITION ON PRINCIPAL ALIEN.—

17 “(1) IN GENERAL.—In order for the conditional
18 basis established under subsection (a) for an alien to
19 be removed, the alien must submit to the Attorney
20 General a petition which requests the removal of
21 such conditional basis and which states, under pen-
22 alty of perjury, facts and information establishing—

23 “(A) subject to section 245B(a)(3)(A)(ii),
24 that the period of residence described in sub-

1 section (a) has remained continuous for not less
2 than 5 years;

3 “(B) that the alien has never been inad-
4 missible under section 212(a)(4); and

5 “(C) subject to the exceptions described in
6 section 245B(c)(2), that the alien satisfies the
7 requirements of section 245B(a)(5).

8 “(2) SUBMISSION PERIOD.—A petition under
9 paragraph (1) shall be submitted during the 90-day
10 period ending on the date that is 5 years after the
11 date on which the alien commenced the period of
12 residence described in subsection (a).

13 “(3) TERMINATION OF PERMANENT RESIDENT
14 STATUS FOR FAILURE TO FILE PETITION.—

15 “(A) IN GENERAL.—In the case of an alien
16 with permanent resident status on a conditional
17 basis under subsection (a), if no petition is filed
18 with respect to the alien in accordance with the
19 provisions of paragraphs (1) and (2), the Attor-
20 ney General shall terminate the permanent resi-
21 dent status of the alien (and that of the alien’s
22 spouse and children, if obtained under sub-
23 section (b)) as of the 5-year anniversary of the
24 date on which the period of residence described
25 in subsection (a) commenced.

1 “(B) HEARING IN REMOVAL PRO-
2 CEEDING.—In any removal proceeding with re-
3 spect to an alien whose permanent resident sta-
4 tus is terminated under subparagraph (A), the
5 burden of proof shall be on the alien to estab-
6 lish compliance with the conditions of para-
7 graphs (1) and (2).

8 “(C) HARDSHIP WAIVER.—The Attorney
9 General, in the Attorney General’s discretion,
10 may remove the conditional basis of the perma-
11 nent resident status for an alien who fails to
12 meet the requirements of paragraphs (1) and
13 (2) if the alien demonstrates that extreme hard-
14 ship would result if such alien is removed.

15 “(f) DETERMINATION AFTER PETITION.—

16 “(1) IN GENERAL.—If a petition is filed in ac-
17 cordance with the provisions of subsection (e), the
18 Attorney General shall make a determination, within
19 90 days of the date of the filing, as to whether the
20 facts and information alleged in the petition are
21 true.

22 “(2) REMOVAL OF CONDITIONAL BASIS IF FA-
23 VORABLE DETERMINATION.—

24 “(A) PRINCIPAL ALIEN.—If the Attorney
25 General determines that such facts and infor-

1 mation are true, the Attorney General shall so
2 notify the parties involved and shall remove the
3 conditional basis of the principal alien effective
4 as of the 5th anniversary of the date on which
5 the period of residence described in subsection
6 (a) commenced.

7 “(B) SPOUSE AND CHILDREN.—In the
8 case of a spouse or child with permanent resi-
9 dent status on a conditional basis under sub-
10 section (b), upon the removal of the principal
11 alien’s conditional basis under subparagraph
12 (B), the Attorney General shall determine
13 whether the spouse or child satisfies the re-
14 quirement of section 245B(g)(1)(B). If the
15 spouse or child is determined to satisfy such re-
16 quirement, the Attorney General shall so notify
17 the parties involved and shall remove the condi-
18 tional basis of the spouse or child effective as
19 of the 5th anniversary of the date on which the
20 period of residence described in subsection (a)
21 commenced. Otherwise, the Attorney General
22 shall so notify the parties involved and shall
23 terminate the permanent resident status of the
24 spouse or child.

1 “(3) TERMINATION IF ADVERSE DETERMINA-
2 TION.—If the Attorney General determines that such
3 facts and information are not true, the Attorney
4 General shall so notify the parties involved and, sub-
5 ject to paragraph (4), shall terminate the permanent
6 resident status of the principal alien (and that of the
7 alien’s spouse and children, if obtained under sub-
8 section (b)).

9 “(4) HEARING IN REMOVAL PROCEEDING.—Any
10 alien whose permanent resident status is terminated
11 under paragraph (3) may request a review of such
12 determination in a proceeding to remove the alien.
13 In such proceeding, the burden of proof shall be on
14 the Attorney General to establish, by a preponder-
15 ance of the evidence, that the facts and information
16 required to be alleged in the petition are not true.

