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106TH CONGRESS
2D SESSION

H. R. 4200

To amend the Immigration and Nationality Act with respect to H–1B nonimmigrant aliens and to assure fair distribution of employment-based immigrant visas, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 2000

Ms. JACKSON-LEE of Texas 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

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A BILL

To amend the Immigration and Nationality Act with respect to H–1B nonimmigrant aliens and to assure fair distribution of employment-based immigrant visas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''American Worker Information Technology Skills Improvement Act of 2000 (AWITSIA)''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—PROVISIONS RELATING TO H–1B NONIMMIGRANTS

Subtitle A—Provisions Relating to Numerical Limitations

SEC. 101. TEMPORARY INCREASE IN NUMBER OF ALIENS AUTHORIZED TO BE GRANTED H–1B NONIMMIGRANT STATUS; EXCEPTION FOR HIGH UNEMPLOYMENT RATE

(a) IN GENERAL.—Section 214(g)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(A)) is amended—

(1) in clause (iii), by striking ''115,000'' and inserting ''225,000'';

(2) in clause (iv), by striking ''107,500'' and inserting ''225,000''; and

(3) in clause (v), by striking ''65,000'' and inserting ''225,000''.

(b) EXCEPTION.—Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended by adding at the end the following:

''(5) The numerical limitations contained in clauses (iii), (iv), and (v) of paragraph (1)(A) shall be reduced—

''(A) to 110,000 in a fiscal year, if in the prior fiscal year the 12-month unemployment rate (as de-

termined by the Bureau of Labor Statistics of the Department of Labor) exceeds 5 percent; and

''(B) to 65,000 in a fiscal year, if in the prior fiscal year the 12-month unemployment rate (as determined by the Bureau of Labor Statistics of the Department of Labor) exceeds 6 percent.''.

SEC. 102. ALLOCATION OF H–1B NUMBERS FOR HIGHLY SKILLED PROFESSIONALS.

Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)), as amended by section 101, is further amended by adding at the end the following:

''(6) Of the total number of aliens authorized to be granted nonimmigrant status under section 101(a)(15)(H)(i)(b)—

''(A) 40 percent for fiscal year 2000, 50 percent for fiscal year 2001, and 60 percent for fiscal year 2002, are authorized for such status only if the aliens have attained at least a master's degree from an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) in the United States or an equivalent degree (as determined in a credential evaluation performed by a private entity prior to filing a petition) from such an institution abroad; and

''(B) of the number reserved under subparagraph (A) for each of fiscal years 2000 through 2002, 10,000 are authorized only if the aliens have attained at least a PhD degree from an institution of higher education described in subparagraph (A) or an equivalent degree (as determined in an evaluation described in such subparagraph).''.

SEC. 103. ADDITIONAL H–1B VISAS FOR FISCAL YEAR 1999.

(a) IN GENERAL.—Notwithstanding section 214(g)(1)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(A)(ii)), the total number of aliens who may be issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act in fiscal year 1999 is increased by a number equal to the number of aliens—

(1) who are issued such a visa or provided such status during the period beginning on the date on which the numerical limitation in such section 214(g)(1)(A)(ii) is reached and ending on September 30, 1999; and

(2) with respect to whom the action described in paragraph (1) is counted in determining whether such numerical limitation has been reached.

(b) MAINTENANCE OF STATUS.—An alien issued a visa or otherwise provided nonimmigrant status under sec-

tion 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act in fiscal year 1999 may maintain that status without regard to whether it was provided in accordance with section 214(g)(1)(A)(ii) of such Act.

(c) EFFECTIVE DATE.—This section shall take effect as if included in the enactment of section 411 of the American Competitiveness and Workforce Improvement Act of 1998 (as contained in title IV of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; Public Law 105–277).

Subtitle B—Provisions Relating to H1–B Nonimmigrant Petitioner Fees

SEC. 111. COLLECTION AND USE OF FEES.

(a) ESTABLISHMENT OF FEES.—

(1) IN GENERAL.—Section 214(c)(9) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(9)) is amended—

(A) in subparagraph (A), by striking ''(excluding'' and all that follows through ''2001)'' and inserting ''(excluding any employer that is a primary or secondary education institution, an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), a nonprofit research

organization, or government-related research institution) filing''; and

(B) by amending subparagraph (B) to read as follows:

''(B) Except as provided in subparagraph (D), the amount of the fee for each such petition shall be as follows:

''(i) For an employer employing not more than 150 employees, $1,000.

