

Frank

HR 1485 IH

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H. R. 1485

To permit certain long-term permanent resident aliens to seek cancellation of removal or waiver of inadmissibility under the Immigration and Nationality Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

April 20, 1999

Mr. FRANK of Massachusetts (for himself, Mr. FROST, Mr. DIAZ-BALART, Mr. BENTSEN, Mr. DELAHUNT, Mr. DEUTSCH, Mr. FILNER, Mr. GONZALEZ, Mr. GREEN of Texas, Mr. GUTIERREZ, Mr. HALL of Texas, Mr. LAMPSON, Ms. LEE, Mr. HINCHEY, Mr. HINOJOSA, Ms. JACKSON-LEE of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. MALONEY of New York, Mr. MARTINEZ, Mr. MCGOVERN, Mrs. MEEK of Florida, Mr. MENENDEZ, Mrs. MORELLA, Mr. ORTIZ, Mr. PASTOR, Mr. REYES, Mr. RODRIGUEZ, Ms. ROS-LEHTINEN, Ms. ROYBAL-ALLARD, Mr. SHAYS, and Mr. WYNN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To permit certain long-term permanent resident aliens to seek cancellation of removal or waiver of inadmissibility under the Immigration and Nationality Act, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Family Reunification Act of 1999'.

SEC. 2. LIMITING THE DISQUALIFICATION, BASED ON COMMISSION OF AN AGGRAVATED FELONY, FROM CANCELLATION OF REMOVAL FOR CERTAIN LONG-TERM PERMANENT RESIDENT ALIENS.

(a) CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT RESIDENTS- Section 240A(a) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)) is amended to read as follows:

'(a) CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT RESIDENTS-

'(1) IN GENERAL- The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States, if the alien--

'(A) has been an alien lawfully admitted for permanent residence for not less than 5 years;

'(B) has resided in the United States continuously for 7 years after having been

admitted in any status; and

`(C) has not been convicted of--

`(i) an aggravated felony or felonies for which the alien has been sentenced, in the aggregate, to a term of imprisonment of 5 years or more; or

`(ii) in the case of sentencing imposed under a system of indeterminate sentencing (as defined in section 20101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13701)), an aggravated felony or felonies for which--

`(I) the midpoint of the statutory range of sentence applicable to the felony or felonies is, in the aggregate, 5 years or more; or

`(II) the alien has served, in the aggregate, a term of imprisonment of 5 years or more.

`(2) NO DANGER TO PERSONS OR PROPERTY- In the case of an alien convicted of an aggravated felony involving violence, the Attorney General may exercise the discretion described in paragraph (1) only after making a written determination that the action poses no danger to the safety of persons or property.

`(3) DEFINITION OF AGGRAVATED FELONY- For purposes of this subsection (and any other determination under this Act made solely with respect to an alien whose removal is canceled under this subsection)--

`(A) subparagraphs (F) and (G) of section 101(a)(43) shall be applied as if the amendment in section 321(a)(3) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-627) had not been made; and

`(B) section 101(a)(43)(N) shall be applied by striking 'spouse,' through 'individual' and inserting 'immediate family'.

`(4) DEFINITION OF TERM OF IMPRISONMENT- For purposes of this subsection (and any other determination under this Act made solely with respect to an alien whose removal is canceled under this subsection), section 101(a)(48)(B) shall be applied so as to exclude from the time periods defined in the section any period of suspension of the imposition or execution of a term of imprisonment or a sentence in whole or in part.

`(5) PERIOD OF CONTINUOUS RESIDENCE-

`(A) SUSPENSION OF PERIOD- For purposes of this subsection and subsection (d)(1) (and any other determination under this Act made solely with respect to an alien whose removal is canceled under this subsection), section 237(a)(2)(A)(i)(II) shall be applied by striking 'may be' and inserting 'is'.

`(B) CONTINUATION OF PERIOD UPON SATISFACTION OF CONDITIONS-

`(i) CONTINUATION-

`(I) IN GENERAL- In the case of an alien otherwise eligible for cancellation of removal under this subsection, any period of continuous residence that is deemed to end under subsection (d)(1) upon the commission of an offense described in clause (ii) shall be deemed, for purposes of this subsection, to continue upon the occurrence of the latest

of the following events (to the extent applicable to the offense):

`(aa) The completion of any term of imprisonment imposed for the offense.

