

109TH CONGRESS
2D SESSION

H. R. 5131

To amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 2006

Mr. LINCOLN DIAZ-BALART of Florida (for himself, Mr. BERMAN, Ms. ROYBAL-ALLARD, Ms. HART, Mr. LEACH, Mr. LAHOOD, Mr. SKELTON, Ms. ROS-LEHTINEN, Ms. HARMAN, Mr. MARIO DIAZ-BALART of Florida, Mr. GUTIERREZ, Mr. FORTUÑO, and Mr. SABO) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children, 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 “American Dream Act”.

5 **SEC. 2. DEFINITIONS.**

6 In this Act:

7 (1) INSTITUTION OF HIGHER EDUCATION.—The
8 term “institution of higher education” has the
9 meaning given that term in section 101 of the High-
10 er Education Act of 1965 (20 U.S.C. 1001).

11 (2) UNIFORMED SERVICES.—The term “uni-
12 formed services” has the meaning given that term in
13 section 101(a) of title 10, United States Code.

14 **SEC. 3. RESTORATION OF STATE OPTION TO DETERMINE**
15 **RESIDENCY FOR PURPOSES OF HIGHER EDU-**
16 **CATION BENEFITS.**

17 (a) IN GENERAL.—Section 505 of the Illegal Immi-
18 gration Reform and Immigrant Responsibility Act of 1996
19 (8 U.S.C. 1623) is repealed.

20 (b) EFFECTIVE DATE.—The repeal under subsection
21 (a) shall take effect as if included in the enactment of the
22 Illegal Immigration Reform and Immigrant Responsibility
23 Act of 1996.

1 **SEC. 4. CANCELLATION OF REMOVAL AND ADJUSTMENT OF**
2 **STATUS OF CERTAIN LONG-TERM RESIDENTS**
3 **WHO ENTERED THE UNITED STATES AS CHIL-**
4 **DREN.**

5 (a) SPECIAL RULE FOR CERTAIN LONG-TERM RESI-
6 DENTS WHO ENTERED THE UNITED STATES AS CHIL-
7 DREN.—

8 (1) IN GENERAL.—Notwithstanding any other
9 provision of law and except as otherwise provided in
10 this Act, the Secretary of Homeland Security may
11 cancel removal of, and adjust to the status of an
12 alien lawfully admitted for permanent residence,
13 subject to the conditional basis described in section
14 5, an alien who is inadmissible or deportable from
15 the United States, if the alien demonstrates that—

16 (A) the alien has been physically present in
17 the United States for a continuous period of
18 not less than 5 years immediately preceding the
19 date of enactment of this Act, and had not yet
20 reached the age of 16 years at the time of ini-
21 tial entry;

22 (B) the alien has been a person of good
23 moral character since the time of application;

24 (C) the alien—

25 (i) is not inadmissible under para-
26 graph (2), (3), (6)(E), (6)(F), or (6)(G) of

1 section 212(a) of the Immigration and Na-
2 tionality Act (8 U.S.C. 1182(a)), or, if in-
3 admissible solely under paragraph (6) of
4 such subsection, the alien was under the
5 age of 16 years at the time the violation
6 was committed; and

7 (ii) is not deportable under paragraph
8 (1)(E), (2), or (4) of section 237(a) of the
9 Immigration and Nationality Act (8 U.S.C.
10 1227(a)); and

11 (D) the alien, at the time of application,
12 has been admitted to an institution of higher
13 education in the United States, or has earned
14 a high school diploma or obtained a general
15 education development certificate in the United
16 States.

17 (2) WAIVER.—The Secretary of Homeland Se-
18 curity may waive the grounds of ineligibility under
19 section 212(a) paragraphs (2), (6)(F) or (6)(G) of
20 the Immigration and Nationality Act, and the
21 grounds of deportability under section 237(a)(2) of
22 such Act, if the Secretary determines that the alien's
23 removal would result in extreme hardship to the
24 alien, the alien's child, or (in the case of an alien
25 who is a child) to the alien's parent.

1 (3) PROCEDURES.—The Secretary of Homeland
2 Security shall provide a procedure by regulation al-
3 lowing eligible individuals to apply affirmatively for
4 the relief available under this subsection without
5 being placed in removal proceedings.

6 (b) TERMINATION OF CONTINUOUS PERIOD.—For
7 purposes of this section, any period of continuous resi-
8 dence or continuous physical presence in the United States
9 of an alien who applies for cancellation of removal under
10 this section shall not terminate when the alien is served
11 a notice to appear under section 239(a) of the Immigra-
12 tion and Nationality Act (8 U.S.C. 1229(a)).

