

107TH CONGRESS
2D SESSION

H. R. 4503

To amend the Immigration and Nationality Act in regard to Caribbean-born immigrants.

IN THE HOUSE OF REPRESENTATIVES

APRIL 18, 2002

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

A BILL

To amend the Immigration and Nationality Act in regard to Caribbean-born immigrants.

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 “Caribbean Amnesty
5 and Relief Act”.

1 **TITLE I—CLARIFICATION OF ELI-**
2 **GIBILITY FOR RELIEF FROM**
3 **REMOVAL AND DEPORTATION**
4 **FOR CERTAIN ALIENS**

5 **SEC. 101. ADJUSTMENT OF STATUS OF CERTAIN CARIB-**
6 **BEANS.**

7 (a) ADJUSTMENT OF STATUS.—

8 (1) IN GENERAL.—Notwithstanding section
9 245(c) of the Immigration and Nationality Act, the
10 status of any alien described in subsection (b) shall
11 be adjusted by the Attorney General to that of an
12 alien lawfully admitted for permanent residence, if
13 the alien—

14 (A) applies for such adjustment before
15 April 1, 2003; and

16 (B) is otherwise eligible to receive an im-
17 migrant visa and is otherwise admissible to the
18 United States for permanent residence, except
19 in determining such admissibility the grounds
20 for inadmissibility specified in paragraphs (4),
21 (5), (6)(A) and (7)(A) of section 212(a) of the
22 Immigration and Nationality Act shall not
23 apply.

24 (2) RELATIONSHIP OF APPLICATION TO CER-
25 TAIN ORDERS.—An alien present in the United

1 States who has been ordered excluded, deported, re-
2 moved or ordered to depart voluntarily from the
3 United States under any provision of the Immigra-
4 tion and Nationality Act may, notwithstanding such
5 order, apply for adjustment of status under para-
6 graph (1). Such an alien may not be required, as a
7 condition of submitting or granting such application,
8 to file a separate motion to reopen, reconsider, or
9 vacate such an order. If the Attorney General grants
10 the application, the Attorney General shall cancel
11 the order. If the Attorney General renders a final
12 administrative decision to deny the application, the
13 order shall be effective and enforceable to the same
14 extent as if the application had not been made.

15 (b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-
16 TUS.—

17 (1) IN GENERAL.—The benefits provided by
18 subsection (a) shall apply to any alien who is a na-
19 tional of countries of the Caribbean and who has
20 been physically present in the United States for a
21 continuous period, beginning not later than Sep-
22 tember 30, 1996 and ending earlier than the date
23 the application for adjustment under such subsection
24 is filed, except an alien shall not be considered to
25 have failed to maintain continuous physical presence

1 by reason of an absence, or absences, from the
2 United States for any periods in the aggregate not
3 exceeding 180 days.

4 (2) PROOF OF COMMENCEMENT OF CONTIN-
5 UOUS PRESENCE.—For purposes of establishing that
6 the period of continuous physical presence referred
7 to in paragraph (1) commenced not later than Sep-
8 tember 30, 1996, an alien—

9 (A) shall demonstrate that the alien, prior
10 to September 30, 1996 performed service, or
11 engaged in a trade or business, within the
12 United States; or

13 (B) shall make such other demonstration
14 of physical presence as the Attorney General
15 may provide for by regulation.

16 (c) STAY OF REMOVAL; WORK AUTHORIZATION.—

17 (1) IN GENERAL.—The Attorney General shall
18 provide by regulation for an alien subject to a final
19 order of deportation or removal to seek a stay of
20 such order based on the filing of an application
21 under subsection (a).

22 (2) DURING CERTAIN PROCEEDINGS.—Notwith-
23 standing any provision of the Immigration and Na-
24 tionality Act, the Attorney General shall not order
25 any alien to be removed from the United States, if

1 the alien is in exclusion, deportation, or removal pro-
2 ceedings under any provision of such an Act and has
3 applied for adjustment of status under subsection
4 (a), except where the Attorney General has rendered
5 a final administrative determination to deny the ap-
6 plication.

7 (3) WORK AUTHORIZATION.—The Attorney
8 General may authorize an alien who has applied for
9 adjustment of status under subsection (a) to engage
10 in employment in the United States during the
11 pendency of such application and may provide the
12 alien with an “employment authorization” endorse-
13 ment or other appropriate document signifying au-
14 thorization of employment, except that if such appli-
15 cation is pending for a period exceeding 180 days,
16 and has not been denied, the Attorney General shall
17 authorize such employment.

