

Calendar No. 814

106TH CONGRESS
2^D SESSION

S. 3068

To amend the Immigration and Nationality Act to remove certain limitations on the eligibility of aliens residing in the United States to obtain lawful permanent resident status.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2000

Mr. KENNEDY (for himself, Mr. DASCHLE, Mr. REID, Mr. LEAHY, Mr. DURBIN, Mr. GRAHAM, Mr. WELLSTONE, and Mr. KERRY) introduced the following bill; which was read the first time

SEPTEMBER 20, 2000

Read the second time and placed on the calendar

A BILL

To amend the Immigration and Nationality Act to remove certain limitations on the eligibility of aliens residing in the United States to obtain lawful permanent resident status.

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 “Latino and Immigrant
5 Fairness Act of 2000”.

1 **TITLE I—CENTRAL AMERICAN**
2 **AND HAITIAN PARITY**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Central American and
5 Haitian Parity Act of 2000”.

6 **SEC. 102. ADJUSTMENT OF STATUS FOR CERTAIN NATION-**
7 **ALS FROM EL SALVADOR, GUATEMALA, HON-**
8 **DURAS, AND HAITI.**

9 Section 202 of the Nicaraguan Adjustment and Cen-
10 tral American Relief Act is amended—

11 (1) in the section heading, by striking “NICA-
12 RAGUANS AND CUBANS” and inserting “NICA-
13 RAGUANS, CUBANS, SALVADORANS, GUATEMALANS,
14 HONDURANS, AND HAITIANS”;

15 (2) in subsection (a)(1)(A), by striking “2000”
16 and inserting “2004”;

17 (3) in subsection (b)(1), by striking “Nicaragua
18 or Cuba” and inserting “Nicaragua, Cuba, El Sal-
19 vador, Guatemala, Honduras, or Haiti”; and

20 (4) in subsection (d)—

21 (A) in subparagraph (A), by striking
22 “Nicaragua or Cuba” and inserting “Nica-
23 ragua, Cuba, El Salvador, Guatamala, Hon-
24 duras, or Haiti; and

1 (B) in subparagraph (E), by striking
2 “2000” and inserting “2004”.

3 **SEC. 103. APPLICATIONS PENDING UNDER AMENDMENTS**
4 **MADE BY SECTION 203 OF THE NICARAGUAN**
5 **ADJUSTMENT AND CENTRAL AMERICAN RE-**
6 **LIEF ACT.**

7 An application for relief properly filed by a national
8 of Guatemala or El Salvador under the amendments made
9 by section 203 of the Nicaraguan Adjustment and Central
10 American Relief Act which was filed on or before the date
11 of enactment of this Act, and on which a final administra-
12 tive determination has not been made, shall, at the election
13 of the applicant, be considered to be an application for
14 adjustment of status under the provisions of section 202
15 of the Nicaraguan Adjustment and Central American Re-
16 lief Act, as amended by sections 102 and 105 of this Act,
17 upon the payment of any fees, and in accordance with pro-
18 cedures, that the Attorney General shall prescribe by regu-
19 lation. The Attorney General may not refund any fees paid
20 in connection with an application filed by a national of
21 Guatemala or El Salvador under the amendments made
22 by section 203 of that Act.

1 **SEC. 104. APPLICATIONS PENDING UNDER THE HAITIAN**
2 **REFUGEE IMMIGRATION FAIRNESS ACT OF**
3 **1998.**

4 An application for adjustment of status properly filed
5 by a national of Haiti under the Haitian Refugee Immi-
6 gration Fairness Act of 1998 which was filed on or before
7 the date of enactment of this Act, and on which a final
8 administrative determination has not been made, may be
9 considered by the Attorney General to also constitute an
10 application for adjustment of status under the provisions
11 of section 202 of the Nicaraguan Adjustment and Central
12 American Relief Act, as amended by sections 102 and 105
13 of this Act.

