

105TH CONGRESS
1ST SESSION

S. 1382

To reform the naturalization process, to clarify the procedures for investigating the criminal background of individuals submitting applications in connection with certain benefits under the Immigration and Nationality Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 6, 1997

Mr. ABRAHAM introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reform the naturalization process, to clarify the procedures for investigating the criminal background of individuals submitting applications in connection with certain benefits under the Immigration and Nationality Act, 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 “Naturalization Reform
5 Act of 1997”.

1 **SEC. 2. BAR TO NATURALIZATION FOR ALIENS DEPORT-**
2 **ABLE FOR CRIMES.**

3 (a) **IN GENERAL.**—Section 316(a) of the Immigra-
4 tion and Nationality Act (8 U.S.C. 1427(a)) is amended—

5 (1) in paragraph (2), by striking “and” at the
6 end;

7 (2) in paragraph (3), by striking “States.” and
8 inserting “States, and”; and

9 (3) by adding at the end the following: “(4) on
10 the date of the application, is not deportable under
11 paragraph (1) (other than subparagraph (A)), (2),
12 (3), or (6) of section 237(a), subparagraph (A), (B),
13 or (D) of paragraph (4) of such section, or para-
14 graph (1)(A) of such section (but only to the extent
15 that such paragraph relates to inadmissibility under
16 paragraph (2), (6), (8), or (9) of section 212(a),
17 subparagraph (A), (B), or (E) of section 212(a)(3),
18 or subparagraph (A), (C), (D), or (E) of section
19 212(a)(10)).”.

20 (b) **EFFECTIVE DATE.**—The amendments made by
21 subsection (a) shall take effect on October 1, 1998, and
22 shall apply to applications for naturalization submitted on
23 or after such date.

1 **SEC. 3. EXTENSION TO 10 YEARS OF GOOD MORAL CHAR-**
 2 **ACTER PERIOD FOR NATURALIZATION.**

3 (a) IN GENERAL.—Section 316(a)(3) of the Immi-
 4 gration and Nationality Act (8 U.S.C. 1427(a)(3)) is
 5 amended by striking “during all the periods referred to
 6 in this subsection” and inserting “during the ten years
 7 immediately preceding the date of filing of the applica-
 8 tion”.

9 (b) EFFECTIVE DATE.—The amendment made by
 10 subsection (a) shall take effect on October 1, 1998, and
 11 shall apply to applications for naturalization submitted on
 12 or after such date.

13 **SEC. 4. INVESTIGATION OF CRIMINAL BACKGROUND OF**
 14 **CERTAIN ALIENS AND PERSONS SPONSORING**
 15 **ALIENS FOR ENTRY.**

16 (a) IN GENERAL.—Title I of the Immigration and
 17 Nationality Act (8 U.S.C. 1101 et seq.) is amended by
 18 adding at the end the following:

19 “INVESTIGATION OF CRIMINAL BACKGROUND OF AN
 20 ALIEN APPLYING FOR CERTAIN BENEFITS AND CER-
 21 TAIN PETITIONERS FOR CLASSIFICATION OF AN
 22 ALIEN

23 “SEC. 106. (a) IN GENERAL.—With respect to a per-
 24 son described in a subparagraph of subsection (c)(1) who
 25 is petitioning, or applying to, the Attorney General to
 26 grant the benefit or take the action described in such sub-

1 paragraph (and with respect to an individual described in
2 subparagraph (E) of such subsection whose residence is
3 the home of such a person), the Attorney General may
4 not grant the benefit or take the action, unless, during
5 the pendency of the person's petition or application, the
6 following has been completed:

7 “(1) An employee of the Service, or a Federal,
8 State, or local criminal law enforcement agency,
9 after verifying the person's identity, has prepared a
10 complete and legible set of fingerprints of the per-
11 son.

12 “(2) The Commissioner has requested the Di-
13 rector of the Federal Bureau of Investigation to con-
14 duct a criminal history background check on the
15 person for the appropriate purpose described in sub-
16 section (c)(2), and the Commissioner has submitted
17 the fingerprints to the Director, along with any sup-
18 plementary information required by the Director to
19 complete the check.

