

110TH CONGRESS  
1ST SESSION

# H. R. 1221

To provide for cancellation of removal and adjustment of status for certain long-term residents who entered the United States as children.

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2007

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

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## A BILL

To provide for cancellation of removal and adjustment of status for certain long-term residents who entered 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—

5               (1) the “Education Access for Rightful Nonciti-  
6       zens Act”; or

7               (2) the “EARN Act”.

8       **SEC. 2. DEFINITIONS.**

9       In this Act:

1           (1) INSTITUTION OF HIGHER EDUCATION.—The  
 2 term “institution of higher education” has the  
 3 meaning given that term in section 101 of the High-  
 4 er Education Act of 1965 (20 U.S.C. 1001).

5           (2) UNIFORMED SERVICES.—The term “uni-  
 6 formed services” has the meaning given that term in  
 7 section 101(a) of title 10, United States Code.

8 **SEC. 3. CANCELLATION OF REMOVAL AND ADJUSTMENT OF**  
 9                           **STATUS OF CERTAIN LONG-TERM RESIDENTS**  
 10                           **WHO ENTERED THE UNITED STATES AS CHIL-**  
 11                           **DREN.**

12           (a) SPECIAL RULE FOR CERTAIN LONG-TERM RESI-  
 13 DENTS WHO ENTERED THE UNITED STATES AS CHIL-  
 14 DREN.—

15           (1) IN GENERAL.—Notwithstanding any other  
 16 provision of law and except as otherwise provided in  
 17 this Act, the Secretary may cancel removal of, and  
 18 adjust to the status of an alien lawfully admitted for  
 19 permanent residence, subject to the conditional basis  
 20 described in section 625, an alien who is inadmis-  
 21 sible or deportable from the United States, if the  
 22 alien demonstrates that—

23                           (A) the alien has been physically present in  
 24 the United States for a continuous period of  
 25 not less than 5 years immediately preceding the

1 date of enactment of this Act, and had not yet  
2 reached the age of 16 years at the time of ini-  
3 tial entry;

4 (B) the alien has been a person of good  
5 moral character since the time of application;

6 (C) the alien—

7 (i) is not inadmissible under para-  
8 graph (2), (3), (6)(B), (6)(C), (6)(E),  
9 (6)(F), or (6)(G) of section 212(a) of the  
10 Immigration and Nationality Act (8 U.S.C.  
11 1182(a)), or, if inadmissible solely under  
12 subparagraph (C) or (F) of paragraph (6)  
13 of such subsection, the alien was under the  
14 age of 16 years at the time the violation  
15 was committed; and

16 (ii) is not deportable under paragraph  
17 (1)(E), (1)(G), (2), (3)(B), (3)(C), (3)(D),  
18 (4), or (6) of section 237(a) of the Immi-  
19 gration and Nationality Act (8 U.S.C.  
20 1227(a)), or, if deportable solely under  
21 subparagraphs (C) or (D) of paragraph (3)  
22 of such subsection, the alien was under the  
23 age of 16 years at the time the violation  
24 was committed;

1 (D) the alien, at the time of application,  
2 has been admitted to an institution of higher  
3 education in the United States, or has earned  
4 a high school diploma or obtained a general  
5 education development certificate in the United  
6 States; and

7 (E) the alien has never been under a final  
8 administrative or judicial order of exclusion, de-  
9 portation, or removal, unless the alien has re-  
10 mained in the United States under color of law  
11 or received the order before attaining the age of  
12 16 years.

13 (2) WAIVER.—The Secretary may waive the  
14 grounds of ineligibility under section 212(a)(6) of  
15 the Immigration and Nationality Act and the  
16 grounds of deportability under paragraphs (1), (3),  
17 and (6) of section 237(a) of that Act for humani-  
18 tarian purposes or family unity or when it is other-  
19 wise in the public interest.

20 (3) PROCEDURES.—The Secretary shall provide  
21 a procedure by regulation allowing eligible individ-  
22 uals to apply affirmatively for the relief available  
23 under this subsection without being placed in re-  
24 moval proceedings.

1 (b) TERMINATION OF CONTINUOUS PERIOD.—For  
2 purposes of this section, any period of continuous resi-  
3 dence or continuous physical presence in the United States  
4 of an alien who applies for cancellation of removal under  
5 this section shall not terminate when the alien is served  
6 a notice to appear under section 239(a) of the Immigra-  
7 tion and Nationality Act (8 U.S.C. 1229(a)).

