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110TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 110–741

FOR THE RELIEF OF ESTHER KARINGE

JULY 8, 2008.—Referred to the Private Calendar and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1485]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1485) for the relief of Esther Karinge, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 1485 would make Esther Karinge eligible for adjustment of her status to that of a permanent resident.

69–007

BACKGROUND AND NEED FOR THE LEGISLATION

Esther Njeri Karinge was born in Limuru, Kenya on April 24, 1962. She came to the United States on September 30, 1994 and affirmatively applied for asylum on August 6, 1997. On November 13, 1997, an asylum officer referred her case to an immigration judge who denied the application, but granted voluntary departure on March 12, 1998. Esther lost her appeal of that decision on January 31, 2003.

Since then, however, Esther has been allowed to remain in the country through official stays of removal, which the Department of Homeland Security (DHS) has granted annually for humanitarian reasons. Esther's son, Nicholas, was born in Cambridge, Massachusetts on December 2, 1995 with multiple birth defects. He continues to suffer from several severe physical and mental disabilities, including cerebral palsy, spastic quadriplegia, hearing loss, and developmental delays. Upon learning of these birth defects, Nicholas' father abandoned the family, leaving Esther as Nicholas' only parent and caretaker.

As a result, Nicholas is completely dependent on Esther for his survival. He needs continuous medical care and requires medical management from numerous specialists, including orthopedists, neurologists, ophthalmologists, audiologists, otolaryngologists, physical therapists, occupational therapists, speech therapists, and other professionals. Nicholas has made significant improvements due to the efforts of his doctors and care providers, but his doctors believe any progress will be lost if he were to return to Kenya where such services are not available to him.

According to his medical doctors, Nicholas' removal to Kenya or separation from his mother would have serious, detrimental impacts on his development. Nicholas' doctors state that he might not survive if he were taken back to Kenya. While Nicholas has exceeded doctors' expectations with the treatment he has received in the United States, the treatment he depends on for survival is not available in Kenya. His doctors also believe that separating Nicholas from his mother would be emotionally devastating and potentially life-threatening for him because of his mental and physiological disabilities. One of Nicholas' specialists notes that children separated from a parent in such circumstances often develop "failure to thrive" syndrome, which can include deterioration of physical and mental development.

As a result of the severity of Nicholas' medical condition, DHS has granted Esther annual stays of removal since February 13, 2003. Such stays of removal are temporary and discretionary. H.R. 1485 presents the only option for Esther and her son to remain permanently in the United States.

HEARINGS

The Committee on the Judiciary held no hearings on H.R. 1485.

COMMITTEE CONSIDERATION

On May 8, 2008, the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law met in open session and ordered the bill, H.R. 1485, favorably reported, without amendment, by voice vote, a quorum being present. On May 14,

2008, the Committee met in open session and ordered the bill, H.R. 1485, favorably reported without amendment, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 1485.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1485, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 11, 2008.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1485, a bill for the relief of Esther Karinge.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 1485—A bill for the relief of Esther Karinge.

H.R. 1485 would make Esther Karinge eligible for permanent residence in the United States. CBO estimates that enacting this legislation would have no significant impact on the Federal budget.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1485 would make Esther Karinge eligible for adjustment of her status to that of a lawful permanent resident.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 8, clause 4 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1485 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Permanent Resident Status for Esther Karinge. Subsection (a) provides that, notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act, Esther Karinge is eligible for issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of such Act or for adjustment of status to lawful permanent resident.

Subsection (b) provides that if Esther Karinge enters the United States before the filing deadline specified in subsection (c), she must be considered to have entered and remained lawfully and, if otherwise eligible, be eligible for adjustment of status under section 245 of the Immigration and Nationality Act as of the date of the enactment of this Act.

Subsection (c) provides that subsections (a) and (b) apply only if the application for issuance of an immigrant visa or the application for adjustment of status is filed with appropriate fees within 2 years after the date of the enactment of this Act.

Subsection (d) provides that, upon the granting of an immigrant visa or permanent residence to Esther Karinge, the Secretary of State must instruct the proper officer to reduce by 1, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of the alien's birth under section 202(e) of such Act.

Subsection (e) provides that the natural parents, brothers, and sisters of Esther Karinge must not, by virtue of such relationship,

be accorded any right, privilege, or status under the Immigration and Nationality Act.

AGENCY VIEWS

The comments of the Department of Homeland Security on H.R. 1485 are as follows:

Office of Congressional Relations

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536

U.S. Immigration
and Customs
Enforcement

MAY - 6 2008

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Immigration, Citizenship,
Refugees, Border Security, & International Law
U.S. House of Representatives
Washington, DC 20510

Dear Madam Chairwoman:

In response to your request for a report relative to H. R. 1485, private legislation for the relief of Esther Karinge, enclosed is a memorandum of information concerning the beneficiary.

The bill provides that the beneficiary shall be eligible for issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of the Immigration and Nationality Act or for adjustment of status to lawful permanent resident.

We hope the information provided is useful. Please do not hesitate to call me if you have additional questions.

Sincerely,

Jamie E. Zuieback
Director
Office of Congressional Relations

Department of Homeland Security
Immigration and Customs Enforcement
Memorandum of Information for HR. 1485, 110th Congress

Ms. Esther KARINGE (A73-616-282) is the beneficiary of H.R. 1485, private legislation introduced by Rep. Ed Markey (D- MA), on March 12, 2007. Ms. KARINGE is a native of Kenya, born on April 24, 1962. She has two sons, Paul KARINGE, born on June 1, 1981, who is a citizen and resident of Kenya, and Nicolas KARINGE, born on December 2, 1995, in Boston, MA. Ms. KARINGE resides in Medford, Massachusetts, with her son Nicolas who is her only relative in the United States.