''(ii) For an employer employing more than 150 employees, $2,000.''.

(2) EXCEPTION.—Section 214(c)(9) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(9)) is amended by adding at the end the following new subparagraphs:

''(D) Any employer that has at least 51 full-time equivalent employees who are employed in the United States, and employs nonimmigrants described in section 101(a)(5)(H)(i)(b) in a number that is equal to at least 15 percent of the number of such full-time equivalent employees, shall pay $3,000 per visa petition filed.

''(E) Any employer that is a public school district shall only be required to pay for visa petitions in excess of 5 in any fiscal year.''.

(b) USE OF FEES.—Section 286(s) of the Immigration and Nationality Act (8 U.S.C. 1356(s)) is amended—

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

''(2) USE OF FEES FOR INFORMATION TECHNOLOGY SKILLS TRAINING.—50 percent of amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended to carry out the Information Technology Training Initiative established by section 121 of the Information Technology Skills Improvement Act of 2000.'';

(2) in paragraph (3), by striking ''28.2 percent'' and inserting ''30 percent'';

(3) by amending paragraph (5) to read as follows:

''(5) USE OF FEES FOR DUTIES RELATING TO PETITIONS.—5 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Attorney General until expended to carry out duties under paragraphs (1) and (9) of section 214(c) related to petitions made for nonimmigrants described in section 101(a)(15)(H)(i)(b) and under paragraph (1) (C) or

(D) of section 204 related to petitions for immigrants described in section 203(b).''; and

(4) by amending paragraph (6) to read as follows:

''(6) USE OF FEES FOR APPLICATION, PROCESSING, AND ENFORCEMENT.—Of the amounts deposited into the H–1B Nonimmigrant Petitioner Account, 6 percent of such amounts shall remain available to the Secretary of Labor until expended for decreasing the processing time for applications under section 212(n)(1), for carrying out section 212(n)(2), and for carrying out section 203(b), to be allocated as follows:

''(A) For the processing of applications under section 212(n)(1), and for decreasing the processing time of applications for visas under section 203(b), 3 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account. Any funds allocated under this subparagraph that are unobligated as of September 30, 2002, may be used for the enforcement actions described in subparagraph (B).

''(B) For enforcement actions under section 212(n)(2), 3 percent of the amounts depos-

ited into the H–1B Nonimmigrant Petitioner Account.''.

(c) EXPANSION OF ELIGIBILITY FOR LOW-INCOME SCHOLARSHIP PROGRAM.—Section 414(d) of the American Competitiveness and Workforce Improvement Act of 1998 (as contained in Public Law 105–277; 112 Stat. 2681–653) is amended in paragraph (2)(A)(i) by striking ''alien'' and all that follows through ''residence'' and inserting the following: ''an alien described in section 431 (b) or (c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641)''.

SEC. 112. PROVIDING FUNDING FOR KIDS 2000 AND NETPREPGYRLS.

(a) AMENDMENT OF THE INA.—Section 286(s)(4) (8 U.S.C. 1356(s)(4)) of the Immigration and Nationality Act is amended to read as follows:

''(4) USE OF FUNDS FOR KIDS 2000 AND NETPREPGYRLS.—9 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available until expended—

''(A) to make grants under title III of the Information Technology Skills Improvement Act of 2000 (relating to Kids 2000); and

''(B) to make grants to expand the program known as the 'NetPrepGyrls' program

(which allows high school girls to focus their technical education on computer networking, leading to an industry-standard certification).''.

(b) CONFORMING AMENDMENT.—Section 414(d)(3) of the American Competitiveness and Workforce Improvement Act of 1998 (as contained in Public Law 105–277) is amended by striking '', except that'' and all that follows through ''year''.

Subtitle C—Information Technology Training

SEC. 121. INFORMATION TECHNOLOGY TRAINING INITIATIVE.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Labor shall establish a program within the Department of Labor which shall be known as the ''Information Technology Training Initiative'' (in this section referred to as the ''program'') for the purpose of providing training in information technology skills to United States workers.

(b) GRANTS.—

(1) ELIGIBILITY.—To carry out the program, the Secretary of Labor shall, subject to the availability of appropriations, award grants to local workforce investment boards established under section 117 of the Workforce Investment Act of 1998 (29

U.S.C. 2832) or an approved labor management coalition training initiative.