8 (c) TREATMENT OF CERTAIN BREAKS IN PRES-  
9 ENCE.—

10 (1) IN GENERAL.—An alien shall be considered  
11 to have failed to maintain continuous physical pres-  
12 ence in the United States under subsection (a) if the  
13 alien has departed from the United States for any  
14 period in excess of 90 days or for any periods in the  
15 aggregate exceeding 180 days.

16 (2) EXTENSIONS FOR EXCEPTIONAL CIR-  
17 CUMSTANCES.—The Secretary may extend the time  
18 periods described in paragraph (1) if the alien dem-  
19 onstrates that the failure to timely return to the  
20 United States was due to exceptional circumstances.  
21 The exceptional circumstances determined sufficient  
22 to justify an extension should be no less compelling  
23 than serious illness of the alien, or death or serious  
24 illness of a parent, grandparent, sibling, or child.

1 (d) EXEMPTION FROM NUMERICAL LIMITATIONS.—  
2 Nothing in this section may be construed to apply a nu-  
3 merical limitation on the number of aliens who may be  
4 eligible for cancellation of removal or adjustment of status  
5 under this section.

6 (e) REGULATIONS.—

7 (1) PROPOSED REGULATIONS.—Not later than  
8 180 days after the date of enactment of this Act, the  
9 Secretary shall publish proposed regulations imple-  
10 menting this section. Such regulations shall be effec-  
11 tive immediately on an interim basis, but are subject  
12 to change and revision after public notice and oppor-  
13 tunity for a period for public comment.

14 (2) INTERIM, FINAL REGULATIONS.—Within a  
15 reasonable time after publication of the interim reg-  
16 ulations in accordance with paragraph (1), the Sec-  
17 retary shall publish final regulations implementing  
18 this section.

19 (f) REMOVAL OF ALIEN.—The Secretary may not re-  
20 move any alien who has a pending application for condi-  
21 tional status under this Act.

22 **SEC. 4. CONDITIONAL PERMANENT RESIDENT STATUS.**

23 (a) IN GENERAL.—

24 (1) CONDITIONAL BASIS FOR STATUS.—Not-  
25 withstanding any other provision of law, and except

1 as provided in section 626, an alien whose status has  
2 been adjusted under section 624 to that of an alien  
3 lawfully admitted for permanent residence shall be  
4 considered to have obtained such status on a condi-  
5 tional basis subject to the provisions of this section.  
6 Such conditional permanent resident status shall be  
7 valid for a period of 6 years, subject to termination  
8 under subsection (b).

9 (2) NOTICE OF REQUIREMENTS.—

10 (A) AT TIME OF OBTAINING PERMANENT  
11 RESIDENCE.—At the time an alien obtains per-  
12 manent resident status on a conditional basis  
13 under paragraph (1), the Secretary shall pro-  
14 vide for notice to the alien regarding the provi-  
15 sions of this section and the requirements of  
16 subsection (c) to have the conditional basis of  
17 such status removed.

18 (B) EFFECT OF FAILURE TO PROVIDE NO-  
19 TICE.—The failure of the Secretary to provide  
20 a notice under this paragraph—

21 (i) shall not affect the enforcement of  
22 the provisions of this Act with respect to  
23 the alien; and

24 (ii) shall not give rise to any private  
25 right of action by the alien.

1 (b) TERMINATION OF STATUS.—

2 (1) IN GENERAL.—The Secretary shall termi-  
3 nate the conditional permanent resident status of  
4 any alien who obtained such status under this Act,  
5 if the Secretary determines that the alien—

6 (A) ceases to meet the requirements of  
7 subparagraph (B) or (C) of section 624(a)(1);

8 (B) has become a public charge; or

9 (C) has received a dishonorable or other  
10 than honorable discharge from the uniformed  
11 services.

12 (2) RETURN TO PREVIOUS IMMIGRATION STA-  
13 TUS.—Any alien whose conditional permanent resi-  
14 dent status is terminated under paragraph (1) shall  
15 return to the immigration status the alien had im-  
16 mediately prior to receiving conditional permanent  
17 resident status under this Act.

18 (c) REQUIREMENTS OF TIMELY PETITION FOR RE-  
19 MOVAL OF CONDITION.—

20 (1) IN GENERAL.—In order for the conditional  
21 basis of permanent resident status obtained by an  
22 alien under subsection (a) to be removed, the alien  
23 must file with the Secretary, in accordance with  
24 paragraph (3), a petition which requests the removal  
25 of such conditional basis and which provides, under

1 penalty of perjury, the facts and information so that  
2 the Secretary may make the determination described  
3 in paragraph (2)(A).