`(bb) The commencement of any term of probation imposed for the offense (but only to the extent such probation is completed without a probation violation).

`(cc) The payment of any fine imposed for the offense.

`(II) NO BREAK IN RESIDENCE- Such termination and recommencement shall not be construed to cause a break in the continuity of residence, which shall be calculated taking into account any period before such termination and any period after such recommencement.

`(ii) OFFENSES DESCRIBED- An offense described in this clause is--

`(I) any aggravated felony that is not described in paragraph (1)(C); or

`(II) any other crime that renders the alien removable from the United States under subparagraph (A) or (B) of section 237(a)(2) (including subparagraph (A)(i) of such section, as modified by subparagraph (A) of this paragraph).

`(6) RELEASE FROM DETENTION PENDING DECISION- Notwithstanding section 236(c)(2), the Attorney General may release an alien applying for cancellation of removal under this subsection, pending a decision on whether the alien is to be removed from the United States, if the alien demonstrates to the satisfaction of the Attorney General that the alien is not a threat to the community and is likely to appear for any scheduled proceeding. A decision relating to such release shall be made in accordance with a procedure that considers the severity of the offense committed by the alien.

`(7) JUDICIAL REVIEW- Notwithstanding paragraph (2) of section 242(a), a judgment regarding the granting or denial of relief under this subsection shall be subject to judicial review under section 242 (and the provisions of such paragraph (2) shall not apply).'

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-587).

(c) APPLICATION FOR RELIEF-

(1) IN GENERAL- Notwithstanding section 240(c)(6) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(6)) or any other limitation imposed by law on motions to reopen removal proceedings, the Attorney General shall establish a process (whether through permitting the reopening of a removal proceeding or otherwise) under which an alien who--

(A) is (or was) in removal proceedings before the date of the enactment of this Act (whether or not the alien has been removed as of such date); and

(B) has become eligible for cancellation of removal as a result of the amendment made by subsection (a);

may apply (or reapply) for cancellation of removal and release from detention under section 240A(a) of the Immigration and Nationality Act, as amended by such subsection.

(2) PAROLE- The Attorney General should exercise the parole authority under section

212(d)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(A)) for the purpose of permitting aliens removed from the United States to participate in the process established under paragraph (1).

SEC. 3. APPLICATION FOR DISCRETIONARY WAIVER OF INADMISSIBILITY FOR CERTAIN LONG-TERM PERMANENT RESIDENT ALIENS.

(a) IN GENERAL- The Attorney General shall establish a process (whether through permitting the reopening of a proceeding described in subsection (b) or otherwise) under which an alien described in subsection (b) may request the Attorney General to exercise the discretion granted under section 212(c) of the Immigration and Nationality Act (as in effect on March 31, 1997, before its repeal by section 304(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009-597)) as if--

(1) such section 212(c) had been amended--

(A) by striking `(c)' and inserting `(c)(1)';

(B) in the first sentence--

(i) by inserting `for not less than 5 years' after `lawfully admitted for permanent residence'; and

(ii) by striking `who are returning to a lawful unrelinquished domicile of seven consecutive year' and inserting `who have resided in the United States continuously for 7 years after having been admitted in any status'; and

(C) by striking the last sentence and adding at the end the following:

`(2) Paragraph (1) shall not apply to an alien who has been convicted of--

`(A) an aggravated felony or felonies for which the alien has been sentenced, in the aggregate, to a term of imprisonment of 5 years or more; or

`(B) in the case of sentencing imposed under a system of indeterminate sentencing (as defined in section 20101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13701)), an aggravated felony or felonies for which--

`(i) the midpoint of the statutory range of sentence applicable to the felony or felonies is, in the aggregate, 5 years or more; or

`(ii) the alien has served, in the aggregate, a term of imprisonment of 5 years or more.';

(2) the amendment in section 321(a)(3) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009-627) to subparagraphs (F) and (G) of section 101(a)(43) of the Immigration and Nationality Act had not been made;

(3) section 321(a)(8) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009-628) had amended section 101(a)(43)(N) of the Immigration and Nationality Act by striking `for which the term' and all that follows and inserting the following: `, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's immediate family to violate a provision of this Act'; and

(4) section 101(a)(48)(B) of the Immigration and Nationality Act, as added by section 322

of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009-628), excluded from the time periods defined in the section any period of suspension of the imposition or execution of a term of imprisonment or a sentence in whole or in part.

