

Public Law 99-639
99th Congress

An Act

To amend the Immigration and Nationality Act to deter immigration-related marriage fraud and other immigration fraud.

Nov. 10, 1986

[H.R. 3737]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Immigration
Marriage Fraud
Amendments of
1986.
8 USC 1101 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Immigration Marriage Fraud Amendments of 1986".

SEC. 2. DETERRING IMMIGRATION-RELATED MARRIAGE FRAUD.

(a) **CONDITIONAL BASIS FOR PERMANENT RESIDENT STATUS BASED ON RECENT MARRIAGE.**—Chapter 2 of title II of the Immigration and Nationality Act is amended by adding at the end the following new section:

"**CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS**

"SEC. 216. (a) **IN GENERAL.**—

8 USC 1186a.

"(1) **CONDITIONAL BASIS FOR STATUS.**—Notwithstanding any other provision of this Act, an alien spouse (as defined in subsection (g)(1)) and an alien son or daughter (as defined in subsection (g)(2)) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

"(2) **NOTICE OF REQUIREMENTS.**—

"(A) **AT TIME OF OBTAINING PERMANENT RESIDENCE.**—At the time an alien spouse or alien son or daughter obtains permanent resident status on a conditional basis under paragraph (1), the Attorney General shall provide for notice to such a spouse, son, or daughter respecting the provisions of this section and the requirements of subsection (c)(1) to have the conditional basis of such status removed.

"(B) **AT TIME OF REQUIRED PETITION.**—In addition, the Attorney General shall attempt to provide notice to such a spouse, son, or daughter, at or about the beginning of the 90-day period described in subsection (d)(2)(A), of the requirements of subsections (c)(1).

"(C) **EFFECT OF FAILURE TO PROVIDE NOTICE.**—The failure of the Attorney General to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such a spouse, son, or daughter.

"(b) **TERMINATION OF STATUS IF FINDING THAT QUALIFYING MARRIAGE IMPROPER.**—

"(1) **IN GENERAL.**—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if the

Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

“(A) the qualifying marriage—

“(i) was entered into for the purpose of procuring an alien's entry as an immigrant, or

“(ii) has been judicially annulled or terminated, other than through the death of a spouse; or

“(B) a fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 214(d) with respect to the alien;

the Attorney General shall so notify the parties involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (or aliens) involved as of the date of the determination.

“(2) HEARING IN DEPORTATION PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to deport the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

“(c) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—

“(1) IN GENERAL.—In order for the conditional basis established under subsection (a) for an alien spouse or an alien son or daughter to be removed—

“(A) the alien spouse and the petitioning spouse (if not deceased) jointly must submit to the Attorney General, during the period described in subsection (d)(2), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1), and

“(B) in accordance with subsection (d)(3), the alien spouse and the petitioning spouse (if not deceased) must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1).

“(2) TERMINATION OF PERMANENT RESIDENT STATUS FOR FAILURE TO FILE PETITION OR HAVE PERSONAL INTERVIEW.—

“(A) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if—

“(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or

“(ii) unless there is good cause shown, the alien spouse and petitioning spouse fail to appear at the interview described in paragraph (1)(B),

the Attorney General shall terminate the permanent resident status of the alien as of the second anniversary of the alien's lawful admission for permanent residence.

“(B) HEARING IN DEPORTATION PROCEEDING.—In any deportation proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B).

“(3) DETERMINATION AFTER PETITION AND INTERVIEW.—

“(A) IN GENERAL.—If—

“(i) a petition is filed in accordance with the provisions of paragraph (1)(A), and

“(ii) the alien spouse and petitioning spouse appear at the interview described in paragraph (1)(B), the Attorney General shall make a determination, within 90-days of the date of the interview, as to whether the facts and information described in subsection (d)(1) and alleged in the petition are true with respect to the qualifying marriage.

“(B) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General determines that such facts and information are true, the Attorney General shall so notify the parties involved and shall remove the conditional basis of the parties effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

“(C) TERMINATION IF ADVERSE DETERMINATION.—If the Attorney General determines that such facts and information are not true, the Attorney General shall so notify the parties involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien spouse or an alien son or daughter as of the date of the determination.

“(D) HEARING IN DEPORTATION PROCEEDING.—Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to deport the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) and alleged in the petition are not true with respect to the qualifying marriage.

“(4) HARDSHIP WAIVER.—The Attorney General, in the Attorney General's discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that—

“(A) extreme hardship would result if such alien is deported, or

“(B) the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) by the alien spouse for good cause and the alien was not at fault in failing to meet the requirements of paragraph (1).

In determining extreme hardship, the Attorney General shall consider circumstances occurring only during the period that the alien was admitted for permanent residence on a conditional basis.