13 (c) TREATMENT OF CERTAIN BREAKS IN PRES-
14 ENCE.—

15 (1) IN GENERAL.—An alien shall not be consid-
16 ered to have failed to maintain continuous physical
17 presence in the United States for purposes of sub-
18 section (a)(1)(A) by virtue of brief, casual, and inno-
19 cent absences from the United States.

20 (2) WAIVER.—The Secretary of Homeland Se-
21 curity may waive breaks in presence beyond brief,
22 casual or innocent absences for humanitarian pur-
23 poses, family unity or when it is otherwise in the
24 public interest.

1 (d) EXEMPTION FROM NUMERICAL LIMITATIONS.—

2 Nothing in this section may be construed to apply a nu-
3 merical limitation on the number of aliens who may be
4 eligible for cancellation of removal or adjustment of status
5 under this section.

6 (e) REGULATIONS.—

7 (1) PROPOSED REGULATIONS.—Not later than
8 180 days after the date of enactment of this Act, the
9 Secretary of Homeland Security shall publish pro-
10 posed regulations implementing this section. Such
11 regulations shall be effective immediately on an in-
12 terim basis, but are subject to change and revision
13 after public notice and opportunity for a period for
14 public comment.

15 (2) INTERIM, FINAL REGULATIONS.—Not later
16 than 90 days after publication of the interim regula-
17 tions in accordance with paragraph (1), the Sec-
18 retary of Homeland Security shall publish final regu-
19 lations implementing this section.

20 (f) REMOVAL OF ALIEN.—The Secretary of Home-
21 land Security may not remove any alien who has a pending
22 application for conditional status under this Act.

23 **SEC. 5. CONDITIONAL PERMANENT RESIDENT STATUS.**

24 (a) IN GENERAL.—

1 (1) CONDITIONAL BASIS FOR STATUS.—Not-
2 withstanding any other provision of law, and except
3 as provided in section 6, an alien whose status has
4 been adjusted under section 4 to that of an alien
5 lawfully admitted for permanent residence shall be
6 considered to have obtained such status on a condi-
7 tional basis subject to the provisions of this section.
8 Such conditional permanent resident status shall be
9 valid for a period of 6 years, subject to termination
10 under subsection (b).

11 (2) NOTICE OF REQUIREMENTS.—

12 (A) AT TIME OF OBTAINING PERMANENT
13 RESIDENCE.—At the time an alien obtains per-
14 manent resident status on a conditional basis
15 under paragraph (1), the Secretary of Home-
16 land Security shall provide for notice to the
17 alien regarding the provisions of this section
18 and the requirements of subsection (c) to have
19 the conditional basis of such status removed.

20 (B) EFFECT OF FAILURE TO PROVIDE NO-
21 TICE.—The failure of the Secretary of Home-
22 land Security to provide a notice under this
23 paragraph—

1 (i) shall not affect the enforcement of
2 the provisions of this Act with respect to
3 the alien; and

4 (ii) shall not give rise to any private
5 right of action by the alien.

6 (b) TERMINATION OF STATUS.—

7 (1) IN GENERAL.—The Secretary of Homeland
8 Security shall terminate the conditional permanent
9 resident status of any alien who obtained such sta-
10 tus under this Act, if the Secretary determines that
11 the alien—

12 (A) ceases to meet the requirements of
13 subparagraph (B) or (C) of section 4(a)(1);

14 (B) has become a public charge; or

15 (C) has received a dishonorable or other
16 than honorable discharge from the uniformed
17 services.

18 (2) RETURN TO PREVIOUS IMMIGRATION STA-
19 TUS.—Any alien whose conditional permanent resi-
20 dent status is terminated under paragraph (1) shall
21 return to the immigration status the alien had im-
22 mediately prior to receiving conditional permanent
23 resident status under this Act.

24 (c) REQUIREMENTS OF TIMELY PETITION FOR RE-
25 MOVAL OF CONDITION.—

1 (1) IN GENERAL.—In order for the conditional
2 basis of permanent resident status obtained by an
3 alien under subsection (a) to be removed, the alien
4 must file with the Secretary of Homeland Security,
5 in accordance with paragraph (3), a petition which
6 requests the removal of such conditional basis and
7 which provides, under penalty of perjury, the facts
8 and information so that the Secretary may make the
9 determination described in paragraph (2)(A).

10 (2) ADJUDICATION OF PETITION TO REMOVE
11 CONDITION.—

12 (A) IN GENERAL.—If a petition is filed in
13 accordance with paragraph (1) for an alien, the
14 Secretary of Homeland Security shall make a
15 determination as to whether the alien meets the
16 requirements set out in subparagraphs (A)
17 through (E) of subsection (d)(1).