(2) PARTNERSHIPS.—Each workforce investment board receiving grant funds under paragraph (1) shall represent a partnership consisting of at least—

(A) one workforce investment board;

(B) one community-based organization or higher education institution;

(C) one business or business-related nonprofit organization such as a trade association; and

(D) one labor union.

(3) DESIGNATION OF RESPONSIBLE FISCAL AGENTS.—Each partnership formed under paragraph (1) shall designate a responsible fiscal agent to receive and disburse grant funds under this section.

(4) PRIORITY IN GRANT AWARDS.—Priority in the awarding of grants shall be given to any regional partnership that—

(A) involves and directly benefits more than one small business (each consisting of 50 employees or less); or

(B) involves labor-management partnerships.

(c) START-UP FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), not more than 5 percent of any single grant, or not to exceed $75,000, whichever is lesser, may be used toward the start-up costs of regional partnerships or new training programs.

(2) EXCEPTION.—In the case of small businesses, not more than 10 percent of any single grant awarded under the program, or $150,000, whichever is lesser, may be used toward the start-up costs of regional partnerships or new training programs.

(3) DURATION OF START-UP PERIOD.—For purposes of this section, a start-up period consists of a period of not more than 2 months after the grant award is announced, at which time training shall immediately begin and no further Federal funds may be used for start-up purposes.

(d) TRAINING.—

(1) IN GENERAL.—Training funded by the program shall be relatively short-term training that may result in skills of differing levels along a career ladder, not necessarily high skill levels that would ordinarily be expected of a 2- to 4-year degree program

or of a Master's degree holder or higher. Priority shall be given to the use of grant funds to demonstrate a significant ability to expand a training program through such means as training more workers and retraining current workers (particularly older and retired workers) or offering more courses, or to support small business or labor-management training programs. All training shall be justified with evidence of skill shortages as demonstrated through reliable regional, State, or local data.

(2) ALLOCATION OF GRANTS.—The total amount of grants awarded under the program shall be allocated as follows:

(A) 80 percent of the grants shall be awarded to programs that train employed and unemployed workers in skills that are in shortage in the high technology, information technology and biotechnology fields, including software and communications services, telecommunications, systems installation and integration, computers and communications hardware, health care technology, biotechnology and biomedical research and manufacturing, and innovation services.

(B) 20 percent of the grants shall be available for training programs that train employed and unemployed workers for any skill shortage related to an inability to hire or to retain H–1B workers.

(3) H–1B WORKER DEFINED.—In paragraph (2)(B), the term ''H–1B worker'' means a nonimmigrant alien under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act.

(e) TRAINING OUTCOMES.—

(1) PREFERENCE FOR CERTAIN PROGRAMS.—Preference in the awarding of grants shall be given to applicants that provide a specific, measurable commitment upon successful completion of a training course, to—

(A) hire unemployed trainees (where applicable);

(B) increase the wages or salary of incumbent workers (where applicable); and

(C) provide skill certifications to trainees or link the training to industry-accepted occupational skill standards, certificates, or licensing requirements.

(2) REQUIREMENTS FOR GRANT APPLICATIONS.—Applications for grants under the program

shall articulate the level of skills that workers will be trained for and the manner by which attainment of those skills will be measured.

(f) TARGET POPULATION.—Training programs eligible for grants under the program shall make efforts to actively recruit and train those who traditionally are under-represented in information technology occupations, such as minorities, women, low-wage workers, workers residing in Empowerment Zones/Enterprise Communities, and people with disabilities.

(g) MATCHING FUNDS.—Each workforce investment board receiving grant funds under the program shall demonstrate the manner by which the partnership will provide matching resources (cash, or in-kind contributions, or both) equal to at least 50 percent of the total grant amount awarded. Preference in the award of grants shall be given to applicants that provide specific commitments of resources from other public or private sources so as to demonstrate the long-term sustainability of the training program after the grant expires.

Subtitle D—Obligations of Petitioning Employers

SEC. 131. EMPLOYER ATTESTATIONS.

Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting after subparagraph (G) the following:

''(H) In the case of an application filed by an H–1B dependent employer, the employer—

''(i) did not displace and will not displace a United States worker between the period of 6 months before and 6 months after the date of filing of any visa petition supported by the labor condition application; and

''(ii) is making efforts to continually train and update the existing skills of incumbent employees, and to promote such employees where possible.

''(I) The employer has not and will not require any alien whose employment is sought pursuant to the application, or any such nonimmigrant, to enter into or comply with an employment contract provision that requires the alien to agree to a specific term of employment or pay a penalty or damages to the employer if employment is terminated before the end of a specified period.