18 (d) ADJUSTMENT OF STATUS FOR STATUS FOR
19 SPOUSES AND CHILDREN.—

20 (1) IN GENERAL.—Notwithstanding section
21 245(c) of the Immigration and Nationality Act, the
22 status of an alien shall be adjusted by the Attorney
23 General to that of an alien lawfully admitted for per-
24 manent residence, if—

1 (A) the alien is a national of a Caribbean
2 country;

3 (B) the spouse, child, or unmarried son or
4 daughter, of an alien whose status is adjusted
5 to that of an alien lawfully admitted for perma-
6 nent residence under subsection (a), except that
7 in the case of such an unmarried son or daugh-
8 ter, the son or daughter shall be required to es-
9 tablish that they have been physically present in
10 the United States for a continuous period, be-
11 ginning not later than December 1, 1995, and
12 ending not earlier than the date the application
13 for adjustment is filed;

14 (C) the alien applies for such adjustment
15 and is physically present in the United States
16 on the date the application is filed;

17 (D) the alien is otherwise eligible to receive
18 an immigrant visa and is otherwise admissible
19 to the United States for permanent residence,
20 except in determining such admissibility the
21 grounds for exclusion specified in paragraphs
22 (4), (5), (6)(A), and (7)(A) of section 212(a) of
23 the Immigration and Nationality Act shall not
24 apply; and

1 (E) applies for such adjustment before
2 April 1, 2003.

3 (2) PROOF OF CONTINUOUS PRESENCE.—For
4 purposes of establishing the period of continuous
5 physical presence referred to in paragraph (1)(B),
6 an alien—

7 (A) shall demonstrate that such period
8 commenced not later than December 1, 1995,
9 in a manner consistent with subsection (b)(2);
10 and

11 (B) shall not be considered to have failed
12 to maintain continuous physical presence by
13 reason of an absence, or absences, from the
14 United States for any period in the aggregate
15 not exceeding 180 days.

16 (e) AVAILABILITY OF ADMINISTRATIVE REVIEW.—
17 The Attorney General shall provide to applicants for ad-
18 justment of status under subsection (a) the same right to,
19 and procedures for, administrative review as are provided
20 to—

21 (1) applicants for adjustment of status under
22 section 245 of the Immigration and Nationality Act;
23 or

24 (2) aliens subject to removal proceedings under
25 section 240 of such Act.

1 (f) LIMITATION ON JUDICIAL REVIEW.—A deter-
2 mination by the Attorney General as to whether the status
3 of any alien should be adjusted under this section is final
4 and shall not be subject to review by any court.

5 (g) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—
6 When an alien is granted the status of having been law-
7 fully admitted for permanent residence pursuant to this
8 section, the Secretary of the State shall not be required
9 to reduce the number of immigrant visas authorized to be
10 issued under any provision of the Immigration and Na-
11 tionality Act.

12 (h) APPLICATION OF IMMIGRATION AND NATION-
13 ALITY ACT PROVISIONS.—Except as otherwise specifically
14 provided in this section, the definitions contained in the
15 Immigration and Nationality Act shall apply in the admin-
16 istration of this section. Nothing contained in this section
17 shall be held to repeal, amend, alter, modify, affect, or
18 restrict the powers, duties, functions, or authority of the
19 Attorney General in the administration and enforcement
20 of such Act or any other law relating to immigration, na-
21 tionality, or naturalization. The fact that an alien may be
22 eligible to be granted the status of having been lawfully
23 admitted for permanent residence under this section shall
24 not preclude the alien from seeking such status under any
25 other provision of law for which the alien may be eligible.

TITLE II—VISA FAIRNESS COMMISSION

SEC. 201. ESTABLISHMENT.

There is established in the Immigration and Naturalization Service a commission to be known as the Visa Fairness Commission (hereafter in this title referred to as the “Commission”).)

SEC. 202. DUTIES.

(a) DATA COLLECTION.—The Commission, in consultation with the Director of the Immigration and Naturalization Service, shall gather empirical data on economic and racial profiling by the Consular Affairs office in American embassies and by Customs and immigration inspectors at US points of entry. In carrying out the preceding sentence, the Commission and the Director shall, to the extent practicable, avoid duplication of administration efforts.

(b) IN GENERAL.—Section 376 of the Immigration and Nationality Act (8 U.S.C. 1351) is amended by adding in subsection (a) the following:

“(3) FEE WAIVER—The Secretary of State shall waive the visa fee for those who can prove in forma pauperis status.”.