4 (2) ADJUDICATION OF PETITION TO REMOVE  
5 CONDITION.—

6 (A) IN GENERAL.—If a petition is filed in  
7 accordance with paragraph (1) for an alien, the  
8 Secretary shall make a determination as to  
9 whether the alien meets the requirements set  
10 out in subparagraphs (A) through (E) of sub-  
11 section (d)(1).

12 (B) REMOVAL OF CONDITIONAL BASIS IF  
13 FAVORABLE DETERMINATION.—If the Secretary  
14 determines that the alien meets such require-  
15 ments, the Secretary shall notify the alien of  
16 such determination and immediately remove the  
17 conditional basis of the status of the alien.

18 (C) TERMINATION IF ADVERSE DETER-  
19 MINATION.—If the Secretary determines that  
20 the alien does not meet such requirements, the  
21 Secretary shall notify the alien of such deter-  
22 mination and terminate the conditional perma-  
23 nent resident status of the alien as of the date  
24 of the determination.

1           (3) TIME TO FILE PETITION.—An alien may pe-  
2           tition to remove the conditional basis to lawful resi-  
3           dent status during the period beginning 180 days  
4           before and ending 2 years after either the date that  
5           is 6 years after the date of the granting of condi-  
6           tional permanent resident status or any other expi-  
7           ration date of the conditional permanent resident  
8           status as extended by the Secretary in accordance  
9           with this Act. The alien shall be deemed in condi-  
10          tional permanent resident status in the United  
11          States during the period in which the petition is  
12          pending.

13          (d) DETAILS OF PETITION.—

14           (1) CONTENTS OF PETITION.—Each petition  
15          for an alien under subsection (c)(1) shall contain in-  
16          formation to permit the Secretary to determine  
17          whether each of the following requirements is met:

18           (A) The alien has demonstrated good  
19          moral character during the entire period the  
20          alien has been a conditional permanent resi-  
21          dent.

22           (B) The alien is in compliance with section  
23          3(a)(1)(C).

24           (C) The alien has not abandoned the  
25          alien's residence in the United States. The Sec-

1           retary shall presume that the alien has aban-  
2           doned such residence if the alien is absent from  
3           the United States for more than 365 days, in  
4           the aggregate, during the period of conditional  
5           residence, unless the alien demonstrates that  
6           alien has not abandoned the alien's residence.  
7           An alien who is absent from the United States  
8           due to active service in the uniformed services  
9           has not abandoned the alien's residence in the  
10          United States during the period of such service.

11           (D) The alien has completed at least 1 of  
12          the following:

13                   (i) The alien has acquired a degree  
14                   from an institution of higher education in  
15                   the United States or has completed at  
16                   least 2 years, in good standing, in a pro-  
17                   gram for a bachelor's degree or higher de-  
18                   gree in the United States.

19                   (ii) The alien has served in the uni-  
20                   formed services for at least 2 years and, if  
21                   discharged, has received an honorable dis-  
22                   charge.

23           (E) The alien has provided a list of all of  
24          the secondary educational institutions that the  
25          alien attended in the United States.

1 (2) HARDSHIP EXCEPTION.—

2 (A) IN GENERAL.—The Secretary may, in  
3 the Secretary’s discretion, remove the condi-  
4 tional status of an alien if the alien—

5 (i) satisfies the requirements of sub-  
6 paragraphs (A), (B), and (C) of paragraph  
7 (1);

8 (ii) demonstrates compelling cir-  
9 cumstances for the inability to complete  
10 the requirements described in paragraph  
11 (1)(D); and

12 (iii) demonstrates that the alien’s re-  
13 moval from the United States would result  
14 in exceptional and extremely unusual hard-  
15 ship to the alien or the alien’s spouse, par-  
16 ent, or child who is a citizen or a lawful  
17 permanent resident of the United States.

18 (B) EXTENSION.—Upon a showing of good  
19 cause, the Secretary may extend the period of  
20 the conditional resident status for the purpose  
21 of completing the requirements described in  
22 paragraph (1)(D).

23 (e) TREATMENT OF PERIOD FOR PURPOSES OF NAT-  
24 URALIZATION.—For purposes of title III of the Immigra-  
25 tion and Nationality Act (8 U.S.C. 1401 et seq.), in the

1 case of an alien who is in the United States as a lawful  
2 permanent resident on a conditional basis under this sec-  
3 tion, the alien shall be considered to have been admitted  
4 as an alien lawfully admitted for permanent residence and  
5 to be in the United States as an alien lawfully admitted  
6 to the United States for permanent residence. However,  
7 the conditional basis must be removed before the alien  
8 may apply for naturalization.