''(J) The employer certifies that the employer—

''(i) is taking steps to recruit qualified United States workers who are members of underrepresented minority groups, including—

''(I) recruiting at a wide geographical distribution of institutions of higher education, including historically black colleges and universities, other minority institutions, community colleges, and vocational and technical colleges; and

''(II) advertising of jobs to publications reaching underrepresented groups of United States workers, including workers older than 35, minority groups, non-English speakers, and disabled veterans; and

''(ii) will submit to the Secretary of Labor at the end of each fiscal year in which the employer employs an H–1B worker a report that describes the steps so taken.

For purposes of this subparagraph, the term 'minority' includes individuals who are African-American, Hispanic, Asian, and women.''.

SEC. 132. SURPRISE COMPLIANCE INVESTIGATIONS; SUBPOENA POWER

Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended by adding at the end the following:

''(I) Notwithstanding any other provision of this paragraph, the Secretary is authorized to subject employers, without prior notice, to spot investigations to determine whether the conditions of paragraph (1) are being satisfied and whether the employer made any misrepresentations of material fact in the application under such paragraph.

''(J) For the purpose of any hearing or investigation provided for in this subsection, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act (15 U.S.C. 49 and 50) are made applicable to the jurisdiction, powers, and duties of the Secretary.''.

SEC. 133. DEPARTMENT OF LABOR SURVEY.

The Secretary of Labor is authorized to conduct an ongoing survey of employers to determine the degree of compliance with the provisions and requirements of section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)).

SEC. 134. RANDOM REVIEWS OF RECRUITMENT EFFORTS.

The Inspector General in the Department of Labor shall perform periodic reviews of randomly selected applicants under section 212(n) of the Immigration and Nationality Act to determine whether employers filing applications under such section are making good faith efforts to hire United States workers.

TITLE II—PROVISIONS RELATING TO EMPLOYMENT-BASED IMMIGRATION

SEC. 201. ASSURING FAIR DISTRIBUTION OF EMPLOYMENT-BASED VISAS.

(a) LIMITATION ON PER COUNTRY CEILING WITH RESPECT TO EMPLOYMENT-BASED IMMIGRANTS.—

(1) SPECIAL RULES.—Section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a)) is amended by adding at the end the following new paragraph:

''(5) RULES FOR EMPLOYMENT-BASED IMMIGRANTS.—

''(A) CERTAIN EMPLOYMENT-BASED IMMIGRANTS NOT SUBJECT TO PER COUNTRY LIMITATION IF ADDITIONAL VISAS AVAILABLE.—If the total number of visas available under paragraph (1), (2), (3), (4), or (5) of section 203(b) for a calendar quarter exceeds the number of

qualified immigrants who may otherwise be issued such visas, the visas made available under that respective paragraph shall be issued without regard to the numerical limitation under paragraph (2) of this subsection during the remainder of the calendar quarter.

''(B) LIMITING FALL ACROSS FOR CERTAIN COUNTRIES SUBJECT TO SUBSECTION (e).—In the case of a foreign state or dependent area to which subsection (e) applies, if the total number of visas issued under section 203(b) exceeds the maximum number of visas that may be made available to immigrants of the state or area under section 203(b) consistent with subsection (e) (determined without regard to this paragraph), in applying subsection (e) all visas shall be deemed to have been required for the classes of aliens specified in section 203(b).''.

(2) CONFORMING AMENDMENTS.—

(A) PER COUNTRY LEVELS FOR EMPLOYMENT-BASED IMMIGRANTS.—Section 202(a)(2) of such Act (8 U.S.C. 1152(a)(2)) is amended by striking ''paragraphs (3) and (4)'' and inserting ''paragraphs (3), (4), and (5)''.

(B) SPECIAL RULES FOR COUNTRIES AT CEILING.—Section 202(e)(3) of such Act (8 U.S.C. 1152(e)(3)) is amended by striking ''the proportion of the visa numbers'' and inserting ''except as provided in subsection (a)(5), the proportion of the visa numbers''.

(3) ONE-TIME PROTECTION UNDER PER COUNTRY CEILING.—Notwithstanding section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(4)), any alien who—

(A) is the beneficiary of a petition filed under section 204(a) of such Act for a preference status under paragraph (1), (2), or (3) of section 203(b) of such Act; and

(B) would be subject to the per country limitations applicable to immigrants under those paragraphs but for this paragraph,

may apply for, and the Attorney General may grant, an extension of such nonimmigrant status until the alien's application for adjustment of status has been processed and a decision made thereon.