14 **SEC. 105. TECHNICAL AMENDMENTS TO THE NICARAGUAN**
15 **ADJUSTMENT AND CENTRAL AMERICAN RE-**
16 **LIEF ACT.**

17 (a) IN GENERAL.—Section 202 of the Nicaraguan
18 Adjustment and Central American Relief Act is
19 amended—

20 (1) in subsection (a)—

21 (A) by inserting before the period at the
22 end of paragraph (1)(B) the following: “, and
23 the Attorney General may waive the grounds of
24 inadmissibility specified in section 212(a)(1)
25 (A)(i) and (6)(C) of such Act for humanitarian

1 purposes, to assure family unity, or when it is
2 otherwise in the public interest”;

3 (B) by redesignating paragraph (2) as
4 paragraph (3);

5 (C) by inserting after paragraph (1) the
6 following:

7 “(2) INAPPLICABILITY OF CERTAIN PROVI-
8 SIONS.—In determining the eligibility of an alien de-
9 scribed in subsection (b) or (d) for either adjustment
10 of status under this section or other relief necessary
11 to establish eligibility for such adjustment, the provi-
12 sions of section 241(a)(5) of the Immigration and
13 Nationality Act shall not apply. In addition, an alien
14 who would otherwise be inadmissible pursuant to
15 section 212(a)(9) (A) or (C) of such Act may apply
16 for the Attorney General’s consent to reapply for ad-
17 mission without regard to the requirement that the
18 consent be granted prior to the date of the alien’s
19 reembarkation at a place outside the United States
20 or attempt to be admitted from foreign contiguous
21 territory, in order to qualify for the exception to
22 those grounds of inadmissibility set forth in section
23 212(a)(9) (A)(iii) and (C)(ii) of such Act.”; and

1 (D) by amending paragraph (3) (as redес-
2 igned by subparagraph (B)) to read as fol-
3 lows:

4 “(3) RELATIONSHIP OF APPLICATION TO CER-
5 TAIN ORDERS.—An alien present in the United
6 States who has been ordered excluded, deported, or
7 removed, or ordered to depart voluntarily from the
8 United States under any provision of the Immigra-
9 tion and Nationality Act may, notwithstanding such
10 order, apply for adjustment of status under para-
11 graph (1). Such an alien may not be required, as a
12 condition of submitting or granting such application,
13 to file a separate motion to reopen, reconsider, or
14 vacate such order. Such an alien may be required to
15 seek a stay of such an order in accordance with sub-
16 section (c) to prevent the execution of that order
17 pending the adjudication of the application for ad-
18 justment of status. If the Attorney General denies a
19 stay of a final order of exclusion, deportation, or re-
20 moval, or if the Attorney General renders a final ad-
21 ministrative determination to deny the application
22 for adjustment of status, the order shall be effective
23 and enforceable to the same extent as if the applica-
24 tion had not been made. If the Attorney General

1 grants the application for adjustment of status, the
2 Attorney General shall cancel the order.”;

3 (2) in subsection (b)(1), by adding at the end
4 the following: “Subsection (a) shall not apply to an
5 alien lawfully admitted for permanent residence, un-
6 less the alien is applying for relief under that sub-
7 section in deportation or removal proceedings.”;

8 (3) in subsection (c)(1), by adding at the end
9 the following: “Nothing in this Act requires the At-
10 torney General to stay the removal of an alien who
11 is ineligible for adjustment of status under this
12 Act.”;

13 (4) in subsection (d)—

14 (A) by amending the subsection heading to
15 read as follows: “SPOUSES, CHILDREN, AND
16 UNMARRIED SONS AND DAUGHTERS.—”;

17 (B) by amending the heading of paragraph
18 (1) to read as follows: “ADJUSTMENT OF STA-
19 TUS.—”;

20 (C) by amending paragraph (1)(A) to read
21 as follows:

22 “(A) the alien entered the United States
23 on or before the date of enactment of the Cen-
24 tral American and Haitian Parity Act of
25 2000;”;

1 (D) in paragraph (1)(B), by striking “ex-
2 cept that in the case of” and inserting the fol-
3 lowing: “except that—

4 “(i) in the case of such a spouse, step-
5 child, or unmarried stepson or step-
6 daughter, the qualifying marriage was en-
7 tered into before the date of enactment of
8 the Central American and Haitian Parity
9 Act of 2000; and

