

Union Calendar No. 587

110TH CONGRESS
2D SESSION

H. R. 6020

[Report No. 110-912]

To amend the Immigration and Nationality Act to protect the well-being of soldiers and their families, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 8, 2008

Ms. ZOE LOFGREN of California (for herself, Mr. THORNBERRY, Mr. CONYERS, Mr. PENCE, Ms. LORETTA SANCHEZ of California, Mr. TURNER, and Mr. REYES) introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 3, 2008

Additional sponsors: Mr. CUELLAR, Mr. ABERCROMBIE, Mr. HONDA, Mr. FILLNER, Ms. SOLIS, Ms. JACKSON-LEE of Texas, Ms. ROYBAL-ALLARD, Ms. HARMAN, Mr. GRIJALVA, Mrs. NAPOLITANO, Ms. LINDA T. SÁNCHEZ of California, Mr. PASTOR, and Mr. BACA

OCTOBER 3, 2008

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 italics]

[For text of introduced bill, see copy of bill as introduced on May 8, 2008]

A BILL

To amend the Immigration and Nationality Act to protect the well-being of soldiers and their families, 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 “Lance Corporal Jose*
5 *Gutierrez Act of 2008”.*

6 **SEC. 2. FACILITATING NATURALIZATION FOR MILITARY**
7 **PERSONNEL.**

8 *(a) IN GENERAL.—Any person who served honorably*
9 *as a member of the Armed Forces in support of contingency*
10 *operations (as defined in section 101(a)(13) of title 10,*
11 *United States Code) shall be eligible for naturalization pur-*
12 *suant to section 329 of the Immigration and Nationality*
13 *Act (8 U.S.C. 1440) as if the person had served during a*
14 *period designated by the President under such section 329.*

15 *(b) NATURALIZATION THROUGH SERVICE IN THE*
16 *ARMED FORCES OF THE UNITED STATES.—Section 328 of*
17 *the Immigration and Nationality Act (8 U.S.C. 1439) is*
18 *amended—*

19 *(1) in subsection (a), by striking “six months”*
20 *and inserting “one year”;*

21 *(2) by striking subsection (c);*

22 *(3) in subsection (d), by striking “six months”*
23 *and inserting “one year”; and*

24 *(4) by redesignating subsections (d), (e), and (f)*
25 *as subsections (c), (d), and (e), respectively.*

1 **SEC. 3. FACILITATING REMOVAL OF CONDITIONAL STATUS**
2 **FOR MILITARY PERSONNEL AND THEIR FAMI-**
3 **LIES.**

4 (a) *PERIOD FOR FILING PETITION.*—Section 216(d)(2)
5 of the Immigration and Nationality Act (8 U.S.C.
6 1186a(d)(2)) is amended—

7 (1) in subparagraph (A), by striking “subpara-

8 graph (B),” and inserting “subparagraphs (B) and

9 (D),”; and

10 (2) by adding at the end the following:

11 “(D) *FILING OF PETITIONS DURING MILI-*

12 *TARY SERVICE.*—In the case of an alien who is

13 serving as a member of the Selected Reserve of

14 the Ready Reserve or in an active-duty status in

15 the military, air, or naval forces of the United

16 States during the 90-day period described in

17 subparagraph (A), the alien may file the petition

18 under subsection (c)(1)(A) during the 6-month

19 period beginning on the date on which the alien

20 is discharged from such service.”.

21 (b) *REQUIREMENTS OF TIMELY PETITION AND INTER-*

22 *VIEW FOR REMOVAL OF CONDITION.*—Section 216(c)(1)(B)

23 of the Immigration and Nationality Act (8 U.S.C.

24 1186a(a)(1)) is amended by inserting “or serving in the

25 Armed Forces at the time of the interview” after “deceased”.

1 **SEC. 4. FACTORS TO CONSIDER IN INITIATING REMOVAL**
2 **PROCEEDINGS AGAINST ACTIVE DUTY MILI-**
3 **TARY PERSONNEL OR VETERANS.**

4 *Section 239 of the Immigration and Nationality Act*
5 *(8 U.S.C. 1229a) is amended by adding at the end the fol-*
6 *lowing:*

