

107TH CONGRESS
1ST SESSION

S. 1265

To amend the Immigration and Nationality Act to require the Attorney General to cancel the removal and adjust the status of certain aliens who were brought to the United States as children.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2001

Mr. DURBIN (for himself, Mr. KENNEDY, Mr. REID, Mr. DODD, Mr. WELLSTONE, Mr. CORZINE, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to require the Attorney General to cancel the removal and adjust the status of certain aliens who were brought to the United States as children.

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 “Children’s Adjustment,
5 Relief, and Education Act” or the “CARE Act”.

1 **SEC. 2. DEFINITION.**

2 In this Act, the term “secondary school student”
3 means a student enrolled in any of the grades 7 through
4 12.

5 **SEC. 3. STATE FLEXIBILITY IN PROVIDING IN-STATE TUI-**
6 **TION FOR COLLEGE-AGE ALIEN CHILDREN.**

7 (a) IN GENERAL.—Section 505 of the Illegal Immi-
8 gration Reform and Immigrant Responsibility Act of 1996
9 (Public Law 104–208; division C; 110 Stat. 3009–672)
10 (8 U.S.C. 1623) is hereby repealed.

11 (b) EFFECTIVE DATE.—The repeal made by this sec-
12 tion to the Illegal Immigration Reform and Immigrant Re-
13 sponsibility Act of 1996 shall take effect as if included
14 in the enactment of such Act.

15 **SEC. 4. CANCELLATION OF REMOVAL AND ADJUSTMENT OF**
16 **STATUS FOR CERTAIN ALIEN CHILDREN.**

17 (a) IN GENERAL.—Section 240A of the Immigration
18 and Nationality Act (8 U.S.C. 1229b) is amended—

19 (1) in subsection (b), by inserting at the end
20 the following new paragraph:

21 “(5) SPECIAL RULE FOR RESIDENTS BROUGHT
22 TO THE UNITED STATES AS CHILDREN.—

23 “(A) AUTHORITY.—Subject to the restric-
24 tions in subparagraph (B), the Attorney Gen-
25 eral shall cancel removal of, and adjust to the
26 status of an alien lawfully admitted for perma-

1 nent residence, an alien who is inadmissible or
2 deportable from the United States, if the alien
3 applies for relief under this paragraph and
4 demonstrates that on the date of application for
5 such relief—

6 “(i) the alien had not attained the age
7 of 21;

8 “(ii) the alien had been physically
9 present in the United States for a contin-
10 uous period of not less than five years im-
11 mediately preceding the date of such appli-
12 cation;

13 “(iii) the alien had been a person of
14 good moral character during the five-year
15 period preceding the application; and

16 “(iv) the alien—

17 “(I) was a secondary school stu-
18 dent in the United States;

19 “(II) was attending an institution
20 of higher education in the United
21 States as defined in section 101 of the
22 Higher Education Act of 1965 (20
23 U.S.C. 1001); or

24 “(III) with respect to whom the
25 registrar of such an institution of

1 higher education in the United States
 2 had certified that the alien had ap-
 3 plied for admission, met the minimum
 4 standards for admission, and was
 5 being considered for admission.

6 “(B) RESTRICTIONS ON AUTHORITY.—

7 Subparagraph (A) does not apply to—

8 “(i) an alien who is inadmissible
 9 under section 212(a)(2)(A)(i)(I), or is de-
 10 portable under section 237(a)(2)(A)(i), un-
 11 less the Attorney General determines that
 12 the alien’s removal would result in extreme
 13 hardship to the alien, the alien’s child, or
 14 (in the case of an alien who is a child) to
 15 the alien’s parent; or

16 “(ii) an alien who is inadmissible
 17 under section 212(a)(3), or is deportable
 18 under section 237(a)(2)(D)(i) or
 19 237(a)(2)(D)(ii).”; and

20 (2) in subsection (d)(1)(A), by inserting “or
 21 (5)” after “subsection (b)(2)”.

22 (b) EXEMPTION FROM NUMERICAL LIMITATIONS.—

23 Section 240A of the Immigration and Nationality Act (8
 24 U.S.C. 1229b), as amended by this Act, is further amend-

1 ed in subsection (e)(3) by adding at the end the following
 2 new subparagraph:

3 “(C) Aliens described in subsection
 4 (b)(5).”.