10 “(ii) in the case of”; and

11 (E) by adding at the end the following new
12 paragraph:

13 “(3) ELIGIBILITY OF CERTAIN SPOUSES AND
14 CHILDREN FOR ISSUANCE OF IMMIGRANT VISAS.—

15 “(A) IN GENERAL.—In accordance with
16 regulations to be promulgated by the Attorney
17 General and the Secretary of State, upon ap-
18 proval of an application for adjustment of sta-
19 tus to that of an alien lawfully admitted for
20 permanent residence under subsection (a), an
21 alien who is the spouse or child of the alien
22 being granted such status may be issued a visa
23 for admission to the United States as an immi-
24 grant following to join the principal applicant,
25 if the spouse or child—

1 “(i) meets the requirements in para-
2 graphs (1)(B) and (1)(D); and

3 “(ii) applies for such a visa within a
4 time period to be established by such regu-
5 lations.

6 “(B) RETENTION OF FEES FOR PROC-
7 ESSING APPLICATIONS.—The Secretary of State
8 may retain fees to recover the cost of immi-
9 grant visa application processing and issuance
10 for certain spouses and children of aliens whose
11 applications for adjustment of status under sub-
12 section (a) have been approved. Such fees—

13 “(i) shall be deposited as an offsetting
14 collection to any Department of State ap-
15 propriation to recover the cost of such
16 processing and issuance; and

17 “(ii) shall be available until expended
18 for the same purposes of such appropria-
19 tion to support consular activities.”;

20 (5) in subsection (g), by inserting “, or an im-
21 migrant classification,” after “for permanent resi-
22 dence”; and

23 (6) by adding at the end the following new sub-
24 section:

1 “(i) **STATUTORY CONSTRUCTION.**—Nothing in this
 2 section authorizes any alien to apply for admission to, be
 3 admitted to, be paroled into, or otherwise lawfully return
 4 to the United States, to apply for, or to pursue an applica-
 5 tion for adjustment of status under this section without
 6 the express authorization of the Attorney General.”.

7 (b) **EFFECTIVE DATE.**—The amendments made by
 8 paragraphs (1)(D), (2), and (6) shall be effective as if in-
 9 cluded in the enactment of the Nicaraguan and Central
 10 American Relief Act. The amendments made by para-
 11 graphs (1) (A)–(C), (3), (4), and (5) shall take effect on
 12 the date of enactment of this Act.

13 **SEC. 106. TECHNICAL AMENDMENTS TO THE HAITIAN REF-**
 14 **UGEE IMMIGRATION FAIRNESS ACT OF 1998.**

15 (a) **IN GENERAL.**—Section 902 of the Haitian Ref-
 16 ugee Immigration Fairness Act of 1998 is amended—

17 (1) in subsection (a)—

18 (A) by inserting before the period at the
 19 end of paragraph (1)(B) the following: “, and
 20 the Attorney General may waive the grounds of
 21 inadmissibility specified in section 212(a)
 22 (1)(A)(i) and (6)(C) of such Act for humani-
 23 tarian purposes, to assure family unity, or when
 24 it is otherwise in the public interest”;

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

3 (C) by inserting after paragraph (1) the
4 following:

5 “(2) INAPPLICABILITY OF CERTAIN PROVI-
6 SIONS.—In determining the eligibility of an alien de-
7 scribed in subsection (b) or (d) for either adjustment
8 of status under this section or other relief necessary
9 to establish eligibility for such adjustment, or for
10 permission to reapply for admission to the United
11 States for the purpose of adjustment of status under
12 this section, the provisions of section 241(a)(5) of
13 the Immigration and Nationality Act shall not apply.
14 In addition, an alien who would otherwise be inad-
15 missible pursuant to section 212(a)(9) (A) or (C) of
16 such Act may apply for the Attorney General’s con-
17 sent to reapply for admission without regard to the
18 requirement that the consent be granted prior to the
19 date of the alien’s reembarkation at a place outside
20 the United States or attempt to be admitted from
21 foreign contiguous territory, in order to qualify for
22 the exception to those grounds of inadmissibility set
23 forth in section 212(a)(9) (A)(iii) and (C)(ii) of such
24 Act.”; and