9 **SEC. 5. RETROACTIVE BENEFITS.**

10 If, on the date of enactment of this Act, an alien has  
11 satisfied all the requirements of subparagraphs (A)  
12 through (E) of section 3(a)(1) and section 4(d)(1)(D), the  
13 Secretary may adjust the status of the alien to that of  
14 a conditional resident in accordance with section 3. The  
15 alien may petition for removal of such condition at the  
16 end of the conditional residence period in accordance with  
17 section 4(c) if the alien has met the requirements of sub-  
18 paragraphs (A), (B), and (C) of section 4(d)(1) during  
19 the entire period of conditional residence.

20 **SEC. 6. EXCLUSIVE JURISDICTION.**

21 (a) IN GENERAL.—The Secretary shall have exclusive  
22 jurisdiction to determine eligibility for relief under this  
23 Act, except where the alien has been placed into deporta-  
24 tion, exclusion, or removal proceedings either prior to or  
25 after filing an application for relief under this Act, in

1 which case the Attorney General shall have exclusive juris-  
2 diction and shall assume all the powers and duties of the  
3 Secretary until proceedings are terminated, or if a final  
4 order of deportation, exclusion, or removal is entered the  
5 Secretary shall resume all powers and duties delegated to  
6 the Secretary under this Act.

7 (b) STAY OF REMOVAL OF CERTAIN ALIENS EN-  
8 ROLLED IN PRIMARY OR SECONDARY SCHOOL.—The At-  
9 torney General shall stay the removal proceedings of any  
10 alien who—

11 (1) meets all the requirements of subpara-  
12 graphs (A), (B), (C), and (E) of section 3(a)(1);

13 (2) is at least 12 years of age; and

14 (3) is enrolled full time in a primary or sec-  
15 ondary school.

16 (c) EMPLOYMENT.—An alien whose removal is stayed  
17 pursuant to subsection (b) may be engaged in employment  
18 in the United States, consistent with the Fair Labor  
19 Standards Act (29 U.S.C. 201 et seq.), and State and  
20 local laws governing minimum age for employment.

21 (d) LIFT OF STAY.—The Attorney General shall lift  
22 the stay granted pursuant to subsection (b) if the alien—

23 (1) is no longer enrolled in a primary or sec-  
24 ondary school; or

1           (2) ceases to meet the requirements of sub-  
2           section (b)(1).

3 **SEC. 7. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**  
4 **TION.**

5           Whoever files an application for relief under this Act  
6 and willfully and knowingly falsifies, misrepresents, or  
7 conceals a material fact or makes any false or fraudulent  
8 statement or representation, or makes or uses any false  
9 writing or document knowing the same to contain any  
10 false or fraudulent statement or entry, shall be fined in  
11 accordance with title 18, United States Code, or impris-  
12 oned not more than 5 years, or both.

13 **SEC. 8. CONFIDENTIALITY OF INFORMATION.**

14           (a) PROHIBITION.—No officer or employee of the  
15 United States may—

16           (1) use the information furnished by the appli-  
17 cant pursuant to an application filed under this Act  
18 to initiate removal proceedings against any persons  
19 identified in the application;

20           (2) make any publication whereby the informa-  
21 tion furnished by any particular individual pursuant  
22 to an application under this Act can be identified; or

23           (3) permit anyone other than an officer or em-  
24 ployee of the United States Government or, in the  
25 case of applications filed under this Act with a des-



1 ment by the applicant of any additional fee for such expe-  
2 dited processing.

3 **SEC. 10. GAO REPORT.**

4 Seven years after the date of enactment of this Act,  
5 the Comptroller General of the United States shall submit  
6 a report to the Committee on the Judiciary of the Senate  
7 and the Committee on the Judiciary of the House of Rep-  
8 resentatives, which sets forth—

9 (1) the number of aliens who were eligible for  
10 cancellation of removal and adjustment of status  
11 under section 3(a);

12 (2) the number of aliens who applied for adjust-  
13 ment of status under section 3(a);

14 (3) the number of aliens who were granted ad-  
15 justment of status under section 3(a); and

16 (4) the number of aliens whose conditional per-  
17 manent resident status was removed under section  
18 4.

○