18 (B) REMOVAL OF CONDITIONAL BASIS IF
19 FAVORABLE DETERMINATION.—If the Secretary
20 determines that the alien meets such require-
21 ments, the Secretary shall notify the alien of
22 such determination and immediately remove the
23 conditional basis of the status of the alien.

24 (C) TERMINATION IF ADVERSE DETER-
25 MINATION.—If the Secretary determines that

1 the alien does not meet such requirements, the
2 Secretary shall notify the alien of such deter-
3 mination and terminate the conditional perma-
4 nent resident status of the alien as of the date
5 of the determination.

6 (3) TIME TO FILE PETITION.—An alien may pe-
7 tition to remove the conditional basis to lawful resi-
8 dent status during the period beginning 180 days
9 before and ending 2 years after either the date that
10 is 6 years after the date of the granting of condi-
11 tional permanent resident status or any other expi-
12 ration date of the conditional permanent resident
13 status as extended by the Secretary of Homeland
14 Security in accordance with this Act. The alien shall
15 be deemed in conditional permanent resident status
16 in the United States during the period in which the
17 petition is pending.

18 (d) DETAILS OF PETITION.—

19 (1) CONTENTS OF PETITION.—Each petition
20 for an alien under subsection (c)(1) shall contain in-
21 formation to permit the Secretary of Homeland Se-
22 curity to determine whether each of the following re-
23 quirements is met:

24 (A) The alien has demonstrated good
25 moral character during the entire period the

1 alien has been a conditional permanent resi-
2 dent.

3 (B) The alien is in compliance with section
4 4(a)(1)(C).

5 (C) The alien has not abandoned the
6 alien's residence in the United States. The Sec-
7 retary shall presume that the alien has aban-
8 doned such residence if the alien is absent from
9 the United States for more than 365 days, in
10 the aggregate, during the period of conditional
11 residence, unless the alien demonstrates that
12 alien has not abandoned the alien's residence.
13 An alien who is absent from the United States
14 due to active service in the uniformed services
15 has not abandoned the alien's residence in the
16 United States during the period of such service.

17 (D) The alien has completed at least 1 of
18 the following:

19 (i) The alien has acquired a degree
20 from an institution of higher education in
21 the United States or has completed at
22 least 2 years, in good standing, in a pro-
23 gram for a bachelor's degree or higher de-
24 gree in the United States.

1 (ii) The alien has served in the uni-
2 formed services for at least 2 years and, if
3 discharged, has received an honorable dis-
4 charge.

5 (E) The alien has provided a list of all of
6 the secondary educational institutions that the
7 alien attended in the United States.

8 (2) HARDSHIP EXCEPTION.—

9 (A) IN GENERAL.—The Secretary of
10 Homeland Security may, in the Secretary's dis-
11 cretion, remove the conditional status of an
12 alien if the alien—

13 (i) satisfies the requirements of sub-
14 paragraphs (A), (B), and (C) of paragraph
15 (1);

16 (ii) demonstrates compelling cir-
17 cumstances for the inability to complete
18 the requirements described in paragraph
19 (1)(D); and

20 (iii) demonstrates that the alien's re-
21 moval from the United States would result
22 in exceptional and extremely unusual hard-
23 ship to the alien or the alien's spouse, par-
24 ent, or child who is a citizen or a lawful
25 permanent resident of the United States.

1 (B) EXTENSION.—Upon a showing of good
2 cause, the Secretary of Homeland Security may
3 extend the period of the conditional resident
4 status for the purpose of completing the re-
5 quirements described in paragraph (1)(D).

6 (e) TREATMENT OF PERIOD FOR PURPOSES OF NAT-
7 URALIZATION.—Except as otherwise provided under this
8 Act, an alien who is in the United States as a lawful per-
9 manent resident on a conditional basis under this section
10 shall be considered to have been admitted as an alien law-
11 fully admitted for permanent residence and to be in the
12 United States as an alien lawfully admitted to the United
13 States for permanent residence. However, the conditional
14 basis must be removed before the alien may apply for nat-
15 uralization.

16 **SEC. 6. APPLICABILITY.**

17 If, on the date of the enactment of this Act, an alien
18 has satisfied all the requirements of subparagraphs (A)
19 through (D) of section 4(a)(1) and section 5(d)(1)(D), the
20 Secretary of Homeland Security may adjust the status of
21 the alien to that of a conditional resident in accordance
22 with section 4. The alien may petition for removal of such
23 condition at the end of the conditional residence period
24 in accordance with section 5(c) if the alien has met the
25 requirements of subparagraphs (A), (B), and (C) of sec-

tion 5(d)(1) during the entire period of conditional residence.

SEC. 7. EXCLUSIVE JURISDICTION.

