

111TH CONGRESS
1ST SESSION

S. 1247

To amend the Immigration and Nationality Act to promote family unity,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 2009

Mr. MENENDEZ (for himself, Mrs. GILLIBRAND, and Mr. LEAHY) 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 promote
family unity, 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 “Orphans, Widows, and
5 Widowers Protection Act”.

6 **SEC. 2. RELIEF FOR ORPHANS AND SPOUSES OF UNITED**
7 **STATES CITIZENS AND RESIDENTS.**

8 (a) AMENDMENT.—Section 201(b)(2)(A)(i) of the
9 Immigration and Nationality Act (8 U.S.C.
10 1151(b)(2)(A)(i)) is amended—

1 (1) by inserting “or, if married to such citizen
2 for less than 2 years at the time of the citizen’s
3 death, an alien who proves by a preponderance of
4 the evidence that the marriage was entered into in
5 good faith and not solely for the purpose of obtain-
6 ing an immigration benefit” after “for at least 2
7 years at the time of the citizen’s death”; and

8 (2) by adding at the end the following: “For
9 purposes of this subsection, an alien who was the
10 child or parent of a citizen of the United States on
11 the date of the citizen’s death shall be considered to
12 remain an immediate relative after such date if the
13 alien parent files a petition under section
14 204(a)(1)(A)(ii) not later than 2 years after such
15 date or the alien child files such a petition before
16 reaching 21 years of age.”.

17 (b) SPECIAL RULE FOR ORPHANS AND SPOUSES.—
18 In applying section 201(b)(2)(A)(i) of the Immigration
19 and Nationality Act, as amended by subsection (a), to an
20 alien whose citizen or lawful permanent resident relative
21 died before the date of the enactment of this Act, the alien
22 relative may file the classification petition under section
23 204(a)(1)(A)(ii) of such Act not later than 2 years after
24 the date of the enactment of this Act.

1 (c) ELIGIBILITY FOR PAROLE.—If an alien was ex-
2 cluded, deported, removed, or departed voluntarily before
3 the date of the enactment of this Act based solely upon
4 the alien’s lack of classification as an immediate relative
5 (as defined in section 201(b)(2)(A)(i) of the Immigration
6 and Nationality Act) due to the death of the alien’s citizen
7 relative—

8 (1) such alien shall be eligible for parole into
9 the United States pursuant to the Attorney Gen-
10 eral’s discretionary authority under section
11 212(d)(5) of such Act (8 U.S.C. 1182(d)(5)); and

12 (2) such alien’s application for adjustment of
13 status shall be considered notwithstanding section
14 212(a)(9) of such Act (8 U.S.C. 1182(a)(9)).

15 **SEC. 3. ADJUSTMENT OF STATUS.**

16 (a) SURVIVING SPOUSES, PARENTS, AND CHIL-
17 DREN.—Section 245 of the Immigration and Nationality
18 Act (8 U.S.C. 1255) is amended by adding at the end the
19 following:

20 “(n) APPLICATION FOR ADJUSTMENT OF STATUS BY
21 SURVIVING SPOUSES, PARENTS, AND CHILDREN.—

22 “(1) IN GENERAL.—An alien described in para-
23 graph (2) who applies for adjustment of status be-
24 fore the death of the qualifying relative may have

1 such application adjudicated as if such death had
2 not occurred.

3 “(2) ALIEN DESCRIBED.—An alien described in
4 this paragraph is an alien who—

5 “(A) is an immediate relative (as described
6 in section 201(b)(2)(A));

7 “(B) is a family-sponsored immigrant (as
8 described in subsection (a) or (d) of section
9 203); or

10 “(C) is a derivative beneficiary of an em-
11 ployment-based immigrant under section 203(b)
12 (as described in section 203(d)).”.

13 (b) REFUGEES.—Section 209(b) of the Immigration
14 and Nationality Act (8 U.S.C. 1259(b)) is amended by
15 adding at the end the following “An alien who is the
16 spouse or child of a refugee (as described in section
17 207(c)(2)) or an asylee (as described in section 208(b)(3)
18 who applies for adjustment of status before the death of
19 a qualifying relative may have such application adju-
20 dicated as if such death had not occurred.”.