1 **SEC. 203. MEMBERSHIP.**

2 (a) NUMBER AND APPOINTMENT.—The Commission
3 shall be composed of 15 members appointed by the Direc-
4 tor of the INS. Members on the Commission shall be
5 broadly representative of the ethnic, religious, majority
6 and minority groups comprising the United States.

7 (b) WAIVER OF LIMITATION ON EXECUTIVE SCHED-
8 ULE POSITIONS.—Appointments may be made under this
9 section without regard to section 5311(b) of title 5, United
10 States Code.

11 (c) POLITICAL AFFILIATION.—Not more than 8
12 members appointed maybe of the same political party.

13 (d) TERMS.—

14 (1) IN GENERAL.—Each member shall be ap-
15 pointed for a term of two years, except as provided.

16 (e) BASIC PAY.—

17 (1) RATES OF PAY.—Except as provided in
18 paragraph (2), member shall serve without pay.

19 (2) PROHIBITION OF COMPENSATION OF FED-
20 ERAL EMPLOYEES.—Members of the Commission
21 who are full-time officers or employees of the United
22 States may not receive additional pay, allowances, or
23 benefits by reason of their services on the Commis-
24 sion.

25 (f) TRAVEL EXPENSES.—Each member shall receive
26 travel expenses, including per diem in lieu of subsistence,

1 in accordance with sections 5702 and 5703 of title 5,
2 United States Code.

3 (g) QUORUM.—Eight members of the Commission
4 shall constitute a quorum but a lesser number may hold
5 hearings.

6 (h) CHAIRMAN; VICE CHAIRMAN.—The Chairman
7 and Vice Chairman of the Commission shall be designated
8 by the Director of the INS at the time of the appointment.

9 (i) MEETINGS.—The Commission shall meet at the
10 call of the Chairman or a majority of its members.

11 **SEC. 204. DIRECTOR AND STAFF OF COMMISSION; EXPERTS**
12 **AND CONSULTANTS.**

13 (a) DIRECTOR.—The Commission shall, without re-
14 gard to section 5311(b) of title 5, United States Code,
15 have a Director who shall be appointed by the Commis-
16 sion. The Director shall be paid at a rate not to exceed
17 the rate of basic pay payable for level V of the Executive
18 Schedule.

19 (b) STAFF.—Subject to rules prescribed by the Com-
20 mission, and without regard to section 5311(b) of title 5,
21 United States Code, the Director may appoint additional
22 personnel as the Director considers appropriate.

23 (c) APPLICABILITY OF CERTAIN CIVIL SERVICE
24 LAWS.—The Director and staff of the Commission shall
25 be appointed subject to the provisions of title 5, United

1 State Code, governing appointments in the competitive
2 service, and shall be paid in accordance with the provisions
3 of chapter 51 and subchapter III of chapter 53 of that
4 title relating to classification and General Schedule pay
5 rates.

6 (d) EXPERTS AND CONSULTANTS.—Subject to rules
7 prescribed by the Commission, the Director may procure
8 temporary and intermittent services under section 3109(b)
9 of title 5, United States Code, but at rates for individuals
10 not to exceed the daily equivalent of the rate basic pay
11 payable for level V of the Executive Schedule.

12 (e) STAFF OF FEDERAL AGENCIES.—Upon request
13 of the Director, the head of any Federal department or
14 agency may detail, on a reimbursable basis, any of the
15 personnel of that department or agency to the Commission
16 to assist it in carrying out its duties under this Act.

17 **SEC. 205. POWERS OF COMMISSION.**

18 (a) HEARINGS AND SESSIONS.—The Commission
19 may, for the purpose of carrying out this Act, hold hear-
20 ings, sit and act at times and places, take testimony, and
21 receive evidence as the Commission considers appropriate.
22 The Commission may administer oaths or affirmations to
23 witnesses appearing before it.

24 (b) POWERS OF MEMBERS AND AGENTS.—Any mem-
25 ber or agent of the Commission may, if authorized by the

1 Commission take any action which the Commission is au-
2 thorized to take by this section.

3 (c) OBTAINING OFFICIAL DATA.—The Commission
4 may secure directly from any department or agency of the
5 United States information necessary to enable it to carry
6 out this Act. Upon request of the Chairman or Vice Chair-
7 man of the Commission, the head of the department or
8 agency shall furnish that information to the Commission,
9 the head of that department or agency shall furnish that
10 information to the Commission.