17 “(g) DETERMINATION OF WHETHER A CHILD.—For
18 purposes of this section, a determination of whether an
19 alien is a child shall be made using the age of the alien
20 on the date on which the alien files an application for per-
21 manent residence under subsection (b).

22 “(h) TREATMENT OF PERIOD FOR PURPOSES OF
23 NATURALIZATION.—For purposes of title III, in the case
24 of an alien who is in the United States as a lawful perma-
25 nent resident on a conditional basis under this section, the

1 alien shall be considered to have been admitted as an alien
 2 lawfully admitted for permanent residence and to be in
 3 the United States as an alien lawfully admitted to the
 4 United States for permanent residence.”.

5 (b) CLERICAL AMENDMENT.—The table of contents
 6 is amended by inserting after the item relating to section
 7 245B the following:

“Sec. 245C. Conditional permanent resident status for certain aliens ineligible
 for adjustment under section 245B.”.

8 **TITLE II—MODIFICATION OF** 9 **PROVISIONS AFFECTING RE-** 10 **MOVAL OF ALIENS**

11 **SEC. 201. ELIMINATION OF RETROACTIVE APPLICATION OF** 12 **CERTAIN PROVISIONS OF THE IMMIGRATION** 13 **AND NATIONALITY ACT.**

14 (a) CANCELLATION OF REMOVAL.—Section 240A (8
 15 U.S.C. 1229b) is amended by adding at the end the fol-
 16 lowing new subsection:

17 “(f) APPLICATION OF LAW.—Notwithstanding any
 18 other provision of this section, an alien who committed an
 19 offense that was a ground for deportation or exclusion
 20 prior to April 1, 1997, shall have the law in effect at the
 21 time of the offense apply with respect to any application
 22 for relief from deportation or exclusion on that ground.
 23 For purposes of determining eligibility for such relief, such
 24 alien shall be credited with any periods of residency in the

1 United States that the alien has accrued without regard
 2 to whether or not the residency occurred after the commis-
 3 sion of the offense or service of a notice to appear under
 4 section 239(a).”.

5 (b) APPLICATION OF AGGRAVATED FELONY DEFINI-
 6 TION.—The last sentence of section 101(a)(43) (8 U.S.C.
 7 1101(a)(43)) is amended to read as follows: “The term
 8 shall not apply to any offense that was not covered by
 9 the term on the date on which the offense occurred.”.

10 (c) GROUNDS OF DEPORTABILITY.—Section 237 (8
 11 U.S.C. 1227) is amended by adding at the end the fol-
 12 lowing new subsection:

13 “(d) Notwithstanding any other provision of this sec-
 14 tion, an alien is not deportable by reason of committing
 15 any offense that was not a ground of deportability on the
 16 date the offense occurred.”.

17 (d) GROUNDS OF INADMISSIBILITY.—Section 212 (8
 18 U.S.C. 1182) is amended—

19 (1) by redesignating the subsection (p) added
 20 by section 1505(f) of P.L. 106–386 (114 Stat.
 21 1526) as a subsection (s); and

22 (2) by adding at the end the following new sub-
 23 section:

24 “(t)(1) Notwithstanding any other provision of this
 25 section, an alien is not inadmissible by reason of commit-

1 ting any offense that was not a ground of inadmissibility
 2 on the date the offense occurred.

3 “(2) Any alien who applied for admission to the
 4 United States or adjustment of status to that of an alien
 5 lawfully admitted for permanent residence prior to April
 6 1, 1997, and was inadmissible under subsection (a)(6)(C),
 7 shall be eligible for the relief available (including any waiv-
 8 er of inadmissibility) at the time the application was
 9 filed.”.

10 (e) PROSPECTIVE EFFECTIVE DATES.—

11 (1) ILLEGAL IMMIGRATION REFORM AND IMMI-
 12 GRANT RESPONSIBILITY ACT.—Notwithstanding any
 13 other provision of law, the Illegal Immigration Re-
 14 form and Immigrant Responsibility Act of 1996, and
 15 the amendments made by that Act, shall apply only
 16 to persons seeking admission, or who became inad-
 17 missible or deportable, on or after April 1, 1997, as
 18 the case may be.