“(d) DETAILS OF PETITION AND INTERVIEW.—

“(1) CONTENTS OF PETITION.—Each petition under subsection (c)(1)(A) shall contain the following facts and information:

“(A) STATEMENT OF PROPER MARRIAGE AND PETITIONING PROCESS.—The facts are that—

“(i) the qualifying marriage—

"(I) was entered into in accordance with the laws of the place where the marriage took place,

"(II) has not been judicially annulled or terminated, other than through the death of a spouse, and

"(III) was not entered into for the purpose of procuring an alien's entry as an immigrant; and

"(ii) no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 214(d) with respect to the alien spouse or alien son or daughter.

8 USC 1154; *post*,
p. 3542.

"(B) STATEMENT OF ADDITIONAL INFORMATION.—The information is a statement of—

"(i) the actual residence of each party to the qualifying marriage since the date the alien spouse obtained permanent resident status on a conditional basis under subsection (a), and

"(ii) the place of employment (if any) of each such party since such date, and the name of the employer of such party.

"(2) PERIOD FOR FILING PETITION.—

"(A) 90-DAY PERIOD BEFORE SECOND ANNIVERSARY.—Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) must be filed during the 90-day period before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

"(B) DATE PETITIONS FOR GOOD CAUSE.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

"(C) FILING OF PETITIONS DURING DEPORTATION.—In the case of an alien who is the subject of deportation hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Attorney General may stay such deportation proceedings against an alien pending the filing of the petition under subparagraph (B).

"(3) PERSONAL INTERVIEW.—The interview under subsection (c)(1)(B) shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) and at a local office of the Service, designated by the Attorney General, which is convenient to the parties involved. The Attorney General, in the Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

8 USC 1401.

"(e) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—For purposes of title III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

"(f) TREATMENT OF CERTAIN WAIVERS.—In the case of an alien who has permanent residence status on a conditional basis under this section, if, in order to obtain such status, the alien obtained a waiver

under subsection (h) or (i) of section 212 of certain grounds of exclusion, such waiver terminates upon the termination of such permanent residence status under this section. 8 USC 1182.

“(g) DEFINITIONS.—In this section:

“(1) The term ‘alien spouse’ means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)—

“(A) as an immediate relative (described in section 201(b)) 8 USC 1151.

as the spouse of a citizen of the United States,

“(B) under section 214(d) as the fiancée or fiancé of a citizen of the United States, or *Post*, p. 3542.

“(C) under section 203(a)(2) as the spouse of an alien lawfully admitted for permanent residence, 8 USC 1153.
by virtue of a marriage which was entered into less than 24 months before the date the alien obtains such status by virtue of such marriage, but does not include such an alien who only obtains such status as a result of section 203(a)(8).

“(2) The term ‘alien son or daughter’ means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the son or daughter of an individual through a qualifying marriage.

“(3) The term ‘qualifying marriage’ means the marriage described to in paragraph (1).

“(4) The term ‘petitioning spouse’ means the spouse of a qualifying marriage, other than the alien.”.

(b) ADDITIONAL GROUND FOR DEPORTATION.—Section 241 (8 U.S.C. 1251) is amended—

(1) in subsection (a)(9)—

(A) by inserting “(A)” after “(9)”, and

(B) by inserting before the semicolon the following: “, (B) or is an alien with permanent resident status on a conditional basis under section 216 and has such status terminated under such section”; and

(2) by adding at the end the following new subsection:

“(g) The provisions of subsection (a)(9)(B) shall not apply in the cases described in section 216(c)(4).”.

Ante, p. 3537.

(c) CLASSIFICATION PETITIONS.—Section 204(a) of such Act (8 U.S.C. 1154(a)) is amended—

(1) by inserting “(1)” after “(a)”, and

(2) by adding at the end the following new paragraph:

“(2)(A) The Attorney General may not approve a spousal second preference petition filed by an alien who, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence, unless—

“(i) a period of 5 years has elapsed after the date the alien acquired the status of an alien lawfully admitted for permanent residence, or

“(ii) the alien establishes to the satisfaction of the Attorney General by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence) was not entered into for the purpose of evading any provision of the immigration laws.

8 USC 1153.

In this subparagraph, the term 'spousal second preference petition' refers to a petition, seeking preference status under section 203(a)(2), for an alien as a spouse of an alien lawfully admitted for permanent residence.

"(B) Subparagraph (A) shall not apply to a petition filed by an alien whose prior marriage was terminated by the death of his or her spouse."

(d) CRIMINAL PENALTY FOR MARRIAGE FRAUD.—Section 275 of such Act (8 U.S.C. 1325) is amended—

(1) by inserting "(a)" after "275.", and

(2) by adding at the end the following new subsection:

"(b) Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than \$250,000, or both."