(b) ALIEN DESCRIBED- An alien referred to in subsection (a) is an alien who is the subject of a proceeding--

(1) in which the alien would have satisfied the requirements for the application of discretion granted to the Attorney General under section 212(c) of the Immigration and Nationality Act (as in effect before the enactment of section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132; 110 Stat. 1277)) but for the amendments made by--

(A) such section 440(d);

(B) paragraphs (3) and (8) of section 321(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to subparagraphs (F), (G), and (N) of section 101(a)(43) of the Immigration and Nationality Act; and

(C) section 322 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (to the extent such section added section 101(a)(48)(B) to the Immigration and Nationality Act);

(2) with respect to which the Attorney General has not elected to proceed under paragraph (2) of section 309(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note); and

(3) which has not been terminated under paragraph (3) of such section 309(c).

(c) NO DANGER TO PERSONS OR PROPERTY- In the case of an alien convicted of an aggravated felony involving violence, the Attorney General may exercise the discretion described in subsection (a) only after making a written determination that the action poses no danger to the safety of persons or property.

(d) JUDICIAL REVIEW- A judgment regarding the granting or denial of relief under this section shall be subject to judicial review in accordance with section 106 of the Immigration and Nationality Act (as in effect on April 23, 1996), notwithstanding section 242 of the Immigration and Nationality Act, section 440(a) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132; 110 Stat. 1277), sections 306 and 309(c)(4) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-607 et seq.), or any other provision of law limiting judicial review of a discretionary decision under section 212(c) of the Immigration and Nationality Act (as in effect before its repeal).

(e) PAROLE- The Attorney General should exercise the parole authority under section 212(d)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(A)) for the purpose of permitting aliens deported from the United States to participate in the process established under subsection (a).

SEC. 4. CANCELLATION OF REMOVAL OR WAIVER OF INADMISSIBILITY FOR CERTAIN OTHER LONG-TERM PERMANENT RESIDENT ALIENS FOR URGENT HUMANITARIAN REASONS OR SIGNIFICANT PUBLIC BENEFIT.

(a) CANCELLATION OF REMOVAL-

(1) IN GENERAL- Section 240A of the Immigration and Nationality Act (8 U.S.C. 1229b), as amended by section 2, is further amended by adding at the end the following:

(f) CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT RESIDENTS FOR URGENT HUMANITARIAN REASONS OR SIGNIFICANT PUBLIC BENEFIT-

(1) IN GENERAL- In the case of an alien otherwise eligible for cancellation of removal under subsection (a), except that the alien has been convicted of an aggravated felony that renders the alien unable to satisfy the requirement in subsection (a)(1)(C) (or, in some cases, the requirements in subparagraphs (B) and (C) of subsection (a)(1)), the Attorney General may cancel removal of the alien under such conditions as the Attorney General may prescribe, but only--

(A) on a case-by-case basis for urgent humanitarian reasons, significant public benefit (including assuring family unity), or any other sufficiently compelling reason; and

(B) after making a written determination that the cancellation of removal poses no danger to the safety of persons or property.

(2) APPLICATION OF PROVISIONS- Paragraphs (3) through (7) of subsection (a) shall apply to a determination of whether an alien satisfies the requirements of paragraph (1) of this subsection in the same manner as such paragraphs apply to a determination under subsection (a).'

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-587).

(3) APPLICATION FOR RELIEF-

(A) IN GENERAL- Notwithstanding section 240(c)(6) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(6)) or any other limitation imposed by law on motions to reopen removal proceedings, the Attorney General shall establish a process (whether through permitting the reopening of a removal proceeding or otherwise) under which an alien who--

(i) is (or was) in removal proceedings before the date of the enactment of this Act (whether or not the alien has been removed as of such date); and

(ii) has become eligible for cancellation of removal as a result of the amendment made by paragraph (1);

may apply for cancellation of removal and release from detention under section 240A(f) of the Immigration and Nationality Act, as added by such paragraph.