20 “(3) The Director of the Federal Bureau of In-
21 vestigation, using the fingerprints and information
22 provided by the Commissioner, has conducted the
23 check, and has provided the Commissioner with a re-
24 sponse describing the person's criminal history, as

1 reflected in records maintained by the Federal Bu-
2 reau of Investigation.

3 “(4) The Commissioner has conducted an inves-
4 tigation of the person’s criminal history, including
5 all criminal offenses listed in the Director’s re-
6 sponse, all criminal offenses listed in informational
7 databases maintained by the Service, and all other
8 criminal offenses of which the Commissioner has
9 knowledge, for the appropriate purpose described in
10 subsection (c)(2).

11 “(5) In a case where the investigation under
12 paragraph (4) of an applicant for naturalization re-
13 veals criminal history that bears upon the appli-
14 cant’s eligibility for naturalization, and the employee
15 designated under section 335 to conduct the exam-
16 ination under such section has determined that the
17 application should be granted, such determination
18 has been reviewed by at least one Service officer
19 whose duties include performing such reviews.

20 “(b) EXCEPTION.—Notwithstanding subsection (a),
21 when the Attorney General certifies to the Director of the
22 Federal Bureau of Investigation that a person described
23 in subsection (c)(1) is physically unable to provide legible
24 fingerprints—

1 “(1) the requirement that the Commissioner
2 submit fingerprints to the Director shall not apply;
3 and

4 “(2) the Director shall conduct a criminal his-
5 tory background check based on the person’s name
6 and any other method of positive identification other
7 than fingerprints used by the Federal Bureau of In-
8 vestigation for criminal history background checks.

9 “(c) PERSONS SUBJECT TO, AND PURPOSES FOR,
10 BACKGROUND CHECKS.—

11 “(1) PERSONS AND PETITIONS DESCRIBED.—
12 The persons (and applications and petitions) de-
13 scribed in this paragraph are as follows:

14 “(A) An alien 14 through 79 years of age
15 applying for adjustment of status to that of an
16 alien lawfully admitted for permanent residence.

17 “(B) An alien 14 through 75 years of age
18 applying for naturalization as a citizen of the
19 United States.

20 “(C) An alien 14 years of age or older ap-
21 plying for asylum, or treatment as a spouse or
22 child accompanying an asylee.

23 “(D) An alien 14 years of age or older ap-
24 plying for temporary protected status under
25 section 244.

1 “(E) A person who has filed a petition to
2 accord a child defined in section 101(b)(1)(F)
3 classification as an immediate relative under
4 section 201(b)(2)(A)(i), and any additional indi-
5 vidual, over the age of 18, whose principal or
6 only residence is the home of such person.

7 “(F) A person who has submitted a guar-
8 antee of legal custody and financial responsibil-
9 ity under paragraphs (2)(B) and (4) of section
10 204(f) in connection with a petition to accord
11 an alien, who is the subject of the guarantee,
12 classification under section 201(b), 203(a)(1),
13 or 203(a)(3).

14 “(2) PURPOSES FOR CHECKS DESCRIBED.—

15 “(A) ALIENS APPLYING FOR BENEFITS.—

16 With respect to the aliens, and the applications,
17 described in subparagraphs (A) through (D) of
18 paragraph (1), the requirements of subsection
19 (a) shall be applied (subject to subsection (b))
20 for the purpose of determining whether the
21 alien has a criminal history that bears upon the
22 alien’s eligibility for the benefit for which the
23 alien applied.

24 “(B) ORPHAN PETITIONS.—With respect
25 to a person described in paragraph (1)(E), the

1 requirements of subsection (a) shall be applied
2 (subject to subsection (b)) for the purpose of
3 determining whether the person has a criminal
4 history that bears upon whether proper care
5 will be furnished the child described in such
6 paragraph.

7 “(C) AMERASIAN PETITIONS.—With re-
8 spect to a person described in paragraph
9 (1)(F), the requirements of subsection (a) shall
10 be applied (subject to subsection (b)) for the
11 purpose of determining whether the person is of
12 good moral character.

13 “(d) FEE.—The Attorney General may charge a per-
14 son described in subsection (c)(1) a fee to cover the actual
15 cost of the criminal background check process under this
16 section.