19 (2) ANTITERRORISM AND EFFECTIVE DEATH
 20 PENALTY ACT OF 1996.—Notwithstanding any other
 21 provision of law, title IV of the Antiterrorism and
 22 Effective Death Penalty Act of 1996, and the
 23 amendments made by that title, shall only apply to
 24 persons seeking admission, or who become deport-
 25 able, on or after April 24, 1996.

1 (3) REINSTATEMENT OF REMOVAL ORDERS.—
 2 Section 241(a)(5) (8 U.S.C. 1231(a)(5)) is repealed,
 3 and such repeal shall apply to all proceedings pend-
 4 ing at any stage as of the date of the enactment of
 5 this Act and to all cases brought on or after such
 6 date.

7 **SEC. 202. RESTORATION OF PROPORTIONALITY TO**
 8 **GROUND OF REMOVAL.**

9 (a) DEFINITION OF CRIMES INVOLVING MORAL TUR-
 10 PITUDE.—Section 237(a)(2)(A)(i) (8 U.S.C.
 11 1227(a)(2)(A)(i)) is amended to read as follows:

12 “(i) CRIMES OF MORAL TURPITUDE.—Any
 13 alien who is convicted of a crime involving
 14 moral turpitude committed within five years
 15 after the date of admissions (or 10 years in the
 16 case of an alien provided lawful permanent resi-
 17 dence status under section 245(j)) for which the
 18 alien is confined in a prison or correctional in-
 19 stitution for more than one year, is deport-
 20 able.”.

21 (b) DEFINITION OF AGGRAVATED FELONY.—Section
 22 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

23 (1) in subparagraphs (F), (G), (J), (R), and
 24 (S), by striking “one year” each place it appears
 25 and inserting “five years”;

1 (2) by amending subparagraph (N) (8 U.S.C.
2 1101(a)(43)(N)) to read as follows:

3 “(N) an offense described in section 274(a)(1)
4 (relating to alien smuggling) for the purpose of com-
5 mercial advantage.”;

6 (3) in subparagraph (P)(ii) (8 U.S.C.
7 1101(a)(43)(P)(ii)), by striking “child” and insert-
8 ing “son or daughter”;

9 (4) in subparagraph (T), by striking “2 years’ ”
10 and inserting “5 years’ ”; and

11 (5) by adding at the end of section 101(a)(43)
12 the following: “No crime shall be deemed to be an
13 aggravated felony if the underlying conviction is a
14 misdemeanor or if the sentence imposed is not in ex-
15 cess of one year.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to convictions entered before, on,
18 or after the date of the enactment of this Act.

19 (d) CONVICTION DEFINED.—Section 101(a)(48)(A)
20 (8 U.S.C. 1101(a)(48)(A)) is amended—

21 (1) by redesignating clauses (i) and (ii) as sub-
22 clauses (I) and (II), respectively;

23 (2) by striking “(48)(A) The term” and insert-
24 ing “(48)(A)(i) Except as provided in clause (ii), the
25 term”; and

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

2 “(ii) For purposes of determinations under this Act,
3 the term ‘conviction’ does not include any Federal, State,
4 or foreign guilty plea or other record of guilt or conviction
5 that has been expunged, dismissed, canceled, vacated, dis-
6 charged or otherwise removed, or any Federal, State, or
7 foreign deferred adjudication, adjudication of guilt with-
8 held, order of probation without entry of judgment, or
9 similar disposition.”.

10 (e) DEFINITION OF TERM OF IMPRISONMENT.—Sec-
11 tion 101(a)(48)(B) (8 U.S.C. 1101(a)(48)(B)) is amended
12 to read as follows:

13 “(B) Any reference to a term of imprisonment or a
14 sentence with respect to an offense is deemed to include
15 the period of incarceration or confinement ordered by a
16 court of law excluding any period of the suspension of the
17 imposition or execution of that imprisonment or sentence
18 in whole or in part.”.

19 (f) CONFORMING AMENDMENTS.—

20 (1) GROUND OF INADMISSIBILITY.—Section
21 212(a)(6)(E) (8 U.S.C. 1182(a)(6)(E)) is amend-
22 ed—

23 (A) in clause (i), by inserting “and for
24 commercial advantage” after “knowingly”;

25 (B) by striking clause (ii); and

1 (C) by redesignating clause (iii) as clause
 2 (ii).

3 (2) GROUND OF DEPORTABILITY.—Section
 4 237(a)(1)(E) (8 U.S.C. 1227(a)(1)(E)) is amend-
 5 ed—

6 (A) in clause (i), by inserting “and for
 7 commercial advantage” after “knowingly”;

8 (B) by striking clause (ii); and

9 (C) by redesignating clause (iii) as clause
 10 (ii).