11 (d) GIFTS, BEQUESTS, AND DEVISES.—The Commis-
12 sion may accept, use, and dispose of gifts, bequests, or
13 devises of services or property, both real and personal, for
14 the purpose of aiding or facilitating the work of the Com-
15 mission. Gifts, bequests, or devises of money and proceeds
16 from sales of other property received as gifts, bequests,
17 or devises shall be deposited in the Treasury and shall be
18 available for disbursement upon order of the Chairman.

19 (e) MAILS.—The Commission may use the United
20 States mails in the same manner and under the same con-
21 ditions as other departments and agencies of the United
22 States.

23 (f) ADMINISTRATIVE SUPPORT SERVICES.—Upon the
24 request of the Commission, the Administrator of General
25 Services shall provide to the Commission, on a reimburs-

1 able basis, the administrative support services necessary
2 for the Commission to carry out its responsibilities under
3 the Act.

4 (g) SUBPOENA POWER.—

5 (1) IN GENERAL.—The Commission may issue
6 subpoenas requiring the attendance and testimony of
7 witnesses and the production of any evidence relat-
8 ing to any matter under investigation by the Com-
9 mission. The attendance of witnesses and the pro-
10 duction of evidence may be required from any place
11 within the United States at any designated place of
12 hearing within the United States.

13 (2) FAILURE TO OBEY A SUBPOENA.—If a per-
14 son refuses to obey a subpoena issued under para-
15 graph (1), the Commission may apply to a United
16 States district court for an order requiring that per-
17 son to appear before the Commission to give testi-
18 mony, produce evidence, or both, relating to the
19 matter under investigation. The application may be
20 made within the judicial district where the hearing
21 is conducted or where that person is found, resides,
22 or transacts business any failure to obey the order
23 of the court may be punished by the court as civil
24 contempt.

1 (3) SERVICE OF SUBPOENAS.—The subpoenas
2 of the Commission shall be served in the manner
3 provided for subpoenas issued by a United States
4 district court under the Federal Rules of Civil Pro-
5 cedure for the United States district courts.

6 (4) SERVICE OF PROCESS.—All process of any
7 court to which application is be made under para-
8 graph (2) may be served in the judicial district in
9 which the person required to be served resides or
10 may be found.

11 (h) IMMUNITY.—Except as provided in this sub-
12 section, a person may not be excused from testifying or
13 from producing evidence pursuant to a subpoena on the
14 ground that the testimony or evidence required by the sub-
15 poena may tend to incriminate or subject that person to
16 criminal prosecution. A person, after having claimed the
17 privilege against self-incrimination, may not be criminally
18 prosecuted by reason of any transaction, matter, or thing
19 about which that person is compelled to testify or relating
20 to which that person is compelled to produce evidence, ex-
21 cept that the person may be prosecuted for perjury com-
22 mitted during the testimony or made in the evidence.

23 (i) CONTRACT AUTHORITY.—The Commission may
24 contract with and compensate government and private
25 agencies or persons for property and services, without re-

1 gard to section 3709 of the Revised Statutes (41 U.S.C.
2 5).

3 **SEC. 206. ANNUAL REPORTS.**

4 The Commission shall transmit an annual report to
5 the Director of the INS and the Congress not later than
6 December 31 of each year. Each such report shall contain
7 a detailed statement of activities of the Commission dur-
8 ing the fiscal year ending in the year in which such report
9 is required to be submitted.

10 **SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

11 There are authorized to be appropriated such sums
12 as may be necessary to complete the study.

13 **TITLE III—ELIGIBILITY FOR**
14 **ADJUSTMENT OF STATUS**

15 **SEC. 301. REMOVAL OF CERTAIN LIMITATIONS ON ELIGI-**
16 **BILITY FOR ADJUSTMENT OF STATUS UNDER**
17 **SECTION 245(i).**

18 Section 245(i) of the Immigration and Nationality
19 Act (8 U.S.C. 1255(i)) is amended—

20 (1) in paragraph (1), by striking “(i)(1)”
21 through “to that of an alien lawfully admitted for
22 permanent residence.” and inserting the following:
23 “(i)(1) Notwithstanding the provisions of subsections
24 (a) and (c) of this section, an alien physically present in
25 the United States who—

1 “(A) entered the United States without inspec-
2 tion; or

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

5 may apply to the Attorney General for the adjustment of
6 his or her status to that of an alien lawfully admitted for
7 permanent residence.”; and

8 (2) in paragraph (3)(B), by striking “, except
9 that” through “286(m)”.

○