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) apply to calendar quarters beginning on or after October 1, 2000.

(b) RECAPTURE OF UNUSED EMPLOYMENT-BASED IMMIGRANT VISAS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the number of employment-based visas (as defined in paragraph (3)) made available for a fiscal year (beginning with fiscal year 2001) shall be increased by the number described in paragraph (2). Visas made available under this subsection shall only be available in a fiscal year to employment-based immigrants under paragraph (1), (2), or (3) of section 203(b) of the Immigration and Nationality Act.

(2) NUMBER AVAILABLE.—

(A) IN GENERAL.—Subject to subparagraph (B), the number described in this paragraph is the difference between the number of employment-based visas that were made available in fiscal year 1999 and 2000 and the number of such visas that were actually used in such fiscal years.

(B) REDUCTION.—The number described in subparagraph (A) shall be reduced, for each fiscal year after fiscal year 2001, by the cumulative number of immigrant visas made avail-

able under paragraph (1) for previous fiscal years.

(C) CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the application of section 201(c)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1151(c)(3)(C)).

(3) EMPLOYMENT-BASED VISAS DEFINED.—For purposes of this subsection, the term ''employment-based visa'' means an immigrant visa which is issued pursuant to the numerical limitation under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)).

TITLE III—KIDS 2000

SEC. 301. AFTER-SCHOOL TECHNOLOGY GRANTS TO THE BOYS AND GIRLS CLUBS OF AMERICA.

(a) PURPOSES.—The Attorney General shall make grants to the Boys and Girls Clubs of America for the purpose of funding effective after-school technology programs, such as PowerUp, in order to provide—

(1) constructive technology-focussed activities that are part of a comprehensive program to provide access to technology and technology training to youth during after-school hours, weekends, and school vacations;

(2) supervised activities in safe environments for youth; and

(3) full-time staffing with teachers, tutors, and other qualified personnel.

(b) SUBAWARDS.—The Boys and Girls Clubs of America shall make subawards to local boys and girls clubs authorizing expenditures associated with providing technology programs such as PowerUp, including the hiring of teachers and other personnel, procurement of goods and services, including computer equipment, or such other purposes as are approved by the Attorney General.

SEC. 302. APPLICATIONS.

(a) ELIGIBILITY.—In order to be eligible to receive a grant under this title, an applicant for a subaward (specified in section 301(b)) shall submit an application to the Boys and Girls Clubs of America, in such form and containing such information as the Attorney General may reasonably require.

(b) APPLICATION REQUIREMENTS.—Each application submitted in accordance with subsection (a) shall include—

(1) a request for a subgrant to be used for the purposes of this Act;

(2) a description of the communities to be served by the grant, including the nature of juvenile crime, violence, and drug use in the communities;

(3) written assurances that Federal funds received under this Act will be used to supplement and not supplant, non-Federal funds that would otherwise be available for activities funded under this Act;

(4) written assurances that all activities funded under this Act will be supervised by qualified adults;

(5) a plan for assuring that program activities will take place in a secure environment that is free of crime and drugs;

(6) a plan outlining the utilization of content-based programs such as PowerUp, and the provision of trained adult personnel to supervise the after-school technology training; and

(7) any additional statistical or financial information that the Boys and Girls Clubs of America may reasonably require.

SEC. 303. GRANT AWARDS.

In awarding subgrants under this title, the Boys and Girls Clubs of America shall consider—

(1) the ability of the applicant to provide the intended services;

(2) the history and establishment of the applicant in providing youth activities; and

(3) the extent to which services will be provided in crime-prone areas and technologically underserved populations, and efforts to achieve an equitable geographic distribution of the grant awards.

TITLE IV—LEGAL AMNESTY RESTORATION ACT OF 2000

SEC. 401. RECORD OF ADMISSION FOR PERMANENT RESIDENCE FOR CERTAIN ALIENS WHO ENTERED PRIOR TO 1986.

(a) IN GENERAL.—Section 249 of the Immigration and Nationality Act (8 U.S.C. 1259) is amended—

(1) in the section heading, by striking ''1972'' and inserting ''1986''; and

(2) in subsection (a), by striking ''1972;'' and inserting ''1986;''.

(b) CLERICAL AMENDMENT.—The table of sections for such Act is amended in the item relating to section 249 by striking ''1972'' and inserting ''1986''.