11 **SEC. 203. ELIMINATION OF PROHIBITION ON ADMISSION**
 12 **FOR ALIENS WHO HAVE BEEN UNLAWFULLY**
 13 **PRESENT IN THE UNITED STATES.**

14 (a) IN GENERAL.—Section 212(a)(9) (8 U.S.C.
 15 1182(a)(9)) is amended—

16 (1) by striking subparagraph (B); and

17 (2) by redesignating subparagraph (C) as sub-
 18 paragraph (B).

19 (b) CONFORMING AMENDMENT.—Section 248 (8
 20 U.S.C. 1258) is amended by striking “and who is not in-
 21 admissible under section 212(a)(9)(B)(i) (or whose inad-
 22 missibility under such section is waived under section
 23 212(a)(9)(B)(v))”.

1 **TITLE III—MISCELLANEOUS**

2 **SEC. 301. FAMILY UNIFICATION THROUGH CHANGE IN**
3 **WORLDWIDE LEVEL OF FAMILY-SPONSORED**
4 **IMMIGRANTS.**

5 Section 201(c)(2) of the Immigration and Nationality
6 Act (8 U.S.C. 1151(c)(2)) is amended by striking “the
7 sum of the number of aliens described in subparagraphs
8 (A) and (B) of subsection (b)(2)” and inserting “the num-
9 ber of aliens described in subsection (b)(2)(B)”.

10 **SEC. 302. VISA FOR CERTAIN SPOUSES AND CHILDREN OF**
11 **CITIZENS AND PERMANENT RESIDENTS TEM-**
12 **PORARILY WAITING FOR VISA NUMBERS.**

13 (a) IN GENERAL.—Section 101(a)(15)(V) (8 U.S.C.
14 1101(a)(15)(V)) is amended to read as follows:

15 “(V) subject to section 214(o), an alien (other
16 than one coming for the purpose of study or of per-
17 forming skilled or unskilled labor or as a representa-
18 tive of foreign press, radio, film, or other foreign in-
19 formation media coming to engage in such vocation)
20 who is the beneficiary of a petition approved
21 under—

22 “(i) section 204 (excluding the provisions
23 of such section referred to in clause (ii)) for
24 classification by reason of a relationship de-
25 scribed in section 203(a)(2)(A) with an alien

1 lawfully admitted for permanent residence, who
 2 is awaiting the availability of an immigrant visa
 3 based upon such approval, and who seeks to
 4 enter the United States to achieve family unity
 5 by joining the permanent resident alien in the
 6 United States; or

7 “(ii) clause (iii), (iv), or (v) of section
 8 204(a)(1)(A) or clause (ii), (iii), or (iv) of sec-
 9 tion 204(a)(1)(B) and who is awaiting the
 10 availability of an immigrant visa based upon
 11 such approval.”.

12 (b) CONFORMING AMENDMENTS.—Section 214 (8
 13 U.S.C. 1184) is amended—

14 (1) by redesignating the subsections (o) and (p)
 15 added by sections 1102(b) and 1103(b), respectively,
 16 of the Departments of Commerce, Justice, and
 17 State, the Judiciary, and Related Agencies Appro-
 18 priations Act, 2001, as enacted into law by section
 19 1(a)(2) of P.L. 106–553 as subsections (p) and (q);
 20 and

21 (2) in subsection (p) (as so redesignated)—

22 (A) in paragraph (1)(B)(i), by striking
 23 “under section 203(a)(2)(A)” each place such
 24 term appears;

1 (B) by striking paragraph (2) and redesignating paragraph (3) as paragraph (2); and

2
3 (C) in paragraph (2)(C) (as so redesignated), by striking “(6)(A), (7), and (9)(B)”
4 and inserting “(6)(A) and (7)”.

5
6 **TITLE IV—GENERAL**
7 **PROVISIONS**

8 **SEC. 401. REGULATIONS.**

9 The Attorney General shall promulgate regulations to
10 implement this Act not more than 90 days after the date
11 of the enactment of this Act.

12 **SEC. 402. AUTHORIZATION OF APPROPRIATIONS.**

13 (a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out this
14 Act.
15

16 (b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.
17
18

19 **SEC. 403. EFFECTIVE DATE.**

20 Except as otherwise provided in this Act, the amendments made by this Act shall take effect on the date of
21 the enactment of this Act.
22

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