

110TH CONGRESS
2D SESSION

S. 3514

To amend the Immigration and Nationality Act to promote family unity,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18 (legislative day, SEPTEMBER 17), 2008

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

A BILL

To amend the Immigration and Nationality Act to promote
family unity, 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 “Reuniting Families
5 Act”.

6 **SEC. 2. RECAPTURE OF IMMIGRANT VISAS LOST TO BU-**
7 **REAUCRATIC DELAY.**

8 (a) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
9 IMMIGRANTS.—Subsection (d) of section 201 of the Immi-

1 gration and Nationality Act (8 U.S.C. 1151) is amended
2 to read as follows:

3 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
4 IMMIGRANTS.—

5 “(1) IN GENERAL.—The worldwide level of em-
6 ployment-based immigrants under this subsection for
7 a fiscal year is equal to the sum of—

8 “(A) 140,000; plus

9 “(B) the number computed under para-
10 graph (2); plus

11 “(C) the number computed under para-
12 graph (3).

13 “(2) UNUSED VISA NUMBERS FROM PREVIOUS
14 FISCAL YEAR.—The number computed under this
15 paragraph for a fiscal year is the difference, if any,
16 between—

17 “(A) the worldwide level of employment-
18 based immigrant visas established for the pre-
19 vious fiscal year; and

20 “(B) the number of visas actually issued
21 under section 203(b), subject to this subsection,
22 during the previous fiscal year.

23 “(3) UNUSED VISA NUMBERS FROM FISCAL
24 YEARS 1992 THROUGH 2007.—The number computed

1 under this paragraph is the difference, if any, be-
 2 tween—

3 “(A) the difference, if any, between—

4 “(i) the sum of the worldwide levels of
 5 employment-based immigrant visas estab-
 6 lished for each of fiscal years 1992
 7 through 2007; and

8 “(ii) the number of visas actually
 9 issued under section 203(b), subject to this
 10 subsection, during such fiscal years; and

11 “(B) the number of unused visas from fis-
 12 cal years 1992 through 2007 that were issued
 13 after fiscal year 2007 under section 203(b),
 14 subject to this subsection.”.

15 (b) WORLDWIDE LEVEL OF FAMILY-SPONSORED IM-
 16 MIGRANTS.—Subsection (c) of section 201 of the Immigra-
 17 tion and Nationality Act (8 U.S.C. 1151) is amended to
 18 read as follows:

19 “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED
 20 IMMIGRANTS.—

21 “(1) IN GENERAL.—Subject to subparagraph
 22 (B), the worldwide level of family-sponsored immi-
 23 grants under this subsection for a fiscal year is
 24 equal to—

25 “(A) 480,000; plus

1 “(B) the sum of—

2 “(i) the number computed under
3 paragraph (2); plus

4 “(ii) the number computed under
5 paragraph (3).

6 “(2) UNUSED VISA NUMBERS FROM PREVIOUS
7 FISCAL YEAR.—The number computed under this
8 paragraph for a fiscal year is the difference, if any,
9 between—

10 “(A) the worldwide level of family-spon-
11 sored immigrant visas established for the pre-
12 vious fiscal year; and

13 “(B) the number of visas actually issued
14 under section 203(a), subject to this subsection,
15 during the previous fiscal year.

16 “(3) UNUSED VISA NUMBERS FROM FISCAL
17 YEARS 1992 THROUGH 2007.—The number computed
18 under this paragraph is the difference, if any, be-
19 tween—

20 “(A) the difference, if any, between—

21 “(i) the sum of the worldwide levels of
22 family-sponsored immigrant visas estab-
23 lished for fiscal years 1992 through 2007;
24 and

1 “(ii) the number of visas actually
 2 issued under section 203(a), subject to this
 3 subsection, during such fiscal years; and

4 “(B) the number of unused visas from fis-
 5 cal years 1992 through 2007 that were issued
 6 after fiscal year 2007 under section 203(a),
 7 subject to this subsection.”.

8 (c) EFFECTIVE DATE.—The amendments made by
 9 this section shall take effect 60 days after the date of the
 10 enactment of this Act.