7 *“(f)(1) A notice to appear shall not be issued against*
8 *an alien who served honorably at any time in the Armed*
9 *Forces of the United States, and who, if separated from such*
10 *service, separated under honorable conditions, without prior*
11 *approval from the Director of the United States Citizenship*
12 *and Immigration Services or the Assistant Secretary of*
13 *Homeland Security for U.S. Immigration and Customs En-*
14 *forcement.*

15 *“(2) In determining whether to issue a notice to ap-*
16 *pear against such an alien, the Director or the Assistant*
17 *Secretary shall consider the alien’s eligibility for natu-*
18 *ralization under section 328 or 329, as well as the alien’s*
19 *record of military service, grounds of deportability applica-*
20 *ble to the alien, and any hardship to the Armed Services,*
21 *the alien, and his or her family if the alien were to be placed*
22 *in removal proceedings.*

23 *“(3) An alien who served honorably at any time in*
24 *the Armed Forces of the United States, and who, if sepa-*
25 *rated from such service, separated under honorable condi-*
26 *tions, shall not be removed from the United States under*

1 *subparagraph (A)(i) or (B)(iii) of section 235(b)(1), section*
2 *238, or section 241(a)(5).”.*

3 **SEC. 5. DISCRETIONARY RELIEF FOR ACTIVE DUTY MILI-**
4 **TARY PERSONNEL, VETERANS, AND FAMILY**
5 **MEMBERS IN REMOVAL PROCEEDINGS.**

6 *(a) GROUNDS OF INADMISSIBILITY.—Section 212 of*
7 *the Immigration and Nationality Act (8 U.S.C. 1182) is*
8 *amended by inserting after subsection (b) the following:*

9 *“(c) MILITARY SERVICE PERSONNEL AND FAMILY*
10 *MEMBERS.—*

11 *“(1) IN GENERAL.—With respect to an alien who*
12 *served honorably at any time in the Armed Forces of*
13 *the United States, and who, if separated from such*
14 *service, separated under honorable conditions, or an*
15 *alien who is the spouse, child, son, daughter, parent,*
16 *or minor sibling of a member serving in the Armed*
17 *Forces of the United States—*

18 *“(A) paragraphs (4), (5), (6)(A), (7)(A),*
19 *and (9)(B) of subsection (a) shall not apply;*

20 *“(B) the Secretary of Homeland Security,*
21 *or the Attorney General, shall not waive—*

22 *“(i) subsection (a)(2)(B), if the alien*
23 *actually was incarcerated for 5 years or*
24 *more for the offenses described in such sub-*
25 *section;*

1 “(ii) subparagraph (C), (D), (G), or
2 (H) of subsection (a)(2);

3 “(iii) subparagraph (A), (B), (C), (E),
4 or (F) of subsection (a)(3);

5 “(iv) subsection (a)(6)(E);

6 “(v) subparagraph (A) or (C) of sub-
7 section (a)(10); or

8 “(vi) subsection (a)(10)(D), if the alien
9 has received a conviction, award, com-
10 promise, settlement, or injunction for an of-
11 fense described in clause (i) of such sub-
12 section, and if the court finds that the alien
13 did not reasonably believe at the time such
14 violation that the alien was a citizen; and

15 “(C) the Secretary of Homeland Security,
16 or the Attorney General, may waive any other
17 provision of subsection (a).

18 “(2) WAIVER FACTORS.—In making a deter-
19 mination under paragraph (1)(C), the following fac-
20 tors may be considered:

21 “(A) The grounds of inadmissibility appli-
22 cable to the alien.

23 “(B) The alien’s service in the United
24 States military, or the degree to which the alien’s

1 *removal would affect a close family member who*
2 *is serving or has served in the Armed Forces.*

3 “(C) *The length of time the alien has lived*
4 *in the United States.*

5 “(D) *The degree to which the alien would be*
6 *impacted by his or her removal from the United*
7 *States.*

8 “(E) *The existence of close family ties with-*
9 *in the United States.*

10 “(F) *The degree to which the alien’s re-*
11 *moval would adversely affect the alien’s United*
12 *States citizen, or lawful permanent resident,*
13 *parents, spouses, children, sons, daughters, or*
14 *siblings.*

15 “(G) *The alien’s history of employment in*
16 *the United States, including whether the alien*
17 *has been self-employed or has owned a business.*

18 “(H) *The degree to which the alien’s re-*
19 *moval would adversely affect the alien’s United*
20 *States employer or business.*