TITLE V—CENTRAL AMERICAN AND HAITIAN ADJUSTMENT ACT

SEC. 501. ADJUSTMENT OF STATUS FOR CERTAIN NATIONALS FROM EL SALVADOR, GUATEMALA, HONDURAS, AND HAITI.

(a) Section 202 of the Nicaraguan Adjustment and Central American Relief Act is amended—

(1) in the section heading, by striking ''**NICARAGUANS AND CUBANS**'' and inserting ''**NICARAGUANS, CUBANS, SALVADORANS, GUATEMALANS, HONDURANS, AND HAITIANS**'';

(2) in subparagraph (a)(1)(A), by striking ''2000'' and inserting ''2003'';

(3) in paragraph (b)(1), by striking ''Nicaragua or Cuba'' and inserting ''Nicaragua, Cuba, El Salvador, Guatemala, Honduras, or Haiti''; and

(4) in subparagraph (d)(1)(E), by striking ''2000'' and inserting ''2003''.

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective upon the date of enactment of this Act.

SEC. 502. APPLICATIONS PENDING UNDER SECTION 203 OF THE NICARAGUAN ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT.

An application for relief properly filed by a national of Guatemala or El Salvador under section 203 of the Nicaraguan Adjustment and Central American Relief Act which was filed on or before the date of enactment of this Act, and on which a final administrative determination has not been made, may be converted by the applicant to an application for adjustment of status under the provisions of section 202 of the Nicaraguan Adjustment and Central American Relief Act, as amended, upon the payment of any fees, and in accordance with procedures, that the Attorney General shall prescribe by regulation. The Attorney General shall not be required to refund any fees paid in connection with an application filed by a national of Guatemala or El Salvador under section 203 of the Nicaraguan Adjustment and Central American Relief Act.

SEC. 503. APPLICATIONS PENDING UNDER THE HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT OF 1998.

An application for adjustment of status properly filed by a national of Haiti under the Haitian Refugee Immigration Fairness Act of 1998 which was filed on or before the date of enactment of this Act, and on which a final administrative determination has not been made, may be

considered by the Attorney General, in her unreviewable discretion, to also constitute an application for adjustment of status under the provisions of section 202 of the Nicaraguan Adjustment and Central American Relief Act, as amended.

SEC. 504. TECHNICAL AMENDMENTS TO THE NICARAGUAN ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT.

(a) Section 202 of the Nicaraguan Adjustment and Central American Relief Act is amended—

(1) in subparagraph (a)(1)(B), by adding after the word ''apply''—''and the Attorney General may, in her unreviewable discretion, waive the grounds of inadmissibility specified in clause 212(a)(1)(A)(i) and paragraph 212(a)(6)(C) of the Immigration and Nationality Act for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest'';

(2) in subsection (a), by redesignating paragraph (2) as paragraph (3), and adding the following as paragraph (2)—

''(2) INAPPLICABILITY OF CERTAIN PROVISIONS.—In determining the eligibility of an alien described in subsections (b) or (d) for either adjustment of status under this section or other relief nec-

essary to establish eligibility for such adjustment, the provisions of section 241(a)(5) of the Immigration and Nationality Act shall not apply. In addition, an alien who would otherwise be inadmissible pursuant to sections 212(a)(9) (A) or (C) of the Immigration and Nationality Act may apply for the Attorney General's consent to reapply for admission without regard to the requirement that the consent be granted prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, in order to qualify for the exception to those grounds of inadmissibility set forth in sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(ii) of the Immigration and Nationality Act.''

(3) in subsection (a), by striking redesignated paragraph (3), and inserting in its place—

''(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—An alien present in the United States who has been ordered excluded, deported, or removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1). Such an alien may not be required, as a

condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate such order. Such an alien may be required to seek a stay of such an order in accordance with subsection (c) to prevent the execution of that order pending the adjudication of the application for adjustment of status. If the Attorney General denies a stay of a final order of exclusion, deportation, or removal, or if the Attorney General renders a final administrative determination to deny the application for adjustment of status, the order shall be effective and enforceable to the same extent as if the application had not been made. If the Attorney General grants the application for adjustment of status, the Attorney General shall cancel the order.'';

(4) in paragraph (b)(1), by adding at the end the following—''However, subsection (a) shall not apply to an alien lawfully admitted for permanent residence, unless he or she is applying for such relief in deportation or removal proceedings.'';

(5) in paragraph (c)(1), by adding at the end the following—''Nothing in this Act shall require the Attorney General to stay the removal of an alien who is ineligible for adjustment of status under this Act.'';