11 **SEC. 3. RECLASSIFICATION OF SPOUSES AND MINOR CHIL-**
 12 **DREN OF LEGAL PERMANENT RESIDENTS AS**
 13 **IMMEDIATE RELATIVES.**

14 (a) IN GENERAL.—Paragraph (2) of section 201(b)
 15 of the Immigration and Nationality Act (8 U.S.C.
 16 1151(b)) is amended to read as follows:

17 “(2) IMMEDIATE RELATIVE.—

18 “(A) IN GENERAL.—

19 “(i) IMMEDIATE RELATIVE DE-
 20 FINED.—In this subparagraph, the term
 21 ‘immediate relative’ means a child, spouse,
 22 or parent of a citizen of the United States
 23 or a child or spouse of a lawful permanent
 24 resident (and for each family member of a
 25 citizen or lawful permanent resident speci-

1 fied under this subparagraph, such individ-
2 ual's spouse or child who is accompanying
3 or following to join the individual), except
4 that, in the case of parents, such citizens
5 shall be at least 21 years of age.

6 “(ii) PREVIOUSLY ISSUED VISA.—
7 Aliens admitted under section 211(a) on
8 the basis of a prior issuance of a visa
9 under section 203(a) to their accom-
10 panying parent who is an immediate rel-
11 ative.

12 “(iii) SPOUSE.—An alien who was the
13 spouse of a citizen of the United States or
14 lawful permanent resident for not less than
15 2 years at the time of the citizen's or resi-
16 dent's death or, if married for less than 2
17 years at the time of the citizen's or resi-
18 dent's death, proves by a preponderance of
19 the evidence that the marriage was entered
20 into in good faith and not solely for the
21 purpose of obtaining an immigration ben-
22 efit and was not legally separated from the
23 citizen or resident at the time of the citi-
24 zen's or resident's death, and each child of
25 such alien, shall be considered, for pur-

1 poses of this subsection, an immediate rel-
2 ative after the date of the citizen's or resi-
3 dent's death if the spouse files a petition
4 under section 204(a)(1)(A)(ii) before the
5 earlier of—

6 “(I) 2 years after such date; or

7 “(II) the date on which the
8 spouse remarries.

9 “(iv) PARENTS AND CHILDREN.—An
10 alien who was the child or parent of a cit-
11 izen of the United States or a child of a
12 lawful permanent resident at the time of
13 the citizen's or resident's death if the alien
14 files a petition under 204(a)(1)(A)(ii) with-
15 in 2 years after such date or prior to
16 reaching 21 years of age.

17 “(v) SPECIAL RULE.—For purposes of
18 this subparagraph, an alien who has filed
19 a petition under clause (iii) or (iv) of sec-
20 tion 204(a)(1)(A) remains an immediate
21 relative if the United States citizen or law-
22 ful permanent resident spouse or parent
23 loses United States citizenship or residence
24 on account of the abuse.

1 “(B) BIRTH DURING TEMPORARY VISIT
 2 ABROAD.—Aliens born to an alien lawfully ad-
 3 mitted for permanent residence during a tem-
 4 porary visit abroad.”.

5 (b) ALLOCATION OF IMMIGRANT VISAS.—Subsection
 6 (a) of section 203 of the Immigration and Nationality Act
 7 (8 U.S.C. 1153) is amended—

8 (1) in paragraph (1), by striking “23,400” and
 9 inserting “38,000”;

10 (2) by striking paragraph (2) and inserting the
 11 following:

12 “(2) UNMARRIED SONS AND UNMARRIED
 13 DAUGHTERS OF PERMANENT RESIDENT ALIENS.—
 14 Qualified immigrants who are the unmarried sons or
 15 unmarried daughters (but are not the children) of
 16 an alien lawfully admitted for permanent residence
 17 shall be allocated visas in a number not to exceed
 18 60,000, plus any visas not required for the class
 19 specified in paragraph (1).”;

20 (3) in paragraph (3), by striking “23,400” and
 21 inserting “38,000”; and

22 (4) in paragraph (4), by striking “65,000” and
 23 inserting “90,000”.

24 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

1 (1) RULES FOR DETERMINING WHETHER CER-
 2 TAIN ALIENS ARE IMMEDIATE RELATIVES.—Sub-
 3 section (f) of section 201 of the Immigration and
 4 Nationality Act (8 U.S.C. 1151) is amended—

5 (A) in paragraph (1), by striking “para-
 6 graphs (2) and (3),” and inserting “paragraph
 7 (2),”;

8 (B) by striking paragraph (2);

9 (C) by redesignating paragraphs (3) and
 10 (4) as paragraphs (2) and (3), respectively; and

11 (D) in paragraph (3), as redesignated by
 12 subparagraph (C), by striking “through (3)”
 13 and inserting “and (2)”.

