

108TH CONGRESS
2D SESSION

S. 2816

To provide for adjustment of immigration status for certain aliens granted temporary protected status in the United States because of conditions in Montserrat.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2004

Mr. SCHUMER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for adjustment of immigration status for certain aliens granted temporary protected status in the United States because of conditions in Montserrat.

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 “Montserrat Immigra-
5 tion Fairness Act”.

6 **SEC. 2. ADJUSTMENT OF STATUS FOR CERTAIN NATIONALS**
7 **OF MONTSERRAT.**

8 (a) IN GENERAL.—The status of any alien described
9 in subsection (c) shall be adjusted by the Secretary of

1 Homeland Security to that of an alien lawfully admitted
 2 for permanent residence, if the alien—

3 (1) applies for such adjustment within 1 year
 4 after the date of enactment of this Act; and

5 (2) is determined to be admissible to the United
 6 States for permanent residence.

7 (b) CERTAIN GROUNDS FOR EXCLUSION INAPPLI-
 8 CABLE.—For purposes of determining admissibility under
 9 subsection (a)(2), the grounds for inadmissibility specified
 10 in paragraphs (4), (5), (6)(A), and 7(A) of section 212(a)
 11 of the Immigration and Nationality Act (8 U.S.C.
 12 1182(a)) shall not apply.

13 (c) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-
 14 TUS.—An alien shall be eligible for adjustment of status
 15 under subsection (a) only if the alien—

16 (1) is a national of Montserrat; and

17 (2) was granted temporary protected status in
 18 the United States by the Secretary of Homeland Se-
 19 curity pursuant to the designation of Montserrat
 20 under section 244(b)(1) of the Immigration and Na-
 21 tionality Act (8 U.S.C. 1254a(b)(1)) on August 28,
 22 1997.

23 **SEC. 3. EFFECT OF APPLICATION ON CERTAIN ORDERS.**

24 An alien present in the United States who has been
 25 ordered excluded, deported, or removed, or ordered to de-

1 part voluntarily, from the United States through an order
2 of removal issued under the Immigration and Nationality
3 Act (8 U.S.C. 1101 et seq.) may, notwithstanding such
4 order of removal, apply for adjustment of status under
5 section 1. Such an alien shall not be required to file a
6 separate motion to reopen, reconsider, or vacate the order
7 of removal. If the Secretary of Homeland Security ap-
8 proves the application, the Secretary shall cancel the order
9 of removal. If the Secretary renders a final administrative
10 decision to deny the application, the order of removal shall
11 be effective and enforceable to the same extent as if the
12 application had not been made.

13 **SEC. 4. WORK AUTHORIZATION.**

14 The Secretary of Homeland Security shall authorize
15 an alien who has applied for adjustment of status under
16 section 1 to engage in employment in the United States
17 during the pendency of such application and shall provide
18 the alien with an appropriate document signifying author-
19 ization of employment.

20 **SEC. 5. ADJUSTMENT OF STATUS FOR CERTAIN FAMILY**
21 **MEMBERS.**

22 (a) IN GENERAL.—The status of an alien shall be
23 adjusted by the Secretary of Homeland Security to that
24 of an alien lawfully admitted for permanent residence if
25 the alien—

1 (1) is the spouse, parent, or unmarried son or
2 daughter of an alien whose status is adjusted under
3 section 1;

4 (2) applies for adjustment under this section
5 within 2 years after the date of enactment of this
6 Act; and

7 (3) is determined to be admissible to the United
8 States for permanent residence.

9 (b) CERTAIN GROUNDS FOR EXCLUSION INAPPLI-
10 CABLE.—For purposes of determining admissibility under
11 subsection (a)(3), the grounds for inadmissibility specified
12 in paragraphs (4), (5), (6)(A), and 7(A) of section 212(a)
13 of the Immigration and Nationality Act (8 U.S.C.
14 1182(a)) shall not apply.

15 **SEC. 6. AVAILABILITY OF REVIEW.**

16 (a) ADMINISTRATIVE REVIEW.—The Secretary of
17 Homeland Security shall provide to aliens applying for ad-
18 justment of status under section 1 or 4 the same right
19 to, and procedures for, administrative review as are pro-
20 vided to—

21 (1) applicants for adjustment of status under
22 section 245 of the Immigration and Nationality Act
23 (8 U.S.C. 1255); or

24 (2) aliens subject to removal proceedings under
25 section 240 of such Act (8 U.S.C. 1229a).

1 (b) LIMITATION ON JUDICIAL REVIEW.—A deter-
2 mination by the Secretary of Homeland Security as to
3 whether the status of any alien should be adjusted under
4 this Act is final and shall not be subject to review by any
5 court.

6 **SEC. 7. NO OFFSET IN NUMBER OF VISAS AVAILABLE.**

7 The granting of adjustment of status under section
8 2 shall not reduce the number of immigrant visas author-
9 ized to be issued under any provision of the Immigration
10 and Nationality Act (8 U.S.C. 1101 et seq.).

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