1 (D) by amending paragraph (3) (as redес-
2 igned by subparagraph (B)) to read as fol-
3 lows:

4 “(3) RELATIONSHIP OF APPLICATION TO CER-
5 TAIN ORDERS.—An alien present in the United
6 States who has been ordered excluded, deported, re-
7 moved, or ordered to depart voluntarily from the
8 United States under any provision of the Immigra-
9 tion and Nationality Act may, notwithstanding such
10 order, apply for adjustment of status under para-
11 graph (1). Such an alien may not be required, as a
12 condition of submitting or granting such application,
13 to file a separate motion to reopen, reconsider, or
14 vacate such order. Such an alien may be required to
15 seek a stay of such an order in accordance with sub-
16 section (c) to prevent the execution of that order
17 pending the adjudication of the application for ad-
18 justment of status. If the Attorney General denies a
19 stay of a final order of exclusion, deportation, or re-
20 moval, or if the Attorney General renders a final ad-
21 ministrative determination to deny the application
22 for adjustment of status, the order shall be effective
23 and enforceable to the same extent as if the applica-
24 tion had not been made. If the Attorney General

1 grants the application for adjustment of status, the
2 Attorney General shall cancel the order.”;

3 (2) in subsection (b)(1), by adding at the end
4 the following: “Subsection (a) shall not apply to an
5 alien lawfully admitted for permanent residence, un-
6 less the alien is applying for such relief under that
7 subsection in deportation or removal proceedings.”;

8 (3) in subsection (c)(1), by adding at the end
9 the following: “Nothing in this Act shall require the
10 Attorney General to stay the removal of an alien
11 who is ineligible for adjustment of status under this
12 Act.”;

13 (4) in subsection (d)—

14 (A) by amending the subsection heading to
15 read as follows: “SPOUSES, CHILDREN, AND
16 UNMARRIED SONS AND DAUGHTERS.—”;

17 (B) by amending the heading of paragraph
18 (1) to read as follows: “ADJUSTMENT OF STA-
19 TUS.—”;

20 (C) by amending paragraph (1)(A), to read
21 as follows:

22 “(A) the alien entered the United States
23 on or before the date of enactment of the Cen-
24 tral American and Haitian Parity Act of
25 2000;”;

1 (D) in paragraph (1)(B), by striking “ex-
2 cept that in the case of” and inserting the fol-
3 lowing: “except that—

4 “(i) in the case of such a spouse, step-
5 child, or unmarried stepson or step-
6 daughter, the qualifying marriage was en-
7 tered into before the date of enactment of
8 the Central American and Haitian Parity
9 Act of 2000; and

10 “(ii) in the case of”;

11 (E) by adding at the end of paragraph (1)
12 the following new subparagraph:

13 “(E) the alien applies for such adjustment
14 before April 3, 2004.”; and

15 (F) by adding at the end the following new
16 paragraph:

17 “(3) ELIGIBILITY OF CERTAIN SPOUSES AND
18 CHILDREN FOR ISSUANCE OF IMMIGRANT VISAS.—

19 “(A) IN GENERAL.—In accordance with
20 regulations to be promulgated by the Attorney
21 General and the Secretary of State, upon ap-
22 proval of an application for adjustment of sta-
23 tus to that of an alien lawfully admitted for
24 permanent residence under subsection (a), an
25 alien who is the spouse or child of the alien

1 being granted such status may be issued a visa
2 for admission to the United States as an immi-
3 grant following to join the principal applicant,
4 if the spouse or child—

5 “(i) meets the requirements in para-
6 graphs (1)(B) and (1)(D); and

7 “(ii) applies for such a visa within a
8 time period to be established by such regu-
9 lations.