14 (2) NUMERICAL LIMITATION TO ANY SINGLE
 15 FOREIGN STATE.—Section 202 of the Immigration
 16 and Nationality Act (8 U.S.C. 1152) is amended—

17 (A) in paragraph (4) of subsection (a)—

18 (i) by striking subparagraphs (A) and
 19 (B);

20 (ii) by redesignating subparagraphs
 21 (C) and (D) as subparagraphs (A) and
 22 (B), respectively; and

23 (iii) in subparagraph (A), as redesign-
 24 nated by clause (ii), by striking “section

1 203(a)(2)(B)” and inserting “section
2 203(a)(2)”;

3 (B) in subsection (e), in the flush matter
4 following paragraph (3), by striking “, or as
5 limiting the number of visas that may be issued
6 under section 203(a)(2)(A) pursuant to sub-
7 section (a)(4)(A)”.

8 (3) ALLOCATION OF IMMIGRATION VISAS.—Sub-
9 section (h) of section 203 of the Immigration and
10 Nationality Act (8 U.S.C. 1153) is amended—

11 (A) in paragraph (1)—

12 (i) in the matter preceding subpara-
13 graph (A), by striking “subsections
14 (a)(2)(A) and (d)” and inserting “sub-
15 section (d)”;

16 (ii) in subparagraph (A), by striking
17 “becomes available for such alien (or, in
18 the case of subsection (d), the date on
19 which an immigrant visa number became
20 available for the alien’s parent),” and in-
21 serting “became available for the alien’s
22 parent,”; and

23 (iii) in subparagraph (B), by striking
24 “applicable”;

(B) in paragraph (2), by striking “The petition” and all that follows through the end and inserting “The petition described in this paragraph is a petition filed under section 204 for classification of the alien’s parent under subsection (a), (b), or (c).”; and

(C) in paragraph (3), by striking “subsections (a)(2)(A) and (d)” and inserting “subsection (d)”.

(4) PROCEDURE FOR GRANTING IMMIGRANT STATUS.—Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended—

(A) in subsection (a)(1)—

(i) in subparagraph (A)—

(I) in clause (i), by inserting “or lawful permanent resident” after “United States”;

(II) in clause (ii), by striking “described in the second sentence of section 201(b)(2)(A)(i) also” and inserting “or an alien child or alien parent described in section 201(b)(2)(A)”;

(III) in clause (iii)—

(aa) in item (aa) of subclause (I), by inserting “or legal permanent resident” after “citizen”; and

(bb) in subclause (II)—

(AA) in item (aa)(AA) and item (aa)(BB), by inserting “or legal permanent resident;” after “States” each place that term appears;

(BB) in item (aa)(CC), by inserting “or legal permanent resident” after “citizen”;

(CC) in item (aa)(CC)(bbb), by inserting “or legal permanent resident” after “citizenship”; and

(DD) in item (aa)(CC)(ccc), by inserting “or legal permanent resident” after “citizen”;

(IV) in clause (iv)—

1 (aa) by striking “States,”
 2 and inserting “States or legal
 3 permanent resident,”;

4 (bb) by inserting “or legal
 5 permanent resident” after
 6 “United States citizen”;

7 (cc) by inserting “or resi-
 8 dent” after “the citizen”; and

9 (dd) by inserting “or resi-
 10 dent” after the “alien’s citizen”;

11 (V) in subclause (I) of clause (v),
 12 by inserting “or legal permanent resi-
 13 dent” after “citizen”; and

14 (VI) in clause (vi)—

15 (aa) by inserting “or legal
 16 permanent resident status” after
 17 “renunciation of citizenship”;
 18 and

19 (bb) by inserting “or legal
 20 permanent resident” after “abus-
 21 er’s citizenship”;

22 (ii) by striking subparagraph (B);

23 (iii) in subparagraph (C), by striking
 24 “subparagraph (A)(iii), (A)(iv), (B)(ii), or

1 (B)(iii)” and inserting “clause (iii) or (iv)
 2 of subparagraph (A)”;

3 (iv) in subparagraph (J), by striking
 4 “or clause (ii) or (iii) of subparagraph
 5 (B)”;

6 (B) by striking paragraph (2) of sub-
 7 section (a);

8 (C) in paragraph (1) of subsection (c), by
 9 striking “or preference status”; and

10 (D) in subsection (h), by striking “or a pe-
 11 tition filed under subsection (a)(1)(B)(ii)”.

12 **SEC. 4. COUNTRY LIMITS.**

13 Paragraph (2) of section 202(a) of the Immigration
 14 and Nationality Act (8 U.S.C. 1152(a)) is amended by
 15 striking “7 percent (in the case of a single foreign state)
 16 or 2 percent” and inserting “10 percent (in the case of
 17 a single foreign state) or 5 percent”.