(B) PAROLE- The Attorney General should exercise the parole authority under section 212(d)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(A)) for the purpose of permitting aliens removed from the United States to participate in the process established under subparagraph (A).

(b) WAIVER OF INADMISSIBILITY- In the case of an alien otherwise eligible for the relief provided under section 3, except that the alien has been convicted of an aggravated felony or felonies referred to in the amendment described in section 3(a)(1)(C)--

(1) the Attorney General shall permit the alien to request the Attorney General to exercise the discretion described in paragraph (2) pursuant to the process established under section 3 (including subsection (e) of such section);

(2) the Attorney General may exercise the discretion described in section 3(a) (including

paragraph (1)(B), the strike (but not the addition) in paragraph (1)(C), and paragraphs (2) through (4) of such section), under such conditions as the Attorney General may prescribe, but only--

(A) on a case-by-case basis for urgent humanitarian reasons, significant public benefit (including assuring family unity), or any other sufficiently compelling reason; and

(B) after making a written determination that the action poses no danger to the safety of persons or property; and

(3) a judgment regarding the granting or denial of relief to the alien under this subsection shall be subject to judicial review in accordance with section 3(d) in the same manner as a judgment regarding relief under section 3.

SEC. 5. SUSPENSION OF DEPORTATION FOR CERTAIN OTHER ALIENS.

(a) **IN GENERAL-** The Attorney General shall establish a process (whether through permitting the reopening of a proceeding described in subsection (b) or otherwise) under which an alien described in subsection (b) may request the Attorney General to exercise the discretion granted under paragraph (1), (2), or (3) of section 244(a) of the Immigration and Nationality Act (as in effect on March 31, 1997) as if--

(1) the amendment in section 321(a)(3) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009-627) to subparagraphs (F) and (G) of section 101(a)(43) of the Immigration and Nationality Act had not been made; and

(2) section 321(a)(8) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009-628) had amended section 101(a)(43)(N) of the Immigration and Nationality Act by striking 'for which the term' and all that follows and inserting the following: ', except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's immediate family to violate a provision of this Act;';

(b) **ALIEN DESCRIBED-** An alien referred to in subsection (a) is an alien who is the subject of a proceeding--

(1) in which the alien would have satisfied the requirements for the application of discretion granted to the Attorney General under paragraph (1), (2), or (3) of section 244(a) of the Immigration and Nationality Act (as in effect on March 31, 1997) but for the amendments made by paragraphs (3) and (8) of section 321(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to subparagraphs (F), (G), and (N) of section 101(a)(43) of the Immigration and Nationality Act;

(2) with respect to which the Attorney General has not elected to proceed under paragraph (2) of section 309(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note); and

(3) which has not been terminated under paragraph (3) of such section 309(c).

(c) **NO DANGER TO PERSONS OR PROPERTY-** In the case of an alien convicted of an aggravated felony involving violence, the Attorney General may exercise the discretion described in subsection (a) only after making a written determination that the action poses no danger to the safety of persons or property.

(d) **JUDICIAL REVIEW-** A judgment regarding the granting or denial of relief under this section shall be subject to judicial review in accordance with section 106 of the Immigration and Nationality Act (as in effect on April 23, 1996), notwithstanding section 242 of the Immigration

and Nationality Act, section 440(a) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132; 110 Stat. 1277), sections 306 and 309(c)(4) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-607 et seq.), or any other provision of law limiting judicial review of a discretionary decision under section 244 of the Immigration and Nationality Act (as in effect on March 31, 1997).

(e) PAROLE- The Attorney General should exercise the parole authority under section 212(d)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(A)) for the purpose of permitting aliens deported from the United States to participate in the process established under subsection (a).

SEC. 6. CONSTRUCTION.

In the case of an alien who is eligible for relief under section 212(c) of the Immigration and Nationality Act (as in effect before the enactment of section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996) (Public Law 104-132; 110 Stat. 1277), nothing in this Act, or any amendment made by this Act, shall be construed to modify such eligibility.

END