17 “(e) CONSTRUCTION.—This section shall not be con-
18 strued to affect or impair the ability of the Attorney Gen-
19 eral to require a criminal history background check as a
20 condition for obtaining any benefit under this Act (includ-
21 ing a classification under section 204) that is not de-
22 scribed in subsection (c)(1).”.

23 (b) CLERICAL AMENDMENT.—The table of contents
24 of the Immigration and Nationality Act is amended by in-
25 serting after the item relating to section 105 the following:

“Sec. 106. Investigation of criminal background of an alien applying for certain benefits and certain petitioners for classification of an alien.”.

1 (c) **EFFECTIVE DATE.**—The amendments made by
2 this section shall take effect on October 1, 1998, and shall
3 apply to applications for a benefit under the Immigration
4 and Nationality Act (including petitions to accord a classi-
5 fication under section 204 of such Act) submitted on or
6 after such date.

7 **SEC. 5. INTERVIEW FOR ADJUSTMENT OF STATUS.**

8 (a) **IN GENERAL.**—The Immigration and Nationality
9 Act is amended by inserting after section 245A the follow-
10 ing:

11 “INTERVIEW FOR ADJUSTMENT OF STATUS TO THAT OF
12 PERSON ADMITTED FOR PERMANENT RESIDENCE

13 “SEC. 245B. Before the status of an alien may be
14 adjusted by the Attorney General to that of an alien law-
15 fully admitted for permanent residence, the alien shall ap-
16 pear before an employee of the Service, who shall conduct
17 a personal interview of the alien for the purpose of verify-
18 ing that the alien is eligible for such adjustment.”.

19 (b) **CLERICAL AMENDMENT.**—The table of contents
20 of the Immigration and Nationality Act is amended by in-
21 serting after the item relating to section 245A the follow-
22 ing:

“Sec. 245B. Interview for adjustment of status to that of person admitted for permanent residence.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on October 1, 1998, and shall
3 apply to applications for adjustment of status submitted
4 on or after such date.

5 **SEC. 6. INTERVIEW FOR NATURALIZATION.**

6 (a) IN GENERAL.—Section 332 of the Immigration
7 and Nationality Act (8 U.S.C. 1443) is amended by add-
8 ing at the end the following:

9 “(i) The examination under subsection (a) shall in-
10 clude a personal interview of the applicant, conducted by
11 an employee of the Service who—

12 “(1) shall require the applicant to demonstrate
13 the ability to speak and understand words in ordi-
14 nary usage in the English language, in accordance
15 with section 312(a)(1), unless the applicant is ex-
16 empt from the requirements of such section pursu-
17 ant to section 312(b);

18 “(2) shall require the applicant to describe any
19 criminal law violations, other than minor traffic vio-
20 lations, for which the applicant has ever been ar-
21 rested, charged, convicted, fined, or imprisoned, or
22 which the applicant has committed but for which the
23 applicant has not been arrested, charged, convicted,
24 fined, or imprisoned; and

1 actment of the Naturalization Reform Act of 1997, is au-
2 thorized by the Attorney General to administer such a
3 test.

4 “(2) The Attorney General shall revoke the author-
5 ization granted to a person to administer tests referred
6 to in paragraph (1), unless—

7 “(A) the person has not subcontracted, fran-
8 chised, or otherwise delegated the person’s testing
9 authority to any other person; and

10 “(B) at any time after the person has been au-
11 thORIZED by the Attorney General to administer such
12 tests and has administered them for at least 6
13 months during the period beginning on the date of
14 the enactment of the Naturalization Reform Act of
15 1997, the person and the Attorney General are able
16 to demonstrate that—

17 “(i) in not less than 5 of the 6 preceding
18 months, the Attorney General has conducted
19 unannounced inspections of at least 10 percent
20 of the testing sites operated by the person in
21 each such month;

22 “(ii) during each such site inspection, the
23 Attorney General has checked the integrity and
24 security of the testing process and has memori-
25 alized the findings from the inspection in a

1 written report and, after the inspection, has
2 provided copies of the report to the person; and

3 “(iii) after reviewing each such inspection
4 report, the Attorney General—

5 “(I) has determined and certified that
6 the person continues to maintain the over-
7 all integrity and security of the person’s
8 testing program, and has remedied any se-
9 rious flaws discovered by the inspections;
10 and

11 “(II) has provided a copy of the cer-
12 tification to the person.

