

107TH CONGRESS
1ST SESSION

H. R. 348

To amend the Nicaraguan Adjustment and Central American Relief Act to provide to certain nationals of El Salvador, Guatemala, Honduras, and Haiti an opportunity to apply for adjustment of status under that Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 2001

Mr. GUTIERREZ introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Nicaraguan Adjustment and Central American Relief Act to provide to certain nationals of El Salvador, Guatemala, Honduras, and Haiti an opportunity to apply for adjustment of status under that Act, 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 “Central American and
5 Haitian Adjustment Act of 1999”.

1 **SEC. 2. ADJUSTMENT OF STATUS FOR CERTAIN NATIONALS**
2 **FROM EL SALVADOR, GUATEMALA, HON-**
3 **DURAS, AND HAITI.**

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

6 (1) in the section heading, by striking “NICA-
7 RAGUANS AND CUBANS” and inserting “NICA-
8 RAGUANS, CUBANS, SALVADORANS, GUATE-
9 MALANS, HONDURANS, and HAITIANS”;

10 (2) in subparagraph (a)(1)(A), by striking
11 “2000” and inserting “2003”;

12 (3) in paragraph (b)(1), by striking “Nicaragua
13 or Cuba” and inserting “Nicaragua, Cuba, El Sal-
14 vador, Guatemala, Honduras, or Haiti”;

15 (4) in subparagraph (d)(1)(E), by striking
16 “2000” and inserting “2003”.

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

20 **SEC. 3. APPLICATIONS PENDING UNDER SECTION 203 OF**
21 **THE NICARAGUAN ADJUSTMENT AND CEN-**
22 **TRAL AMERICAN RELIEF ACT.**

23 An application for relief properly filed by a national
24 of Guatemala or El Salvador under section 203 of the Nic-
25 araguan Adjustment and Central American Relief Act
26 which was filed on or before the date of enactment of this

1 Act, and on which a final administrative determination has
2 not been made, may be converted by the applicant to an
3 application for adjustment of status under the provisions
4 of section 202 of the Nicaraguan Adjustment and Central
5 American Relief Act, as amended, upon the payment of
6 any fees, and in accordance with procedures, that the At-
7 torney General shall prescribe by regulation. The Attorney
8 General shall not be required to refund any fees paid in
9 connection with an application filed by a national of Gua-
10 temala or El Salvador under section 203 of the Nica-
11 raguean Adjustment and Central American Relief Act.

12 **SEC. 4. APPLICATIONS PENDING UNDER THE HAITIAN REF-**
13 **UGEE IMMIGRATION FAIRNESS ACT OF 1998.**

14 An application for adjustment of status properly filed
15 by a national of Haiti under the Haitian Refugee Immi-
16 gration Fairness Act of 1998 which was filed on or before
17 the date of enactment of this Act, and on which a final
18 administrative determination has not been made, may be
19 considered by the Attorney General, in her unreviewable
20 discretion, to also constitute an application for adjustment
21 of status under the provisions of section 202 of the Nica-
22 raguean Adjustment and Central American Relief Act, as
23 amended.

1 **SEC. 5. TECHNICAL AMENDMENTS TO THE NICARAGUAN**
2 **ADJUSTMENT AND CENTRAL AMERICAN RE-**
3 **LIEF ACT.**

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

6 (1) in subparagraph (a)(1)(B), by adding after
7 the word “apply”—“and the Attorney General may,
8 in her unreviewable discretion, waive the grounds of
9 inadmissibility specified in clause 212(a)(1)(A)(i)
10 and paragraph 212(a)(6)(C) of the Immigration and
11 Nationality Act for humanitarian purposes, to as-
12 sure family unity, or when it is otherwise in the pub-
13 lic interest”;

14 (2) in subsection (a), by redesignating para-
15 graph (2) as paragraph (3), and adding the fol-
16 lowing as paragraph (2)—

17 “(2) INAPPLICABILITY OF CERTAIN PROVI-
18 SIONS.—In determining the eligibility of an alien de-
19 scribed in subsection, (b) or (d) for either adjust-
20 ment of status under this section or other relief nec-
21 essary to establish eligibility for such adjustment,
22 the provisions of section 241(a)(5) of the Immigra-
23 tion and Nationality Act shall not apply. In addition,
24 an alien who would otherwise be inadmissible pursu-
25 ant to sections 212(a)(9) (A) or (C) of the Immigra-
26 tion and Nationality Act may apply for the Attorney

1 General’s consent to reapply for admission without
2 regard to the requirement that the consent be grant-
3 ed prior to the date of the alien’s reembarkation at
4 a place outside the United States or attempt to be
5 admitted from foreign contiguous territory, in order
6 to qualify for the exception to those grounds of inad-
7 missibility set forth in sections 212(a)(9)(A)(iii) and
8 212(a)(9)(C)(ii) of the Immigration and Nationality
9 Act.”.