(a) IN GENERAL.—The Secretary of Homeland Security shall have exclusive jurisdiction to determine eligibility for relief under this Act, except where the alien has been placed into deportation, exclusion, or removal proceedings either prior to or after filing an application for relief under this Act, in which case the Attorney General shall have exclusive jurisdiction and shall assume all the powers and duties of the Secretary until proceedings are terminated, or if a final order of deportation, exclusion, or removal is entered the Secretary shall resume all powers and duties delegated to the Secretary under this Act.

(b) STAY OF REMOVAL OF CERTAIN ALIENS ENROLLED IN PRIMARY OR SECONDARY SCHOOL.—The Attorney General shall stay the removal proceedings of any alien who—

(1) meets all the requirements of subparagraphs (A), (B), (C), and (E) of section 4(a)(1);

(2) is at least 12 years of age; and

(3) is enrolled full time in a primary or secondary school.

(c) EMPLOYMENT.—An alien whose removal is stayed pursuant to subsection (b) may be engaged in employment

1 in the United States, consistent with the Fair Labor
2 Standards Act (29 U.S.C. 201 et seq.), and State and
3 local laws governing minimum age for employment.

4 (d) LIFT OF STAY.—The Attorney General shall lift
5 the stay granted pursuant to subsection (b) if the alien—

6 (1) is no longer enrolled in a primary or sec-
7 ondary school; or

8 (2) ceases to meet the requirements of sub-
9 section (b)(1).

10 **SEC. 8. CONFIDENTIALITY OF INFORMATION.**

11 (a) PROHIBITION.—No officer or employee of the
12 United States may—

13 (1) use the information furnished by the appli-
14 cant pursuant to an application filed under this Act
15 to initiate removal proceedings against any persons
16 identified in the application;

17 (2) make any publication whereby the informa-
18 tion furnished by any particular individual pursuant
19 to an application under this Act can be identified; or

20 (3) permit anyone other than an officer or em-
21 ployee of the United States Government or, in the
22 case of applications filed under this Act with a des-
23 ignated entity, that designated entity, to examine
24 applications filed under this Act.

1 (b) REQUIRED DISCLOSURE.—The Attorney General
2 or the Secretary of Homeland Security shall provide the
3 information furnished under this section, and any other
4 information derived from such furnished information, to—

5 (1) a duly recognized law enforcement entity in
6 connection with an investigation or prosecution of an
7 offense described in paragraph (2) or (3) of section
8 212(a) of the Immigration and Nationality Act (8
9 U.S.C. 1182(a)), when such information is requested
10 in writing by such entity; or

11 (2) an official coroner for purposes of affirma-
12 tively identifying a deceased individual (whether or
13 not such individual is deceased as a result of a
14 crime).

15 (c) PENALTY.—Whoever knowingly uses, publishes,
16 or permits information to be examined in violation of this
17 section shall be fined not more than \$10,000.

18 **SEC. 9. EXPEDITED PROCESSING OF APPLICATIONS; PRO-**
19 **HIBITION ON FEES.**

20 Regulations promulgated under this Act shall provide
21 that applications under this Act will be considered on an
22 expedited basis and without a requirement for the pay-
23 ment by the applicant of any additional fee for such expe-
24 dited processing.

1 **SEC. 10. HIGHER EDUCATION ASSISTANCE.**

2 Notwithstanding any provision of the Higher Edu-
3 cation Act of 1965 (20 U.S.C. 1001 et seq.) or any provi-
4 sion of Title IV of the Personal Responsibility and Work
5 Opportunity Reconciliation Act of 1996 (8 U.S.C. 1601
6 et seq.), with respect to Federal financial education assist-
7 ance, an alien who is lawfully admitted for permanent resi-
8 dence under this Act and has not had the conditional basis
9 removed shall not be eligible for—

10 (1) Federal Pell grants under part A of title IV
11 of the Higher Education Act of 1965 (20 U.S.C.
12 1070a et seq.); and

13 (2) Federal supplemental educational oppor-
14 tunity grants under part A of title IV of that Act
15 (20 U.S.C. 1070b et seq.).

16 **SEC. 11. GAO REPORT.**

17 Seven years after the date of enactment of this Act,
18 the Comptroller General of the United States shall submit
19 a report to the Committees on the Judiciary of the Senate
20 and the House of Representatives setting forth—

21 (1) the number of aliens who were eligible for
22 cancellation of removal and adjustment of status
23 under section 4(a);

24 (2) the number of aliens who applied for adjust-
25 ment of status under section 4(a);

- 1 (3) the number of aliens who were granted ad-
- 2 justment of status under section 4(a); and
- 3 (4) the number of aliens whose conditional per-
- 4 manent resident status was removed under section
- 5 5.