21 **SEC. 4. TRANSITION PERIOD.**

22 (a) IN GENERAL.—Notwithstanding a denial of an
23 application for adjustment of status for an alien whose
24 qualifying relative died before the date of the enactment
25 of this Act, such application may be renewed by the alien

1 through a motion to reopen, without fee, if such motion
2 is filed not later than 2 years after such date of enact-
3 ment.

4 (b) ELIGIBILITY FOR PAROLE.—If an alien described
5 in section 245(n)(2) of the Immigration and Nationality
6 Act (8 U.S.C. 1255(n)(2)) was excluded, deported, re-
7 moved, or departed voluntarily before the date of the en-
8 actment of this Act—

9 (1) such alien shall be eligible for parole into
10 the United States pursuant to the Attorney Gen-
11 eral’s discretionary authority under section
12 212(d)(5) of the Immigration and Nationality Act (8
13 U.S.C. 1182(d)(5)); and

14 (2) such alien’s application for adjustment of
15 status shall be considered notwithstanding section
16 212(a)(9) of such Act (8 U.S.C. 1182(a)(9)).

17 **SEC. 5. PROCESSING OF IMMIGRANT VISAS AND DERIVA-**
18 **TIVE PETITIONS.**

19 (a) IN GENERAL.—Section 204(b) of the Immigra-
20 tion and Nationality Act (8 U.S.C. 1154(b)) is amended—

21 (1) by striking “After an investigation” and in-
22 serting the following:

23 “(1) IN GENERAL.—After an investigation”;
24 and

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

1 “(2) DEATH OF QUALIFYING RELATIVE.—

2 “(A) IN GENERAL.—Any alien described in
3 subparagraph (B) whose qualifying relative died
4 before the completion of immigrant visa proc-
5 essing may have an immigrant visa application
6 adjudicated as if such death had not occurred.
7 An immigrant visa issued before the death of
8 the qualifying relative shall remain valid after
9 such death.

10 “(B) ALIEN DESCRIBED.—An alien de-
11 scribed in this subparagraph is an alien who
12 is—

13 “(i) an immediate relative (as de-
14 scribed in section 201(b)(2)(A));

15 “(ii) a family-sponsored immigrant
16 (as described in subsection (a) or (d) of
17 section 203);

18 “(iii) a derivative beneficiary of an
19 employment-based immigrant under section
20 203(b) (as described in section 203(d)); or

21 “(iv) the spouse or child of a refugee
22 (as described in section 207(c)(2)) or an
23 asylee (as described in section
24 208(b)(3)).”.

25 (b) TRANSITION PERIOD.—

1 (1) IN GENERAL.—Notwithstanding a denial or
2 revocation of an application for an immigrant visa
3 for an alien whose qualifying relative died before the
4 date of the enactment of this Act, such application
5 may be renewed by the alien through a motion to re-
6 open, without fee, if such motion is filed not later
7 than 2 years after such date of enactment.

8 (2) INAPPLICABILITY OF BARS TO ENTRY.—
9 Notwithstanding section 212(a)(9) of the Immigra-
10 tion and Nationality Act (8 U.S.C. 1182(a)(9)), an
11 alien’s application for an immigrant visa shall be
12 considered if the alien was excluded, deported, re-
13 moved, or departed voluntarily before the date of the
14 enactment of this Act.

15 **SEC. 6. NATURALIZATION.**

16 Section 319(a) of the Immigration and Nationality
17 Act (8 U.S.C. 1430(a)) is amended by inserting “(or, if
18 the spouse is deceased, the spouse was a citizen of the
19 United States)” after “citizen of the United States”.

20 **SEC. 7. EFFECTIVE DATE.**

21 The amendments made by this Act shall apply to all
22 petitions or applications described in such amendments
23 that—

24 (1) are pending as of the date of the enactment
25 of this Act; or

1 (2) have been denied, but would have been ap-
2 proved if such amendments had been in effect at the
3 time of adjudication of the petition or application.

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