(e) LIMITATION ON ADJUSTMENT OF STATUS.—Section 245 of such Act (8 U.S.C. 1255) is amended by adding at the end the following new subsection:

"(d) The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 216."

Ante, p. 3537.

(f) CONFORMING AMENDMENT.—The table of contents of such Act is amended by inserting after the item relating to section 215 the following new item:

"Sec. 216. Conditional permanent resident status for certain alien spouses and sons and daughters."

SEC. 3. PREVENTING MARRIAGE FRAUD WITH RESPECT TO "K" NONIMMIGRANTS.

(a) REQUIRING PREVIOUS MEETING TO OBTAIN "K" NONIMMIGRANT VISA.—The third sentence of section 214(d) of the Immigration and Nationality Act (8 U.S.C. 1184(d)) is amended—

(1) by striking "have a bona fide intention to marry" and inserting "have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry", and

(2) by inserting before the period at the end the following: ", except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person".

(b) RESTRICTING SEPARATE ADJUSTMENT TO PERMANENT RESIDENT STATUS OF "K" NONIMMIGRANTS.—Section 245(d) of such Act (8 U.S.C. 1255(d)), as added by section 2(d) of this Act, is amended by inserting before the period at the end the following: "or of a nonimmigrant described in section 101(a)(15)(K)".

8 USC 1101.

(c) REQUIRING FILING OF ADJUSTMENT OF STATUS PETITION.—Section 214(d) of such Act (8 U.S.C. 1184(d)) is amended by striking the last sentence.

8 USC 1184 note.

(d) EFFECTIVE DATES.—(1) The amendments made by subsection (a) shall apply to petitions approved on or after the date of the enactment of this Act.

8 USC 1255 note.

(2) The amendment made by subsection (b) shall apply to adjustments occurring on or after the date of the enactment of this Act.

8 USC 1184 note.

(3) The amendment made by subsection (c) shall apply to aliens issued visas under section 101(a)(15)(K) of the Immigration and Nationality Act on or after the date of the enactment of this Act.

8 USC 1101.

SEC. 4. RESTRICTIONS ON FUTURE ENTRY OF ALIENS INVOLVED WITH MARRIAGE FRAUD.

(a) **IN GENERAL.**—Section 204(c) of the Immigration and Nationality Act (8 U.S.C. 1154(c)) is amended—

- (1) by inserting “(1)” after “if”;
- (2) by inserting “, or has sought to be accorded,” after “previously been accorded”, and
- (3) by inserting before the period at the end the following: “, or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to petitions filed on or after the date of the enactment of this Act.

8 USC 1154 note.

SEC. 5. RESTRICTIONS ON ADJUSTMENT OF STATUS OR PETITIONS BASED ON MARRIAGES ENTERED WHILE IN EXCLUSION OR DEPORTATION PROCEEDINGS.

(a) **RESTRICTION ON ADJUSTMENT.**—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255), as amended by sections 2(d) and 3(b), is further amended—

- (1) in subsection (c), by striking “The provisions of this section” and inserting “Subsection (a)”, and

(2) by adding at the end the following new subsection:

“(e)(1) An alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien’s status adjusted under subsection (a).

“(2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien’s right to enter or remain in the United States.”.

(b) **RESTRICTION ON PETITIONS.**—Section 204 of such Act (8 U.S.C. 1154) is amended by adding at the end the following new subsection:

“(h) Notwithstanding subsection (a), a petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period described in section 245(e)(2), until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.”.

Supra.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to marriages entered into on or after the date of the enactment of this Act.

8 USC 1154 note.

(d) **REPORT ON SECTION 241(c) SANCTIONS.**—The Attorney General shall study and report to the Congress, not later than 6 months after the date of the enactment of this Act, concerning the application of the 2-year marriage fraud presumption under section 241(c) of the Immigration and Nationality Act (8 U.S.C. 1251(c)). Such report shall include—

- (1) the number of cases of deportations effected under such section, and
- (2) recommendations for changes in such section.

SEC. 6. EXCLUSION FOR MISREPRESENTATIONS.

(a) **IN GENERAL.**—Paragraph (19) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a)) is amended to read as follows:

8 USC 1182.

"(19) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure, or has sought to procure or has procured, a visa, other documentation, or entry into the United States or other benefit provided under this Act;"

8 USC 1182 note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to the receipt of visas by, and the admission of, aliens occurring after the date of the enactment of this Act based on fraud or misrepresentations occurring before, on, or after such date.

Approved November 10, 1986.

LEGISLATIVE HISTORY—H.R. 3737:

HOUSE REPORTS: No. 99-906 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 132 (1986):

Sept. 29, considered and passed House.

Oct. 18, considered and passed Senate.