Nicolas was born with cerebral palsy and needs a great deal of care. He is unable to walk without crutches or assistance, and is partially deaf. Nicolas' father, Robert Gichuru, is currently delinquent in providing child support and has violated a protection order placed against him by Ms. KARINGE. Nicolas is currently receiving Section Eight Housing in Medford. Ms. KARINGE is involved in several community groups including the Immigrant Learning Center in Malden, Family Ties, Family Voices Boston, New England Serve Boston, and the Disability Committee, Episcopal Diocese of Massachusetts. The YWCA presented her with an award for her work in the community.

ICE databases including the Central Index System (CIS) indicate that Esther KARINGE entered the United States on September 30, 1994, through Boston as a B2 non-immigrant visitor, admitted until March 29, 1995. Upon arriving to the United States, Ms. KARINGE legally obtained a Social Security card and New Hampshire driver's license. On September 25, 1997, Ms. KARINGE was issued a Notice to Appear and Warrant of Arrest. On December 11, 1997, Ms. KARINGE filed an Asylum Petition. On January 20, 1998, Ms. KARINGE had her initial appearance at the Immigration Court in Boston.
On March 12, 1998, Ms. KARINGE had her asylum case heard by the immigration judge. The immigration judge denied the application for asylum and withholding of deportation. Ms. KARINGE also sought the benefit of voluntary departure. The immigration judge noted the fact that Ms. KARINGE had twice previously claimed U.S citizenship in order to obtain employment as a serious negative factor with regard to granting voluntary departure. Despite this serious negative factor, the immigration judge did grant her the privilege of voluntarily departing the United States within 60 days, or on or before May 11, 1998, conditioned on the posting of a bond to assure that she would depart. On March 18, 1998, Ms. KARINGE posted bond, then filed an appeal of the Immigration Court's decision on April 6, 1998.
On January 31, 2003, the Bureau of Immigration Appeals denied the appeal and granted Ms. KARINGE Voluntary Departure on March 2, 2003. Ms. KARINGE was then placed on an Order of Supervision on May 19, 2003. Ms. KARINGE was granted several Stays of Removal prior to February 26, 2008, when a report was requested on H.R. 1485 by the House Subcommittee, creating a new stay for the 110th Congress.

During an interview conducted by an ICE Special Agent, Esther KARINGE stated that she feared for her safety if she were to return to Kenya. She stated that the ruling government of

Kenya has targeted her tribe. Ms. KARINGE stated that her uncle was a target of a government raid. She expressed her concern for the welfare of her son, Nicolas, if she were to return to Kenya. Ms. KARINGE stated that if Nicolas accompanied her to Kenya, he would be an outcast due to his disability.

Richard Mangiafico, a neighbor, stated that Ms. KARINGE does not socialize often with other residents in the building, but that she seems pleasant. Mr. Mangiafica also stated that Nicolas needs help walking and is sometimes in a wheelchair. Makrina Ormond, the leasing manager at Mystic Place Apartments stated that Ms. KARINGE is moving soon to an apartment that is handicap accessible for Nicolas.

CIS checks and information received from Ms. KARINGE indicate that she worked without authorization between 1994 and April 17, 1998 when her first Employment Authorization Card was issued. Esther KARINGE has been employed as a nurse's assistant and a mental health counselor. Ms. KARINGE was a case manager and program manager for the Refugee Immigration Ministry. Ms. KARINGE is currently a teacher's assistant at Medford Public Schools and is paid approximately $17,000 a year.

No criminal history in the United States was located for Esther KARINGE. The only incident involving law enforcement she has had was receiving a traffic ticket in Malden, Massachusetts. Local police department checks were also negative.

ADDITIONAL VIEWS

Meritorious private bills should either represent unique and compelling circumstances or fit within private bill precedent of the modern era (from the 97th Congress onward, following the ABSCAM private bill scandal).

There is precedent in the modern era for the enactment of private bills where the aliens' U.S. citizen family members suffered serious illnesses which would be exacerbated if the aliens were returned home or the U.S. citizens accompanied them home. A private bill was enacted in the 104th Congress for an alien who had earlier been deported to Mexico for marriage fraud.[1] Before his deportation, he married his second wife in a legitimate marriage and they had two children. His wife and one of their children were carriers for Reiter's syndrome, a severe, disabling, incurable arthritic disease who could be triggered by an intestinal infection with an organism widespread in Mexico. Thus, they risked serious illness by joining him in Mexico. The private bill waived the grounds of inadmissibility for marriage fraud. The House Report stated that "this legislation acknowledges the previously set precedent in private legislation that separation due to medical circumstances is viewed . . . as satisfying the standard of extreme hardship to an American citizen."[2]

In the 106th Congress, a private bill was enacted granting permanent residence to an alien whose petition for permanent residence filed by his U.S. citizen wife had been denied because of marriage fraud in his first marriage.[3] The INS believed this second marriage was valid. The alien's U.S. citizen wife had been diagnosed with multiple sclerosis and her doctor indicated that she might rapidly deteriorate as a result of any type of severe stress.

A DHS report on Ms. Karinge was received on May 6 and contained no derogatory information. Because H.R. 1485 fits within private bill precedent and the DHS report contained no derogatory information, this is a meritorious private bill.

LAMAR SMITH.

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[1] *See* Priv. L. No. 104–3.
[2] H.R. Rep. No. 104–810, at 2–3.
[3] *See* Priv. L. No. 106–13.