13 “(3) The Attorney General shall require an applicant
14 for naturalization who has passed a test administered
15 under this subsection to retake and repass such a test in
16 circumstances where the Attorney General has reasonable
17 grounds to believe that the administration of the test was
18 impaired by fraud, misrepresentation, or other misconduct
19 or negligence that jeopardizes the reliability of the test re-
20 sults.”.

21 (2) EFFECTIVE DATE.—The amendment made
22 by paragraph (1) shall take effect on October 1,
23 1998, and shall apply to applications for naturaliza-
24 tion submitted on or after such date.

25 (b) STUDY ON INTEGRITY OF TESTING PROCESS.—

1 (1) REPORT.—Not later than the date that is
2 6 months after the date of the enactment of this
3 Act, the Comptroller General of the United States
4 shall prepare and transmit to the Committee on the
5 Judiciary of the House of Representatives and the
6 Committee on the Judiciary of the Senate the report
7 described in paragraph (2).

8 (2) CONTENTS.—The report referred to in
9 paragraph (1) shall describe the results of a com-
10 prehensive study conducted by the Comptroller Gen-
11 eral of the United States to determine the extent to
12 which tests administered by persons other than the
13 Attorney General, by which an applicant for natu-
14 ralization may satisfy the reading and writing re-
15 quirements of subsection (a)(1), and the knowledge
16 and understanding requirements of subsection
17 (a)(2), of section 312 of the Immigration and Na-
18 tionality Act, are impaired by fraud, misrepresenta-
19 tion, or other misconduct or negligence that jeopard-
20 izes the reliability of the test results.

21 **SEC. 8. REQUIREMENTS WITH RESPECT TO RESIDENT**
22 **ALIEN CARDS.**

23 (a) CIVIL PENALTY FOR FAILURE TO REPORT LOSS,
24 THEFT, OR DESTRUCTION OF RESIDENT ALIEN CARD.—

1 (1) IN GENERAL.—The Immigration and Na-
 2 tionality Act is amended by inserting after section
 3 274D the following:

4 “CIVIL PENALTY FOR FAILURE TO REPORT LOSS, THEFT,
 5 OR DESTRUCTION OF RESIDENT ALIEN CARD

6 “SEC. 274E. Any alien who has been issued by the
 7 Attorney General an alien registration receipt card indi-
 8 cating the alien’s status as an alien lawfully admitted for
 9 permanent residence, and who fails to report to the Attor-
 10 ney General the loss, theft, or destruction of the card by
 11 the date that is 7 days after the date the alien discovers
 12 such loss, theft, or destruction, shall pay a civil penalty
 13 to the Commissioner of \$50 per violation.”.

14 (2) CLERICAL AMENDMENT.—The table of con-
 15 tents of the Immigration and Nationality Act is
 16 amended by inserting after the item relating to sec-
 17 tion 274D the following new item:

 “Sec. 274E. Civil penalty for failure to report loss, theft, or destruction of resi-
 dent alien card.”.

18 (3) EFFECTIVE DATE.—The amendments made
 19 by this subsection shall take effect on October 1,
 20 1998, and shall apply to alien registration receipt
 21 cards that are lost, stolen, or destroyed on or after
 22 such date.

23 (b) SURRENDER OF RESIDENT ALIEN CARD UPON
 24 NATURALIZATION.—

1 (1) IN GENERAL.—Section 338 of the Immigra-
2 tion and Nationality Act (8 U.S.C. 1449) is amend-
3 ed—

4 (A) by inserting “(a)” before “A person”;
5 and

6 (B) by adding at the end the following:

7 “(b)(1) Notwithstanding subsection (a), the Attorney
8 General may not deliver a certificate of naturalization to
9 any person to whom the Attorney General previously had
10 issued an alien registration receipt card indicating the per-
11 son’s status as an alien lawfully admitted for permanent
12 residence, unless—

13 “(A) the person has surrendered the card to the
14 Attorney General; or

15 “(B) the person has submitted an affidavit to
16 the Attorney General stating that the card was lost,
17 stolen, or destroyed, and describing any facts known
18 to the alien with respect to the circumstances of
19 such loss, theft, or destruction, and a period of not
20 less than 30 days has elapsed since such submission,
21 during which period the Attorney General may con-
22 duct an investigation of such loss, theft, or destruc-
23 tion.