18 **SEC. 5. FAMILY UNITY.**

19 (a) EXCEPTION TO PROHIBITION ON UNLAWFUL
 20 PRESENCE FOR MINORS.—Clause (iii) of section
 21 212(a)(9)(B) of the Immigration and Nationality Act (8
 22 U.S.C. 1182(a)(9)(B)) is amended—

23 (1) in subclause (I), by striking “18” and in-
 24 serting “21”;

1 (2) by indenting subclause (V) 8 ems from the
2 left margin; and

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

4 “(VI) Clause (i) shall not apply
5 to an alien for whom an immigrant
6 visa is available or was available on or
7 prior to the date of enactment of the
8 Reuniting Families Act, and is other-
9 wise admissible to the United States
10 for permanent residence.”.

11 (b) WAIVER OF PROHIBITION ON UNLAWFUL PRES-
12 ENCE FOR CHILDREN OF CITIZENS AND RESIDENTS.—
13 Clause (v) of section 212(a)(9)(B) of the Immigration and
14 Nationality Act (8 U.S.C. 1182(a)(9)(B)) is amended—

15 (1) by striking “spouse or son or daughter” and
16 inserting “spouse, son, daughter, or parent”;

17 (2) by striking “extreme”;

18 (3) by inserting “, son, daughter, or” after
19 “lawfully resident spouse”; and

20 (4) by striking “alien.” and inserting “alien or,
21 if the Attorney General determines that a waiver is
22 necessary for humanitarian purposes, to ensure fam-
23 ily unity or is otherwise in the public interest.”.

24 (c) EXCEPTIONS TO PROHIBITION ON UNLAWFUL
25 PRESENCE AFTER PREVIOUS IMMIGRATION VIOLA-

1 TION.—Clause (ii) of section 212(a)(9)(C) of the Immigra-
 2 tion and Nationality Act (8 U.S.C. 212(a)(9)(C)) is
 3 amended to read as follows:

4 “(ii) EXCEPTIONS.—Clause (i) shall
 5 not apply to an alien—

6 “(I) seeking admission more than
 7 10 years after the date of the alien’s
 8 last departure from the United States
 9 if, prior to the alien’s reembarkation
 10 at a place outside the United States
 11 or attempt to be readmitted from a
 12 foreign contiguous territory, the Sec-
 13 retary of Homeland Security has con-
 14 sented to the alien’s reapplying for
 15 admission; or

16 “(II) for whom an immigrant
 17 visa is available or was available on or
 18 prior to the date of enactment of the
 19 Reuniting Families Act, and is other-
 20 wise admissible to the United States
 21 for permanent residence.”.

22 **SEC. 6. RELIEF FOR ORPHANS AND SPOUSES.**

23 (a) IN GENERAL.—

24 (1) SPECIAL RULE FOR ORPHANS AND
 25 SPOUSES.—In applying clauses (iii) and (iv) of sec-

tion 201(b)(2)(A) of the Immigration and Nationality Act, as added by section 3(a), to an alien whose citizen or lawful permanent resident relative died before the date of the enactment of this Act, the alien relative may (notwithstanding the deadlines specified in either such clause) file the classification petition under clause (ii) of section 204(a)(1)(A) of such Act, as amended by section 3(c)(4)(A)(i)(II), not later than 2 years after the date of the enactment of this Act.

(2) ELIGIBILITY FOR PAROLE.—If an alien was excluded, deported, removed, or departed voluntarily before the date of the enactment of this Act based solely upon the alien’s lack of classification as an immediate relative (as defined in clause (ii) of section 201(b)(2)(A) of the Immigration and Nationality Act, as amended by section 3(a)) due to the death of such citizen or resident—

(A) such alien shall be eligible for parole into the United States pursuant to the Attorney General’s discretionary authority under section 212(d)(5) of such Act (8 U.S.C. 1182(d)(5)); and

(B) such alien’s application for adjustment of status shall be considered notwithstanding

1 section 212(a)(9) of such Act (8 U.S.C.
2 1182(a)(9)).

3 (b) ADJUSTMENT OF STATUS.—Section 245 of the
4 Immigration and Nationality Act (8 U.S.C. 1255) is
5 amended by adding at the end the following:

6 “(n) APPLICATION FOR ADJUSTMENT OF STATUS BY
7 SURVIVING SPOUSES, PARENTS, AND CHILDREN.—

8 “(1) IN GENERAL.—Any alien described in
9 paragraph (2) who applies for adjustment of status
10 before the death of the qualifying relative, may have
11 such application adjudicated as if such death had
12 not occurred.