(6) in subsection (d)—

(A) by revising the subsection heading to read ''SPOUSES, CHILDREN, AND UNMARRIED SONS AND DAUGHTERS.—'';

(B) in paragraph (1), by revising the hearing to read ''ADJUSTMENT OF STATUS.—'';

(C) by striking subparagraph (1)(A), and replacing it with the following—

''(A) the alien entered the United States on or before the date of enactment of the Information Technology Skills Improvement Act of 2000;'';

(D) in subparagraph (1)(B), by inserting the following after ''except that''—'': (i) in the case of such a spouse, stepchild, or unmarried stepson or stepdaughter, the qualifying marriage was entered into before the date of enactment of the Information Technology Skills Improvement Act of 2000; and (ii)''; and

(E) by creating a new paragraph (3) to read as follows—

''(3) ELIGIBILITY OF CERTAIN SPOUSES AND CHILDREN FOR ISSUANCE OF IMMIGRANT VISAS.—

''(A) In accordance with regulations to be promulgated by the attorney General and the

Secretary of State, upon approval of an application for adjustment of status to that of an alien lawfully admitted for permanent residence under subsection (a), an alien who is the spouse or child of the alien being granted such status may be issued a visa for admission to the United States as an immigrant following to join the principal applicant, provided that the spouse or child:

''(i) meets the requirements in subparagraphs (1) (B) and (D); and

''(ii) applies for such a visa within a time period to be established by regulation.

''(B) The Secretary of State may retain fees to recover the cost of immigrant visa application processing and issuance for certain spouses and children of aliens whose applications for adjustment of status under subsection (a) have been approved, provided that such fees:

''(i) shall be deposited as an offsetting collection to any Department of State appropriation to recover the cost of such processing and issuance; and

''(ii) shall be available until expended for the same purposes of such appropriation to support consular activities.'';

(7) in subsection (g), by inserting after ''for permanent residence'' the following—''or an immigrant classification''; and

(8) by adding at the end the following subsection—

''(i) ADMISSIONS.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, be admitted to, be paroled into, or otherwise lawfully return to the United States, to apply for or to pursue an application for adjustment of status under this section without the express authorization of the Attorney General.''

(b) EFFECTIVE DATE.—The amendments made by subsections (a)(3), (a)(4), and (a)(8) shall be effective as if included in the enactment of the Nicaraguan and Central American Relief Act. The amendments made by subsections (a)(1), (a)(2), (a)(5), (a)(6), and (a)(7) shall effective as of the date of enactment of this Act.

SEC. 505. TECHNICAL AMENDMENTS TO THE HAITIAN IMMIGRATION FAIRNESS ACT OF 1998.

(a) Section 902 of the Haitian Refugee Immigration Fairness Act of 1998 is amended—

(1) in subparagraph (a)(1)(B), by adding after the word ''apply''—''and the Attorney General may, in her unreviewable discretion, waive the grounds of inadmissibility specified in clause 212(a)(1)(A)(i) and paragraph 212(a)(6)(C) of the Immigration and Nationality Act for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest'';

(2) in subsection (a), by redesignating paragraph (2) as paragraph (3), and adding the following as paragraph (2)—

''(2) INAPPLICABILITY OF CERTAIN PROVISIONS.—In determining the eligibility of an alien described in subsections (b) or (d) for either adjustment of status under this section or other relief necessary to establish eligibility for such adjustment, or for permission to reapply for admission to the United States for the purpose of adjustment of status under this section, the provisions of section 241(a)(5) of the Immigration and Nationality Act shall not apply. In addition, an alien who would otherwise be inadmissible pursuant to sections

212(a)(9)(A) or (C) of the Immigration and Nationality Act may apply for the Attorney General's consent to reapply for admission without regard to the requirement that the consent be granted prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, in order to qualify for the exception to those grounds of inadmissibility set forth in sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(ii) of the Immigration and Nationality Act.'';

(3) in subsection (a), by striking redesignated paragraph (3), and inserting in its place—

''(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—An alien present in the United States who has been ordered excluded, deported, or removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1). Such an alien may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate such order. Such an alien may be required to seek a stay of such an order in accordance with sub-

section (c) to prevent the execution of that order pending the adjudication of the application for adjustment of status. If the Attorney General denies a stay of a final order of exclusion, deportation, or removal, or if the Attorney General renders a final administrative determination to deny the application for adjustment of status, the order shall be effective and enforceable to the same extent as if the application had not been made. If the Attorney General grants the application for adjustment of status, the Attorney General shall cancel the order.'';