21 “(I) *The degree to which the alien has ties*
22 *to the alien’s community in the United States or*
23 *has contributed to the Nation through commu-*
24 *nity, volunteer, or other activities.”.*

1 **(b) GROUNDS OF DEPORTABILITY.**—Section 237 of the
2 *Immigration and Nationality Act (8 U.S.C. 1227)* is
3 *amended by adding at the end the following:*

4 “(d) **MILITARY SERVICE PERSONNEL AND FAMILY**
5 **MEMBERS.**—

6 “(1) **IN GENERAL.**—With respect to an alien who
7 *served honorably at any time in the Armed Forces of*
8 *the United States, and who, if separated from such*
9 *service, separated under honorable conditions, or an*
10 *alien who is the spouse, child, son, daughter, parent,*
11 *or minor sibling of a member serving in the Armed*
12 *Forces of the United States—*

13 “(A) paragraphs (1)(D), (3)(A), and (5) of
14 *subsection (a) shall not apply;*

15 “(B) the Secretary of Homeland Security,
16 *or the Attorney General, shall not waive—*

17 “(i) *subsection (a)(1)(E);*

18 “(ii) *subsection (a)(2)(A)(ii), if the*
19 *alien actually was incarcerated for 5 years*
20 *or more for the offenses described in such*
21 *subsection;*

22 “(iii) *subsection (a)(2)(A)(iii), if the*
23 *aggravated felony involved was an offense*
24 *described in subparagraph (A), (B), (C),*
25 *(D), (E)(i), (H), (I), (K)(i), (K)(ii),*

1 *(K)(iii), (L)(i), (L)(ii), (L)(iii), (M)(ii),*
2 *(R), (S), or (U) of section 101(a)(43);*

3 *“(iv) clause (iv) or (v) of subsection*
4 *(a)(2)(A);*

5 *“(v) clause (i) or (ii) of subsection*
6 *(a)(2)(D);*

7 *“(vi) subsection (a)(2)(D)(iii), if the*
8 *offense is a violation of the Trading With*
9 *the Enemy Act;*

10 *“(vii) subsection (a)(2)(D)(iv), if the*
11 *offense is a violation of section 278;*

12 *“(viii) subparagraph (A), (B), (C)(i),*
13 *(D), or (E) of subsection (a)(4); or*

14 *“(ix) subsection (a)(6)(A), if the alien*
15 *has received a conviction, award, com-*
16 *promise, settlement, or injunction for an of-*
17 *fense described in such subsection, and if the*
18 *court finds that the alien did not reasonably*
19 *believe at the time such violation that the*
20 *alien was a citizen; and*

21 *“(C) the Secretary of Homeland Security,*
22 *or the Attorney General, may waive any other*
23 *provision of subsection (a).*

1 “(2) *WAIVER FACTORS.*—*In making a deter-*
2 *mination under paragraph (1)(C), the following fac-*
3 *tors may be considered:*

4 “(A) *The grounds of deportability applica-*
5 *ble to the alien.*

6 “(B) *The alien’s service in the United*
7 *States military, or the degree to which the alien’s*
8 *removal would affect a close family member who*
9 *is serving or has served in the Armed Forces.*

10 “(C) *The length of time the alien has lived*
11 *in the United States.*

12 “(D) *The degree to which the alien would be*
13 *impacted by his or her removal from the United*
14 *States.*

15 “(E) *The existence of close family ties with-*
16 *in the United States.*

17 “(F) *The degree to which the alien’s re-*
18 *moval would adversely affect the alien’s United*
19 *States citizen, or lawful permanent resident,*
20 *parents, spouses, children, sons, daughters, or*
21 *siblings.*

22 “(G) *The alien’s history of employment in*
23 *the United States, including whether the alien*
24 *has been self-employed or has owned a business.*

1 “(H) *The degree to which the alien’s re-*
2 *moval would adversely affect the aliens United*
3 *States employer or business.*

4 “(I) *The degree to which the alien has ties*
5 *to the alien’s community in the United States or*
6 *has contributed to the Nation through commu-*
7 *nity, volunteer, or other activities.”.*

8 **SEC. 6. TIMELY REUNIFICATION OF MILITARY PERSONNEL**
9 **AND THEIR NUCLEAR FAMILIES.**

10 *Section 201(b)(1) of the Immigration and Nationality*
11 *Act (8 U.S.C. 1151(b)(1)) is amended by adding at the end*
12 *the following:*

