

Union Calendar No. 57

108TH CONGRESS
1ST SESSION

H. R. 1954

[Report No. 108-111]

To revise the provisions of the Immigration and Nationality Act relating to naturalization through service in the Armed Forces, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 2003

Mr. SENSENBRENNER (for himself, Mr. COBLE, Mr. FLAKE, Mr. GUTIERREZ, Mr. HASTINGS of Washington, Mr. ISSA, Mr. JENKINS, Mr. JONES of North Carolina, Mr. KELLER, Mr. CONYERS, Ms. JACKSON-LEE of Texas, and Mr. BERMAN) introduced the following bill; which was referred to the Committee on the Judiciary

MAY 19, 2003

Additional sponsors: Ms. SOLIS, Mr. DREIER, Mr. PEARCE, Mr. PUTNAM, Mr. LEWIS of California, and Mr. GREEN of Texas

MAY 19, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on May 6, 2003]

A BILL

To revise the provisions of the Immigration and Nationality Act relating to naturalization through service in the Armed Forces, and for other purposes.

1 *and no clerk of any State court shall charge or collect*
2 *any fee for such services unless the laws of the State*
3 *require such charge to be made, in which case nothing*
4 *more than the portion of the fee required to be paid*
5 *to the State shall be charged or collected.”; and*

6 (2) *in section 329(b)—*

7 (A) *in paragraph (2), by striking “and” at*
8 *the end;*

9 (B) *in paragraph (3), by striking the period*
10 *at the end and inserting “; and”; and*

11 (C) *by adding at the end the following:*

12 “(4) *notwithstanding any other provision of law,*
13 *no fee shall be charged or collected from the person for*
14 *filing the application, or for the issuance of a certifi-*
15 *cate of naturalization upon being granted citizenship,*
16 *and no clerk of any State court shall charge or collect*
17 *any fee for such services unless the laws of the State*
18 *require such charge to be made, in which case nothing*
19 *more than the portion of the fee required to be paid*
20 *to the State shall be charged or collected.”.*

21 (c) *REVOCATION OF CITIZENSHIP FOR SEPARATION*
22 *FROM MILITARY SERVICE UNDER OTHER THAN HONOR-*
23 *ABLE CONDITIONS.—Section 328 of the Immigration and*
24 *Nationality Act (8 U.S.C. 1439) is amended by adding at*
25 *the end the following:*

1 “(f) *Citizenship granted pursuant to this section may*
2 *be revoked in accordance with section 340 of this title if*
3 *at any time subsequent to naturalization the person is sepa-*
4 *rated from the military, air, or naval forces under other*
5 *than honorable conditions, and such ground for revocation*
6 *shall be in addition to any other provided by law. The fact*
7 *that the naturalized person was separated from the service*
8 *under other than honorable conditions shall be proved by*
9 *a duly authenticated certification from the executive depart-*
10 *ment under which the person was serving at the time of*
11 *separation.*”.

12 (d) *NATURALIZATION PROCEEDINGS OVERSEAS FOR*
13 *MEMBERS OF ARMED FORCES.*—*Notwithstanding any*
14 *other provision of law, the Secretary of Homeland Security,*
15 *the Secretary of State, and the Secretary of Defense shall*
16 *ensure that any applications, interviews, filings, oaths,*
17 *ceremonies, or other proceedings under title III of the Immi-*
18 *gration and Nationality Act (8 U.S.C. 1401 et seq.) relating*
19 *to naturalization of members of the Armed Forces are avail-*
20 *able, to the maximum extent practicable, through United*
21 *States embassies, consulates, and United States military in-*
22 *stallations overseas.*

23 (e) *TECHNICAL AMENDMENT.*—*Section 328(b)(3) of the*
24 *Immigration and Nationality Act (8 U.S.C. 1439(b)(3)) is*

1 amended by striking “Attorney General,” and inserting
2 “Secretary of Homeland Security.”

3 **SEC. 3. POSTHUMOUS CITIZENSHIP THROUGH DEATH**
4 **WHILE ON ACTIVE-DUTY SERVICE IN ARMED**
5 **FORCES.**

6 (a) *IN GENERAL.*—Section 329A of the Immigration
7 and Nationality Act (8 U.S.C. 1440–1) is amended by
8 striking subsection (e) and inserting the following:

9 “(e) *PROHIBITION ON IMPOSITION OF FEES.*—Not-
10 withstanding any other provision of law, no fee shall be
11 charged or collected from a person for filing a request for
12 the granting of posthumous citizenship under subsection (c),
13 or for the issuance of a document under subsection (d).

14 “(f) *BENEFITS FOR SURVIVORS.*—

15 “(1) *SPOUSES.*—Notwithstanding the second sen-
16 tence of section 201(b)(2)(A)(i), a person who is the
17 surviving spouse of a person granted posthumous citi-
18 zenship under this section, and who was living in
19 marital union with the citizen spouse at the time of
20 death, shall be considered, for purposes of section
21 201(b), to remain an immediate relative after the
22 date of the citizen’s death, but only until the date on
23 which the surviving spouse remarries.