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

12 “(3) RELATIONSHIP OF APPLICATION TO CER-
13 TAIN ORDERS.—An alien present in the United
14 States who has been ordered excluded, deported, or
15 removed, ordered to depart voluntarily from the
16 United States under any provision of the Immigra-
17 tion and Nationality Act may, notwithstanding such
18 order, apply for adjustment of status under para-
19 graph (1). Such an alien may not be required, as a
20 condition of submitting or granting such application,
21 to file a separate motion to reopen, reconsider, or
22 vacate such order. Such an alien may be required to
23 seek a stay of such an order in accordance with sub-
24 section (c) to prevent the execution of that order
25 pending the adjudication of the application for ad-

1 justment of status. If the Attorney General denies a
2 stay of a final order of exclusion, deportation, or re-
3 moval, or if the Attorney General renders a final ad-
4 ministrative determination to deny the application
5 for adjustment of status, the order shall be effective
6 and enforceable to the same extent as if the applica-
7 tion had not been made. If the Attorney General
8 grants the application for adjustment of status, the
9 Attorney General shall cancel the order.”.

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

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

20 (6) in subsection (d)—

21 (A) by revising the subsection heading to
22 read “SPOUSES, CHILDREN, AND UNMARRIED
23 SONS AND DAUGHTERS.—”;

24 (B) in paragraph (1), by revising the head-
25 ing to read “ADJUSTMENT OF STATUS.—”;

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

3 “(A) the alien entered the United States
4 on or before the date of enactment of the Cen-
5 tral American and Haitian Adjustment Act of
6 1999;”;

7 (D) in subparagraph (1)(B), by inserting
8 the following after “except that”—“: (1) in the
9 case of such a spouse, stepchild, or unmarried
10 stepson or stepdaughter, the qualifying mar-
11 riage was entered into before the date of enact-
12 ment of the Central American and Haitian Ad-
13 justment Act of 1999; and (ii)”; and

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

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

18 “(A) In accordance with regulations to be
19 promulgated by the Attorney General and the
20 Secretary of State, upon approval of an applica-
21 tion for adjustment of status to that of an alien
22 lawfully admitted for permanent residence
23 under subsection (a), an alien who is the spouse
24 or child of the alien being granted such status
25 may be issued a visa for admission to the

1 United States as an immigrant following to join
2 the principal applicant, provided that the
3 spouse or child:

4 “(i) meets the requirements in sub-
5 paragraphs (1)(B) and (D); and

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

8 “(B) The Secretary of State may retain
9 fees to recover the cost of immigrant visa appli-
10 cation processing and issuance for certain
11 spouses and children of aliens whose applica-
12 tions for adjustment of status under subsection
13 (a) have been approved, provided that such
14 fees:

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

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

22 (7) in subsection (g), by inserting after “for
23 permanent residence” the following—“or an immi-
24 grant classification”; and

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

3 “(i) ADMISSIONS.—Nothing in this
4 section shall be construed as authorizing
5 an alien to apply for admission to, be ad-
6 mitted to, be paroled into, or otherwise
7 lawfully return to the United States, to
8 apply for or to pursue an application for
9 adjustment of status under this section
10 without the express authorization of the
11 Attorney General.”.

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

18 **SEC. 6. TECHNICAL AMENDMENTS TO THE HAITIAN IMMI-**

19 **GRATION FAIRNESS ACT OF 1998.**

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

22 (1) in subparagraph (a)(1)(B), by adding after
23 the word “apply”—“and the Attorney General may,
24 in her unreviewable discretion, waive the grounds of
25 inadmissibility specified in clause 212(a)(1)(A)(i)

1 and paragraph 212(a)(6)(C) of the Immigration and
2 Nationality Act for humanitarian purposes, to as-
3 sure family unity, or when it is otherwise in the pub-
4 lic interest”;

5 (2) in subsection (a), by redesignating para-
6 graph (2) as paragraph (3), and adding the fol-
7 lowing as paragraph (2)—

8 “(2) INAPPLICABILITY OF CERTAIN PROVI-
9 SIONS.—In determining the eligibility of an alien de-
10 scribed in subsections (b) or (d) for either adjust-
11 ment of status under this section or other relief nec-
12 essary to establish eligibility for such adjustment, or
13 for permission to reapply for admission to the
14 United States for the purpose of adjustment of sta-
15 tus under this section, the provisions of section
16 241(a)(5) of the Immigration and Nationality Act
17 shall not apply. In addition, an alien who would oth-
18 erwise be inadmissible pursuant to sections
19 212(a)(9) (A) or (C) of the Immigration and Na-
20 tionality Act may apply for the Attorney General’s
21 consent to reapply for admission without regard to
22 the requirement that the consent be granted prior to
23 the date of the alien’s reembarkation at a place out-
24 side the United States or attempt to be admitted
25 from foreign contiguous territory, in order to qualify

1 for the exception to those grounds of inadmissibility
2 set forth in sections 212(a)(9)(A)(iii) and
3 212(a)(9)(C)(ii) of the Immigration and Nationality
4 Act.”.