5 (c) APPLICATION OF PROVISIONS.—For the purpose
 6 of applying section 240A(b)(5)(A) of the Immigration and
 7 Nationality Act (as added by subsection (a))—

8 (1) an individual shall be deemed to have met
 9 the qualifications of clause (i) of such section
 10 240A(b)(5)(A) if the individual—

11 (A) had not attained the age of 21 prior
 12 to the date of enactment of this Act; and

13 (B) applies for relief under this section
 14 within 120 days of the effective date of regula-
 15 tions implementing this section; and

16 (2) an individual shall be deemed to have met
 17 the requirements of clauses (i), (ii), and (iv) of such
 18 section 240A(b)(5)(A) if—

19 (A) the individual would have met such re-
 20 quirements at any time during the four-year pe-
 21 riod immediately preceding the date of enact-
 22 ment of this Act; and

23 (B) the individual has graduated from, or
 24 is on the date of application for relief under
 25 such section 240A(b)(5) enrolled in, an institu-

tion of higher education in the United States
(as defined in clause (iv) of such section
240A(b)(5)(A)).

(d) CONFIDENTIALITY OF INFORMATION.—

(1) PROHIBITION.—Neither the Attorney General, nor any other official or employee of the Department of Justice may—

(A) use the information furnished by the applicant pursuant to an application filed under section 240A(b)(5) of the Immigration and Nationality Act (as added by this Act) for any purpose other than to make a determination on the application;

(B) make any publication whereby the information furnished by any particular individual can be identified; or

(C) permit anyone other than the sworn officers and employees of the Department or, with respect to applications filed under such section 240A(b)(5) with a designated entity, that designated entity, to examine individual applications.

(2) PENALTY.—Whoever knowingly uses, publishes, or permits information to be examined in vio-

1 lation of this subsection shall be fined not more than
2 \$10,000.

3 (e) REGULATIONS.—

4 (1) PROPOSED REGULATION.—Not later than
5 60 days after the date of enactment of this Act, the
6 Attorney General shall publish proposed regulations
7 implementing this section.

8 (2) INTERIM, FINAL REGULATIONS.—Not later
9 than 120 days after the date of enactment of this
10 Act, the Attorney General shall publish final regula-
11 tions implementing this section. Such regulations
12 shall be effective immediately on an interim basis,
13 but shall be subject to change and revision after
14 public notice and opportunity for a period of public
15 comment.

16 (3) ELEMENTS OF REGULATIONS.—In promul-
17 gating regulations described in paragraphs (1) and
18 (2), the Attorney General shall do the following:

19 (A) APPLICATION FOR RELIEF.—Establish
20 a procedure allowing eligible individuals to
21 apply affirmatively for the relief available under
22 section 240A(b)(5) of the Immigration and Na-
23 tionality Act (as added by this Act) without
24 being placed in removal proceedings.

1 (B) CONTINUOUS PRESENCE.—Ensure
 2 that an alien shall not be considered to have
 3 failed to maintain continuous physical presence
 4 in the United States for purposes of section
 5 240A(b)(5)(ii) of the Immigration and Nation-
 6 ality Act (as added by this Act) by virtue of
 7 brief, casual, and innocent absences from the
 8 United States.

9 (f) CONFORMING AMENDMENT.—Section 240A(b) of
 10 the Immigration and Nationality Act (8 U.S.C. 1229b(b)),
 11 as amended by this Act, is further amended in paragraph
 12 (4) by striking “paragraph (1) or (2)” each place it occurs
 13 and inserting “paragraph (1), (2), or (5)”.

14 **SEC. 5. ELIGIBILITY OF CANCELLATION APPLICANTS FOR**
 15 **EDUCATIONAL ASSISTANCE.**

16 (a) QUALIFIED ALIENS.—Section 431 of the Per-
 17 sonal Responsibility and Work Opportunity Reconciliation
 18 Act of 1996 (8 U.S.C. 1641(b)) is amended by adding at
 19 the end the following new paragraph:

20 “(8) for purposes of determining eligibility for
 21 postsecondary educational assistance, including
 22 grants, scholarships, and loans, an alien with respect
 23 to whom an application has been filed for relief
 24 under section 240A(b)(5) of the Immigration and

1 Nationality Act, but whose application has not been
2 finally adjudicated.”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply as if enacted on August 22, 1996.

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