24 “(2) *CHILDREN.*—Notwithstanding the second
25 sentence of section 201(b)(2)(A)(i), a person who is

1 *the surviving child of a person granted posthumous*
2 *citizenship under this section, and who is an unmar-*
3 *ried person under 21 years of age on the date on*
4 *which the petition under paragraph (4) is filed, shall*
5 *be considered, for purposes of section 201(b), to re-*
6 *main an immediate relative after the date of the citi-*
7 *zen's death (regardless of changes in age or marital*
8 *status after such filing date).*

9 “(3) *PARENTS.*—*Notwithstanding the first sen-*
10 *tence of section 201(b)(2)(A)(i), a person who is the*
11 *surviving parent of a person granted posthumous citi-*
12 *zenship under this section, and who is lawfully*
13 *present in the United States on the date of the citi-*
14 *zen's death, shall be considered, for purposes of section*
15 *201(b), to remain an immediate relative after such*
16 *date, and the requirement that the citizen be at least*
17 *21 years of age shall not apply.*

18 “(4) *SELF-PETITIONS.*—

19 “(A) *IN GENERAL.*—*In the case of a sur-*
20 *viving spouse, child, or parent who remains an*
21 *immediate relative after the date of a citizen's*
22 *death pursuant to paragraph (1), (2), or (3),*
23 *any petition under section 204 otherwise re-*
24 *quired to be filed by the citizen to classify the*
25 *spouse, child, or parent under section*

1 201(b)(2)(A)(i) may be filed instead by the
2 spouse, child, or parent.

3 “(B) *MINOR CHILDREN.*—In the case of a
4 child under 18 years of age on the filing date,
5 the petition described in subparagraph (A) shall
6 be filed on behalf of the child by a parent or
7 legal guardian of the child.

8 “(5) *DEADLINE.*—Paragraphs (1) through (4)
9 shall apply only if the petition under paragraph (4)
10 is filed not later than 2 years after the date on which
11 the request under subsection (c) is granted.

12 “(6) *CONVERSION OF PETITIONS.*—In the case of
13 a petition under section 204 initially filed for an
14 alien’s classification as a family-sponsored immi-
15 grant under section 203(a)(2)(A), based on the alien’s
16 spouse or parent being lawfully admitted for perma-
17 nent residence, upon the grant of posthumous citizen-
18 ship under this section to the petitioner, the Secretary
19 of Homeland Security—

20 “(A) shall convert such petition to a peti-
21 tion filed under paragraph (4) to classify the
22 alien as an immediate relative under subsection
23 (b)(2)(A)(i);

1 “(B) shall ensure that the priority date as-
2 signed upon receipt of the original petition is
3 maintained; and

4 “(C) otherwise shall treat the date on which
5 the request under subsection (c) is granted as the
6 petition filing date for purposes of this sub-
7 section.

8 “(7) WAIVER OF PUBLIC CHARGE GROUND FOR
9 INADMISSIBILITY.—In determining the admissibility
10 of any alien accorded an immigration benefit under
11 this subsection, the grounds for inadmissibility speci-
12 fied in section 212(a)(4) shall not apply.

13 “(8) NO BENEFITS FOR OTHER RELATIVES.—
14 Nothing in this section shall be construed as pro-
15 viding for any benefit under this Act for any relative
16 of a person granted posthumous citizenship under this
17 section who is not treated as a spouse, child, or par-
18 ent under this subsection.”.

19 (b) NATURALIZATION FOR SURVIVING SPOUSES.—Sec-
20 tion 319(d) of the Immigration and Nationality Act (8
21 U.S.C. 1430(d)) is amended by adding at the end the fol-
22 lowing: “For purposes of this subsection, the terms ‘United
23 States citizen’ and ‘citizen spouse’ include a person granted
24 posthumous citizenship under section 329A.”.

1 (c) *TECHNICAL AMENDMENTS.*—Section 329A of the
 2 *Immigration and Nationality Act* (8 U.S.C. 1440–1) is
 3 amended by striking “Attorney General” each place such
 4 term appears and inserting “Secretary of Homeland Secu-
 5 rity”.

6 **SEC. 4. IMMIGRATION BENEFITS FOR SURVIVING ALIEN**
 7 **SPOUSES, CHILDREN, AND PARENTS OF CITI-**
 8 **ZENS WHO DIE WHILE ON ACTIVE DUTY.**

9 (a) *TREATMENT AS IMMEDIATE RELATIVES.*—Section
 10 201(f) of the *Immigration and Nationality Act* (8 U.S.C.
 11 1151(f)) is amended by adding at the end the following:

12 “(4) *SURVIVING ALIEN SPOUSES, CHILDREN, AND*
 13 *PARENTS OF CITIZENS WHO DIE WHILE ON ACTIVE-*
 14 *DUTY SERVICE IN ARMED FORCES.*—

15 “(A) *BENEFITS FOR SURVIVORS.*—

16 “(i) *IN GENERAL.*—The benefits under
 17 this paragraph shall apply only to a sur-
 18 viving spouse, child, or parent of a person
 19 who, while a citizen of the United States,
 20 died during a period of honorable service in
 21 the Armed Forces of the United States as a
 22 result of injury or disease incurred in or
 23 aggravated by such service.