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

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

1 and enforceable to the same extent as if the applica-
2 tion had not been made. If the Attorney General
3 grants the application for adjustment of status, the
4 Attorney General shall cancel the order.”.

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

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

15 (6) in subsection (d)—

16 (A) by revising the subsection heading to
17 read “SPOUSES, CHILDREN, AND UNMARRIED
18 SONS AND DAUGHTERS.—”;

19 (B) in paragraph (1), by revising the head-
20 ing to read “ADJUSTMENT OF STATUS.—”;

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

23 “(A) the alien entered the United States
24 on or before the date of enactment of the Cen-

1 tral American and Haitian Adjustment Act of
2 1999;”;

3 (D) in subparagraph (1)(B), by inserting
4 the following after “except that”—“: (i) in the
5 case of such a spouse, stepchild, or unmarried
6 stepson or stepdaughter, the qualifying mar-
7 riage was entered into before the date of enact-
8 ment of the Central American and Haitian Ad-
9 justment Act of 1999; and (ii)”;

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

12 “(E) the alien applies for such adjustment
13 before April 3, 2003.”; and

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

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

18 “(A) In accordance with regulations to be
19 promulgated by the Attorney General and the
20 Secretary of State, upon approval of an applica-
21 tion for adjustment of status to that of an alien
22 lawfully admitted for permanent residence
23 under subsection (a), an alien who is the spouse
24 or child of the alien being granted such status
25 may be issued a visa for admission to the

1 United States as an immigrant following to join
2 the principal applicant, provided that the
3 spouse or child:

4 “(i) meets the requirements in sub-
5 paragraphs (1) (B) and (D); and

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

8 “(B) The Secretary of State may retain
9 fees to recover the cost of immigrant visa appli-
10 cation processing and issuance for certain
11 spouses and children of aliens whose applica-
12 tions for adjustment of status under subsection
13 (a) have been approved, provided that such
14 fees:

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

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

22 (7) in subsection (g), by inserting after “for
23 permanent residence” the following—“or an immi-
24 grant classification”; and

1 (8) by redesignating subsections (i), (j), and (k)
2 as (j), (k), and (l) respectively, and adding as sub-
3 section (i) the following—

4 “(i) ADMISSIONS.—Nothing in this
5 section shall be construed as authorizing
6 an alien to apply for admission to, be ad-
7 mitted to, be paroled into, or otherwise
8 lawfully return to the United States, to
9 apply for or to pursue an application for
10 adjustment of status under this section
11 without the express authorization of the
12 Attorney General.”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 sections 6(a)(3), 6(a)(4), and 6(a)(8) of this Act shall be
15 effective as if included in the enactment of the Haitian
16 Refugee Immigration Fairness Act of 1998. The amend-
17 ments made by sections 6(a)(1), 6(a)(2), 6(a)(5), 6(a)(6),
18 and 6(a)(7) shall be effective as of the date of enactment
19 of this Act.

20 **SEC. 7. MOTIONS TO REOPEN.**

21 (a) Notwithstanding any time and number limitations
22 imposed by law on motions to reopen, a national of Haiti
23 who, on the date of enactment of this Act, has a final
24 administrative denial of an application for adjustment of
25 status under the Haitian Refugee Immigration Fairness

1 Act of 1988, and is made eligible for adjustment of status
2 under that Act by the amendments made by this Act, may
3 file one motion to reopen exclusion, deportation, or re-
4 moval proceedings to have the application considered
5 again. All such motions shall be filed within 180 days of
6 the date of enactment of this Act. The scope of any pro-
7 ceeding reopened on this basis shall be limited to a deter-
8 mination of the alien's eligibility for adjustment of status
9 under the Haitian Refugee Immigration Fairness Act of
10 1988.

11 (b) Notwithstanding any time and number limitations
12 imposed by law on motions to reopen, a national of Cuba
13 or Nicaragua who, on the date of enactment of the Act,
14 has a final administrative denial of an application for ad-
15 justment of status under the Nicaraguan Adjustment and
16 Central American Relief Act, and who is made eligible for
17 adjustment of status under that Act by the amendments
18 made by this Act, may file one motion to reopen exclusion,
19 deportation, or removal proceedings to have the applica-
20 tion considered again. All such motions shall be filed with-
21 in 180 days of the date of enactment of this Act. The
22 scope of any proceeding reopened on this basis shall be
23 limited to a determination of the alien's eligibility for ad-

- 1 adjustment of status under the Nicaraguan Adjustment and
- 2 Central American Relief Act.

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