1 “(2) The Attorney General may charge a person de-
2 scribed in paragraph (1)(B) a fee to cover the cost of an
3 investigation described in such paragraph.”.

4 (2) EFFECTIVE DATE.—The amendments made
5 by this subsection shall take effect on October 1,
6 1998, and shall apply to certificates of naturaliza-
7 tion delivered on or after such date.

8 **SEC. 9. REVOCATION OF NATURALIZATION.**

9 (a) CLARIFICATION OF MATERIALITY REQUIRE-
10 MENT.—Section 340(a) of the Immigration and National-
11 ity Act (8 U.S.C. 1451(a)) is amended—

12 (1) by striking “(a)” and inserting “(a)(1)”;
13 and

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

15 “(2) For purposes of this section, a fact with respect
16 to a naturalized person may not be considered immaterial
17 solely because the fact, had it been known to the Attorney
18 General before the person was naturalized, would not, by
19 itself, have required the Attorney General to deny the per-
20 son’s application for naturalization.”.

21 (b) REBUTTABLE PRESUMPTION OF WILLFUL-
22 NESS.—Section 340 of the Immigration and Nationality
23 Act (8 U.S.C. 1451) is amended—

24 (1) by redesignating subsections (d) through (h)
25 as subsections (e) though (i), respectively; and

1 (2) by inserting after subsection (c) the follow-
2 ing:

3 “(d) In any proceeding under this section in which
4 the United States proves that an order admitting a person
5 to citizenship was procured by the person’s concealment
6 or misrepresentation of a material fact, such proof shall
7 be considered prima facie evidence that the person acted
8 willfully with respect to the concealment or misrepresenta-
9 tion, and, in the absence of countervailing evidence, such
10 proof shall be sufficient to authorize the revocation and
11 setting aside of the order and the cancellation of the cer-
12 tificate of naturalization.”.

13 (c) LIMITATION ON ADMINISTRATIVE REVOCA-
14 TIONS.—Section 340 of the Immigration and Nationality
15 Act (8 U.S.C. 1451), as amended by subsection (b), is fur-
16 ther amended—

17 (1) in subsection (i), by striking “Nothing” and
18 inserting “Subject to subsection (j), nothing”; and

19 (2) by inserting after subsection (i) the follow-
20 ing:

21 “(j) The Attorney General shall commence any pro-
22 ceeding administratively to correct, reopen, alter, modify,
23 or vacate an order naturalizing a person not later than
24 5 years after the effective date of the order.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on October 1, 1998, and shall
3 apply to any order naturalizing a person with an effective
4 date that is on or after October 1, 1998.

5 **SEC. 10. QUALITY ASSURANCE AND IMPROVED OVERSIGHT**
6 **FOR NATURALIZATION.**

7 (a) IN GENERAL.—Not later than 60 days after the
8 date of the enactment of this Act, the Attorney General
9 shall establish a process (including internal audit proce-
10 dures, other audit procedures, or both) to review the ongo-
11 ing compliance with all laws, policies, and procedures af-
12 fecting naturalization by each office of the Immigration
13 and Naturalization Service that has duties with respect
14 to naturalization.

15 (b) REPORTS.—Not later than 30 days after the ter-
16 mination of each of fiscal years 1998, 1999, 2000, and
17 2001, the Attorney General shall submit a report to the
18 Committee on the Judiciary of the Senate and the Com-
19 mittee on the Judiciary of the House of Representatives
20 concerning the compliance by the Commissioner of Immi-
21 gration and Naturalization and the Immigration and Nat-
22 uralization Service with all laws, policies, and procedures
23 affecting naturalization during such terminated fiscal
24 year.

1 (c) EFFECTIVE DATE.—This section shall take effect
2 on the date of the enactment of this Act, and shall cease
3 to be effective upon the submission, under subsection (b),
4 of the report with respect to fiscal year 2001.

○