24 “(ii) *DETERMINATIONS.*—The executive
 25 department under which the citizen so

1 *served shall determine whether the citizen*
2 *satisfied the requirements of clause (i).*

3 “(B) *SPOUSES.*—*Notwithstanding the sec-*
4 *ond sentence of subsection (b)(2)(A)(i), a person*
5 *who is a surviving spouse described in subpara-*
6 *graph (A), and who was living in marital union*
7 *with the citizen described in such subparagraph*
8 *at the time of death, shall be considered, for pur-*
9 *poses of subsection (b), to remain an immediate*
10 *relative after the date of the citizen’s death, but*
11 *only until the date on which the surviving spouse*
12 *remarries.*

13 “(C) *CHILDREN.*—*Notwithstanding the sec-*
14 *ond sentence of subsection (b)(2)(A)(i), a person*
15 *who is a surviving child described in subpara-*
16 *graph (A), and who is an unmarried person*
17 *under 21 years of age on the date on which a pe-*
18 *tition described in subparagraph (E) to classify*
19 *the alien as an immediate relative is filed, shall*
20 *be considered, for purposes of subsection (b), to*
21 *remain an immediate relative after the date of*
22 *the citizen’s death (regardless of changes in age*
23 *or marital status after such filing date).*

24 “(D) *PARENTS.*—*Notwithstanding the first*
25 *sentence of subsection (b)(2)(A)(i), a person who*

1 is a surviving parent described in subparagraph
2 (A), and who is lawfully present in the United
3 States on the date of the citizen's death, shall be
4 considered, for purposes of subsection (b), to re-
5 main an immediate relative after such date, and
6 the requirement that the citizen be at least 21
7 years of age shall not apply.

8 “(E) TREATMENT OF PETITIONS.—

9 “(i) CONTINUATION OF PETITIONS.—A
10 petition properly filed on behalf of a spouse,
11 child, or parent under section
12 204(a)(1)(A)(i) by a citizen described in
13 subparagraph (A) prior to the citizen's
14 death shall be valid to classify the spouse,
15 child, or parent as an immediate relative
16 pursuant to this paragraph. No new peti-
17 tion shall be required to be filed, and any
18 priority date assigned prior to the death
19 shall be maintained.

20 “(ii) SELF-PETITIONS.—In the case of
21 a surviving child or parent who remains an
22 immediate relative after the date of a citi-
23 zen's death pursuant to subparagraph (C)
24 or (D), any petition under section 204 oth-
25 erwise required to be filed by the citizen to

1 *classify the child or parent under subsection*
2 *(b)(2)(A)(i) may be filed instead by the*
3 *child or parent. In the case of a surviving*
4 *spouse who remains an immediate relative*
5 *after the date of a citizen's death pursuant*
6 *to subparagraph (B), the spouse may peti-*
7 *tion under section 204(a)(1)(A)(ii) and*
8 *shall be treated as an alien spouse described*
9 *in the second sentence of subsection*
10 *(b)(2)(A)(i) for such purpose.*

11 “(iii) *MINOR CHILDREN.—In the case*
12 *of a child under 18 years of age on the fil-*
13 *ing date, the petition described in clause*
14 *(ii) shall be filed on behalf of the child by*
15 *a parent or legal guardian of the child.*

16 “(iv) *DEADLINE.—In the case of peti-*
17 *tion under clause (ii), subparagraphs (B),*
18 *(C), and (D) shall apply only if such peti-*
19 *tion is filed not later than 2 years after the*
20 *date of the citizen's death.*

21 “(F) *WAIVER OF PUBLIC CHARGE GROUND*
22 *FOR INADMISSIBILITY.—In determining the ad-*
23 *missibility of any alien accorded an immigra-*
24 *tion benefit under this paragraph, the grounds*

1 *for inadmissibility specified in section 212(a)(4)*
2 *shall not apply.”.*

3 ***(b) TECHNICAL AMENDMENT.***—*Section 201(f)(1) of the*
4 *Immigration and Nationality Act (8 U.S.C. 201(f)(1)) is*
5 *amended by striking “Attorney General” and inserting*
6 *“Secretary of Homeland Security”.*

7 ***SEC. 5. EFFECTIVE DATE.***

8 ***(a) IN GENERAL.***—*Except as provided in subsection*
9 *(b), this Act and the amendments made by this Act shall*
10 *take effect as if enacted on September 11, 2001.*

11 ***(b) FEES.***—*The amendments made by this Act to sec-*
12 *tions 328 through 329A of the Immigration and Nationality*
13 *Act (8 U.S.C. 1439–1440–1), insofar as such amendments*
14 *prohibit the imposition of a fee—*

15 ***(1)*** *shall take effect on the date of the enactment*
16 *of this Act; and*

17 ***(2)*** *shall not be construed to require the refund*
18 *or return of any fee collected before such date.*

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