10 “(B) RETENTION OF FEES FOR PROC-
11 ESSING APPLICATIONS.—The Secretary of State
12 may retain fees to recover the cost of immi-
13 grant visa application processing and issuance
14 for certain spouses and children of aliens whose
15 applications for adjustment of status under sub-
16 section (a) have been approved. Such fees—

17 “(i) shall be deposited as an offsetting
18 collection to any Department of State ap-
19 propriation to recover the cost of such
20 processing and issuance; and

21 “(ii) shall be available until expended
22 for the same purposes of such appropria-
23 tion to support consular activities.”;

1 (5) in subsection (g), by inserting “, or an im-
2 migrant classification,” after “for permanent resi-
3 dence”;

4 (6) by redesignating subsections (i), (j), and (k)
5 as subsections (j), (k), and (l), respectively; and

6 (7) by inserting after subsection (h) the fol-
7 lowing new subsection:

8 “(i) **STATUTORY CONSTRUCTION.**—Nothing in this
9 section authorizes any alien to apply for admission to, be
10 admitted to, be paroled into, or otherwise lawfully return
11 to the United States, to apply for, or to pursue an applica-
12 tion for adjustment of status under this section without
13 the express authorization of the Attorney General.”.

14 (b) **EFFECTIVE DATE.**—The amendments made by
15 paragraphs (1)(D), (2), and (6) shall be effective as if in-
16 cluded in the enactment of the Haitian Refugee Immigra-
17 tion Fairness Act of 1998. The amendments made by
18 paragraphs (1) (A)–(C), (3), (4), and (5) shall take effect
19 on the date of enactment of this Act.

20 **SEC. 107. MOTIONS TO REOPEN.**

21 (a) **NATIONALS OF HAITI.**—Notwithstanding any
22 time and number limitations imposed by law on motions
23 to reopen, a national of Haiti who, on the date of enact-
24 ment of this Act, has a final administrative denial of an
25 application for adjustment of status under the Haitian

1 Refugee Immigration Fairness Act of 1998, and is made
2 eligible for adjustment of status under that Act by the
3 amendments made by this Act, may file one motion to re-
4 open an exclusion, deportation, or removal proceeding to
5 have the application reconsidered. Any such motion shall
6 be filed within 180 days of the date of enactment of this
7 Act. The scope of any proceeding reopened on this basis
8 shall be limited to a determination of the alien's eligibility
9 for adjustment of status under the Haitian Refugee Immi-
10 gration Fairness Act of 1998.

11 (b) NATIONALS OF CUBA.—Notwithstanding any
12 time and number limitations imposed by law on motions
13 to reopen, a national of Cuba or Nicaragua who, on the
14 date of enactment of the Act, has a final administrative
15 denial of an application for adjustment of status under
16 the Nicaraguan Adjustment and Central American Relief
17 Act, and who is made eligible for adjustment of status
18 under that Act by the amendments made by this Act, may
19 file one motion to reopen an exclusion, deportation, or re-
20 moval proceeding to have the application reconsidered.
21 Any such motion shall be filed within 180 days of the date
22 of enactment of this Act. The scope of any proceeding re-
23 opened on this basis shall be limited to a determination
24 of the alien's eligibility for adjustment of status under the
25 Nicaraguan Adjustment and Central American Relief Act.

1 **TITLE II—ADJUSTMENT OF**
2 **STATUS OF OTHER ALIENS**

3 **SEC. 201. ADJUSTMENT OF STATUS.**

4 (a) **GENERAL AUTHORITY.**—Notwithstanding any
5 other provision of law, an alien described in subsection (b)
6 shall be eligible for adjustment of status by the Attorney
7 General under the same procedures and under the same
8 grounds of eligibility as are applicable to the adjustment
9 of status of aliens under section 202 of the Nicaraguan
10 Adjustment and Central American Relief Act.

11 (b) **COVERED ALIENS.**—An alien described in this
12 subsection is any alien who was a national of the Soviet
13 Union, Russia, any republic of the former Soviet Union,
14 Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Ro-
15 mania, Hungary, Bulgaria, Albania, East Germany, Yugo-
16 slavia, or any state of the former Yugoslavia and who has
17 been physically present in the United States for a contin-
18 uous period, beginning not later than December 1, 1995,
19 and ending not earlier than the date the application for
20 adjustment under subsection (a) is filed, except an alien
21 shall not be considered to have failed to maintain contin-
22 uous physical presence by reason of an absence, or ab-
23 sences, from the United States for any periods in the ag-
24 gregate not exceeding 180 days.