13 “(F) *Aliens who are eligible for an immigrant*
14 *visa under paragraph (2)(A) of section 203(a) and*
15 *are either the spouse or child of an alien who is serv-*
16 *ing in the Armed Forces of the United States.”.*

17 **SEC. 7. RELIEF FOR IMMEDIATE FAMILY MEMBERS OF AC-**
18 **TIVE DUTY PERSONNEL.**

19 (a) *IN GENERAL.*—*The Secretary of Homeland Secu-*
20 *rity shall adjust the status of an alien described in sub-*
21 *section (b) to that of an alien lawfully admitted for perma-*
22 *nent residence if the alien—*

23 (1) *applies for such adjustment, and is phys-*
24 *ically present in the United States on the date the ap-*
25 *plication is filed;*

1 (2) *is admissible to the United States as an im-*
2 *migrant, except as provided in subsection (d); and*

3 (3) *pays a fee, as determined by the Secretary,*
4 *for the processing of such application.*

5 **(b) ELIGIBLE ALIENS.—**

6 (1) *IN GENERAL.—The benefits provided in sub-*
7 *section (a) shall apply only to an alien who is a par-*
8 *ent, spouse, child, son or daughter, or minor sibling*
9 *of an eligible member of the Armed Forces, as defined*
10 *in subsection (c).*

11 (2) *POSTHUMOUS BENEFITS.—An alien described*
12 *in paragraph (1) shall continue to be eligible for ad-*
13 *justment under this section for 2 years after the death*
14 *of an eligible member of the Armed Forces whose*
15 *death was the result of injury or disease incurred in*
16 *or aggravated by his or her service in the Armed*
17 *Forces.*

18 **(c) ELIGIBLE MEMBERS OF THE ARMED FORCES.—**
19 *In this section, “eligible member of the Armed Forces”*
20 *means any person who—*

21 (1) *is serving or has served honorably as a mem-*
22 *ber of the Selected Reserve of the Ready Reserve or in*
23 *an active-duty status in the military, air, or naval*
24 *forces of the United States during a period beginning*
25 *February 28, 1961, and ending on a date designated*

1 *by the President by Executive order as of the date of*
2 *termination of the Vietnam hostilities, or thereafter*
3 *during any other period which the President by Exec-*
4 *utive order shall designate as a period in which*
5 *Armed Forces of the United States are or were en-*
6 *gaged in military operations involving armed conflict*
7 *with a hostile foreign force; and*

8 *(2) if separated from the service described in*
9 *paragraph (1), was separated under honorable condi-*
10 *tions.*

11 *(d) WAIVER OF CERTAIN GROUNDS OF INADMIS-*
12 *SIBILITY.—For the purpose of adjustment of status under*
13 *this section:*

14 *(1) Paragraphs (4), (5), (6)(A), (7)(A), and*
15 *(9)(B) of section 212(a) of the Immigration and Na-*
16 *tionality Act (8 U.S.C. 1182(a)) shall not apply.*

17 *(2) The Secretary of Homeland Security, or the*
18 *Attorney General, shall not waive the following provi-*
19 *sions of section 212 of the Immigration and Nation-*
20 *ality Act (8 U.S.C. 1182):*

21 *(A) Subsection (a)(2)(B), if the alien actu-*
22 *ally was incarcerated for 5 years or more for the*
23 *offenses described in such subsection.*

24 *(B) Subparagraph (C), (D), (G), or (H) of*
25 *subsection (a)(2).*

1 (C) Subparagraph (A), (B), (C), (E), or (F)
2 of subsection (a)(3).

3 (D) Subsection (a)(6)(E).

4 (E) Subparagraph (A) or (C) of subsection
5 (a)(10).

6 (F) Subsection (a)(10)(D), if the alien has
7 received a conviction, award, compromise, settle-
8 ment, or injunction for an offense described in
9 clause (i) of such subsection, and if the court
10 finds that the alien did not reasonably believe at
11 the time such violation that the alien was a cit-
12 izen.

13 (3) The Secretary of Homeland Security, or the
14 Attorney General, may waive any other provision of
15 section 212(a) of the Immigration and Nationality
16 Act (8 U.S.C. 1182(a)) for humanitarian purposes, to
17 assure family unity, or when it is otherwise in the
18 public interest.

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