13 “(2) ALIEN DESCRIBED.—An alien described in
14 this paragraph is an alien who—

15 “(A) is an immediate relative (as described
16 in section 201(b)(2)(A));

17 “(B) is a family-sponsored immigrant (as
18 described in subsection (a) or (d) of section
19 203); or

20 “(C) is a derivative beneficiary of an em-
21 ployment-based immigrant under section 203(b)
22 (as described in section 203(d)).”.

23 (c) TRANSITION PERIOD.—

24 “(1) IN GENERAL.—Notwithstanding a denial of
25 an application for adjustment of status for an alien

1 whose qualifying relative died before the date of the
2 enactment of this Act, such application may be re-
3 newed by the alien through a motion to reopen,
4 without fee, if such motion is filed not later than 2
5 years after such date of enactment.

6 (2) ELIGIBILITY FOR PAROLE.—If an alien de-
7 scribed in section 245(n)(2), as amended by sub-
8 section (b), was excluded, deported, removed or de-
9 parted voluntarily before the date of the enactment
10 of this Act—

11 (A) such alien shall be eligible for parole
12 into the United States pursuant to the Attorney
13 General’s discretionary authority under section
14 212(d)(5) of the Immigration and Nationality
15 Act (8 U.S.C. 1182(d)(5)); and

16 (B) such alien’s application for adjustment
17 of status shall be considered notwithstanding
18 section 212(a)(9) of such Act (8 U.S.C.
19 1182(a)(9)).

20 (d) PROCESSING OF IMMIGRANT VISAS AND DERIVA-
21 TIVE PETITIONS.—

22 (1) IN GENERAL.—Subsection (b) of section
23 204 of the Immigration and Nationality Act (8
24 U.S.C. 1154) is amended—

1 (A) by striking “After an investigation”
2 and inserting the following:

3 “(1) IN GENERAL.—After an investigation”;
4 and

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

6 “(2) DEATH OF QUALIFYING RELATIVE.—

7 “(A) IN GENERAL.—Any alien described in
8 paragraph (2) whose qualifying relative died be-
9 fore the completion of immigrant visa proc-
10 essing may have an immigrant visa application
11 adjudicated as if such death had not occurred.
12 An immigrant visa issued before the death of
13 the qualifying relative shall remain valid after
14 such death.

15 “(B) ALIEN DESCRIBED.—An alien de-
16 scribed in this paragraph is an alien who—

17 “(i) is an immediate relative, as de-
18 scribed in section 201(b)(2)(A);

19 “(ii) is a family-sponsored immigrant,
20 as described in subsection (a) or (d) of sec-
21 tion 203;

22 “(iii) is a derivative beneficiary of an
23 employment-based immigrant under section
24 203(b), as described in section 203(d); or

1 “(iv) is the spouse or child of a ref-
2 ugee, as described in section 207(c)(2) or
3 an asylee, as described in section
4 208(b)(3).”.

5 (2) TRANSITION PERIOD.—

6 (A) IN GENERAL.—Notwithstanding a de-
7 nial or revocation of an application for an immi-
8 grant visa for an alien whose qualifying relative
9 died before the date of the enactment of this
10 Act, such application may be renewed by the
11 alien through a motion to reopen, without fee,
12 if such motion is filed not later than 2 years
13 after such date of enactment.

14 (B) INAPPLICABILITY OF BARS TO
15 ENTRY.—In the case of an alien who was ex-
16 cluded, deported, removed, or departed volun-
17 tarily before the date of the enactment of this
18 Act, such alien’s application for an immigrant
19 visa shall be considered notwithstanding section
20 212(a)(9) of the Immigration and Nationality
21 Act (8 U.S.C. 1182(a)(9)).

22 (e) NATURALIZATION.—Subsection (a) of section 319
23 of the Immigration and Nationality Act (8 U.S.C. 1430)
24 is amended by inserting “(or, if the spouse is deceased,

1 the spouse was a citizen of the United States)” after “cit-
2 izen of the United States”.

3 **SEC. 7. EXEMPTION FROM IMMIGRANT VISA LIMIT FOR**
4 **CERTAIN VETERANS WHO ARE NATIVES OF**
5 **PHILIPPINES.**

6 Paragraph (1) of section 201(b) of the Immigration
7 and Nationality Act (8 U.S.C. 1151(b)) is amended by
8 adding at the end the following:

9 “(F) Aliens who are eligible for an immigrant
10 visa under paragraph (1) or (3) of section 203(a)
11 and who have a parent who was naturalized pursu-
12 ant to section 405 of the Immigration Act of 1990
13 (8 U.S.C. 1440 note).”.

○