(4) in paragraph (b)(1), by adding at the end the following—''However, subsection (a) shall not apply to an alien lawfully admitted for permanent residence, unless he or she is applying for such relief in deportation or removal proceedings.'';

(5) in paragraph (c)(1), by adding at the end the following—''Nothing in this Act shall require the Attorney General to stay the removal of an alien who is ineligible for adjustment of status under this Act.'';

(6) in subsection (d)—

(A) by revising the subsection heading to read ''SPOUSES, CHILDREN, AND UNMARRIED SONS AND DAUGHTERS.—'';

(B) in paragraph (1), by revising the heading to read ''ADJUSTMENT OF STATUS.—'';

(C) by striking subparagraph (1)(A), and replacing it with the following—

''(A) the alien entered the United States on or before the date of enactment of the Information Technology Skills Improvement Act of 2000;'';

(D) in subparagraph (1)(B), by inserting the following after ''except that''—'': (i) in the case of such a spouse, stepchild, or unmarried stepson or stepdaughter, the qualifying marriage was entered into before the date of enactment of the Information Technology Skills Improvement Act of 2000; and (ii)'';

(E) in paragraph (1), by creating a new subparagraph (E) as follows—

''(E) the alien applies for such adjustment before April 3, 2003.''; and

(F) by creating a new paragraph (3) to read as follows—

''(3) ELIGIBILITY OF CERTAIN SPOUSES AND CHILDREN FOR ISSUANCE OF IMMIGRANT VISAS.—

(A) In accordance with regulations to be promulgated by the Attorney General and the

Secretary of State, upon approval of an application for adjustment of status to that of an alien lawfully admitted for permanent residence under subsection (a), an alien who is the spouse or child of the alien being granted such status may be issued a visa for admission to the United States as an immigrant following to join the principal applicant, provided that the spouse or child:

(i) meets the requirements in subparagraphs (1) (B) and (D); and

(ii) applies for such a visa within a time period to be established by regulation.

(B) The Secretary of State may retain fees to recover the cost of immigrant visa application processing and issuance for certain spouses and children of aliens whose applications for adjustment of status under subsection (a) have been approved, provided that such fees:

(i) shall be deposited as an offsetting collection to any Department of State appropriation to recover the cost of such processing and issuance; and

(ii) shall be available until expended for the same purposes of such appropriation to support consular activities.'';

(7) in subsection (g), by inserting after ''for permanent residence'' the following—''or an immigrant classification''; and

(8) by redesignating subsections (i), (j), and (k) as (j), (k), and (l) respectively, and adding as subsection (i) the following—

''(i) ADMISSIONS.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, be admitted to, be paroled into, or otherwise lawfully return to the United States, to apply for or to pursue an application for adjustment of status under this section without the express authorization of the Attorney General.''.

(b) EFFECTIVE DATE.—The amendments made by subsections (a)(3), (a)(4), and (a)(8) of this Act shall be effective as if included in the enactment of the Haitian Refugee Immigration Fairness Act of 1998. The amendments made by subsections (a)(1), (a)(2), (a)(5), (a)(6), and (a)(7) shall be effective as of the date of enactment of this Act.

SEC. 506. MOTIONS TO REOPEN.

(a) Notwithstanding any time and number limitations imposed by law on motions to reopen, a national of Haiti who, on the date of enactment of this Act, has a final administrative denial of an application for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1988, and is made eligible for adjustment of status under that Act by the amendments made by this title, may file one motion to reopen exclusion, deportation, or removal proceedings to have the application considered again. All such motions shall be filed within 180 days of the date of enactment of this Act. The scope of any proceeding reopened on this basis shall be limited to a determination of the alien's eligibility for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1988.

(b) Notwithstanding any time and number limitations imposed by law on motions to reopen, a national of Cuba or Nicaragua who, on the date of enactment of the Act, has a final administrative denial of an application for adjustment of status under the Nicaraguan Adjustment and Central American Relief Act, and who is made eligible for adjustment of status under that Act by the amendments made by this title, may file one motion to reopen exclusion, deportation, or removal proceedings to have the application considered again. All such motions shall be filed with-

in 180 days of the date of enactment of this Act. The scope of any proceeding reopened on this basis shall be limited to a determination of the alien's eligibility for adjustment of status under the Nicaraguan Adjustment and Central American Relief Act.

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