1 **TITLE III—RESTORATION OF**
2 **SECTION 245(i) ADJUSTMENT**
3 **OF STATUS BENEFITS**

4 **SEC. 301. REMOVAL OF CERTAIN LIMITATIONS ON ELIGI-**
5 **BILITY FOR ADJUSTMENT OF STATUS UNDER**
6 **SECTION 245(i).**

7 (a) IN GENERAL.—Section 245(i)(1) of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1255(i)(1)) is amended
9 by striking “(i)(1)” through “The Attorney General” and
10 inserting the following:

11 “(i)(1) Notwithstanding the provisions of subsections
12 (a) and (c) of this section, an alien physically present in
13 the United States who—

14 “(A) entered the United States without inspec-
15 tion; or

16 “(B) is within one of the classes enumerated in
17 subsection (c) of this section;

18 may apply to the Attorney General for the adjustment of
19 his or her status to that of an alien lawfully admitted for
20 permanent residence. The Attorney General”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall be effective as if included in the enact-
23 ment of the Departments of Commerce, Justice, and
24 State, the Judiciary, and Related Agencies Appropriations
25 Act, 1998 (Public Law 105–119; 111 Stat. 2440).

1 **SEC. 302. USE OF SECTION 245(i) FEES.**

2 Section 245(i)(3)(B) of the Immigration and Nation-
3 ality Act (8 U.S.C. 1255(i)(3)(B)) is amended to read as
4 follows:

5 “(B) One-half of any remaining portion of such fees
6 remitted under such paragraphs shall be deposited by the
7 Attorney General into the Immigration Examinations Fee
8 Account established under section 286(m), and one-half
9 of any remaining portion of such fees shall be deposited
10 by the Attorney General into the Breached Bond/Deten-
11 tion Fund established under section 286(r).”.

12 **TITLE IV—EXTENSION OF**
13 **REGISTRY BENEFITS**

14 **SEC. 401. SHORT TITLE.**

15 This title may be cited as the “Date of Registry Act
16 of 2000”.

17 **SEC. 402. RECORD OF ADMISSION FOR PERMANENT RESI-**
18 **DENCE IN THE CASE OF CERTAIN ALIENS.**

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

21 (1) in subsection (a), by striking “January 1,
22 1972” and inserting “January 1, 1986”; and

23 (2) by striking “JANUARY 1, 1972” in the head-
24 ing and inserting “JANUARY 1, 1986”.

25 (b) EFFECTIVE DATES.—

1 (1) GENERAL RULE.—The amendments made
2 by subsection (a) shall take effect on the date of en-
3 actment of this Act.

4 (2) EXTENSION OF DATE OF REGISTRY.—

5 (A) PERIOD BEGINNING JANUARY 1,
6 2002.—Beginning on January 1, 2002, section
7 249 of the Immigration and Nationality Act (8
8 U.S.C. 1259) is amended by striking “January
9 1, 1986” each place it appears and inserting
10 “January 1, 1987”.

11 (B) PERIOD BEGINNING JANUARY 1,
12 2003.—Beginning on January 1, 2003, section
13 249 of such Act is amended by striking “Janu-
14 ary 1, 1987” each place it appears and insert-
15 ing “January 1, 1988”.

16 (C) PERIOD BEGINNING JANUARY 1,
17 2004.—Beginning on January 1, 2004, section
18 249 of such Act is amended by striking “Janu-
19 ary 1, 1988” each place it appears and insert-
20 ing “January 1, 1989”.

21 (D) PERIOD BEGINNING JANUARY 1,
22 2005.—Beginning on January 1, 2005, section
23 249 of such Act is amended by striking “Janu-
24 ary 1, 1989” each place it appears and insert-
25 ing “January 1, 1990”.

Calendar No. 814

106TH CONGRESS
2D SESSION

S. 3068

A BILL

To amend the Immigration and Nationality Act to remove certain limitations on the eligibility of aliens residing in the United States to obtain lawful permanent resident status.

SEPTEMBER 20, 2000

Read the second time and placed on the calendar