

105TH CONGRESS
1ST SESSION

S. 1504

To adjust the immigration status of certain Haitian nationals who were provided refuge in the United States.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 9, 1997

Mr. GRAHAM (for himself, Mr. MACK, Mr. KENNEDY, Mr. ABRAHAM, and Ms. MOSELEY-BRAUN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To adjust the immigration status of certain Haitian nationals who were provided refuge in the United States.

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 “Haitian Refugee Immi-
5 gration Fairness Act of 1997”.

6 **SEC. 2. ADJUSTMENT OF STATUS OF CERTAIN HAITIAN NA-**
7 **TIONALS.**

8 (a) ADJUSTMENT OF STATUS.—

9 (1) IN GENERAL.—Notwithstanding section
10 245(c) of the Immigration and Nationality Act, the

1 status of any alien described in subsection (b) shall
2 be adjusted by the Attorney General to that of an
3 alien lawfully admitted for permanent residence, if
4 the alien—

5 (A) applies for such adjustment before
6 April 1, 2000; and

7 (B) is otherwise eligible to receive an im-
8 migrant visa and is otherwise admissible to the
9 United States for permanent residence, except
10 in determining such admissibility the grounds
11 for inadmissibility specified in paragraphs (4),
12 (5), (6)(A), and (7)(A) of section 212(a) of the
13 Immigration and Nationality Act shall not
14 apply.

15 (2) RELATIONSHIP OF APPLICATION TO CER-
16 TAIN ORDERS.—An alien present in the United
17 States who has been ordered excluded, deported, re-
18 moved, or ordered to depart voluntarily from the
19 United States under any provision of the Immigra-
20 tion and Nationality Act may, notwithstanding such
21 order, apply for adjustment of status under para-
22 graph (1). Such an alien may not be required, as a
23 condition on submitting or granting such applica-
24 tion, to file a motion to reopen, reconsider, or vacate
25 such order. If the Attorney General grants the appli-

1 cation, the Attorney General shall cancel the order.
2 If the Attorney General renders a final administra-
3 tive decision to deny the application, the order shall
4 be effective and enforceable to the same extent as if
5 the application had not been made.

6 (b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-
7 TUS.—The benefits provided by subsection (a) shall apply
8 to any alien who is a national of Haiti—

9 (1) who filed for asylum before December 31,
10 1995, or was paroled into the United States prior to
11 December 31, 1995, after having been identified as
12 having a credible fear of persecution, or paroled for
13 emergent reasons or reasons deemed strictly in the
14 public interest, and

15 (2) has been physically present in the United
16 States for at least 1 year and is physically present
17 in the United States on the date the application for
18 such adjustment is filed, except an alien shall not be
19 considered to have failed to maintain continuous
20 physical presence by reason of an absence, or ab-
21 sences, from the United States for any periods in
22 the aggregate not exceeding 180 days.

23 (c) STAY OF REMOVAL.—

24 (1) IN GENERAL.—The Attorney General shall
25 provide by regulation for an alien subject to a final

1 order of deportation or removal or exclusion to seek
2 a stay of such order based on the filing of an appli-
3 cation under subsection (a).

4 (2) DURING CERTAIN PROCEEDINGS.—Notwith-
5 standing any provision of the Immigration and Na-
6 tionality Act, the Attorney General shall not order
7 any alien to be removed from the United States, if
8 the alien is in exclusion, deportation, or removal pro-
9 ceedings under any provision of such Act and raises
10 as a defense to such an order the eligibility of the
11 alien to apply for adjustment of status under sub-
12 section (a), except where the Attorney General has
13 rendered a final administrative determination to
14 deny the application.

15 (3) WORK AUTHORIZATION.—The Attorney
16 General may authorize an alien who has applied for
17 adjustment of status under subsection (a) to engage
18 in employment in the United States during the
19 pendency of such application and may provide the
20 alien with an “employment authorized” endorsement
21 or other appropriate document signifying authoriza-
22 tion of employment, except that if such application
23 is pending for a period exceeding 180 days, and has
24 not been denied, the Attorney General shall author-
25 ize such employment.

1 (d) ADJUSTMENT OF STATUS FOR SPOUSES AND
2 CHILDREN.—

3 (1) IN GENERAL.—Notwithstanding section
4 245(c) of the Immigration and Nationality Act, the
5 status of an alien shall be adjusted by the Attorney
6 General to that of an alien lawfully admitted for per-
7 manent residence, if—

8 (A) the alien is a national of Haiti;

9 (B) the alien is the spouse, child, or un-
10 married son or daughter, of an alien whose sta-
11 tus is adjusted to that of an alien lawfully ad-
12 mitted for permanent residence under sub-
13 section (a), except that in the case of such an
14 unmarried son or daughter, the son or daughter
15 shall be required to establish that they have
16 been physically present in the United States for
17 at least 1 year and is physically present in the
18 United States on the date the application for
19 such adjustment is filed.

20 (C) the alien applies for such adjustment
21 and is physically present in the United States
22 on the date the application is filed; and

23 (D) the alien is otherwise eligible to receive
24 an immigration visa and is otherwise admissible
25 to the United States for permanent residence,

1 except in determining such admissibility the
2 grounds for exclusion specified in paragraphs
3 (4), (5), (6)(A), and (7)(A) of section 212(a) of
4 the Immigration and Nationality Act shall not
5 apply.

6 (2) PROOF OF CONTINUOUS PRESENCE.—For
7 purposes of establishing the period of continuous
8 physical presence referred to in paragraph (1)(B),
9 an alien shall not be considered to have failed to
10 maintain continuous physical presence by reason of
11 an absence, or absences, from the United States for
12 any periods in aggregate not exceeding 180 days.

13 (e) AVAILABILITY OF ADMINISTRATIVE REVIEW.—
14 The Attorney General shall provide to applicants for ad-
15 justment of status under subsection (a) the same right to,
16 and procedures for, administrative review as are provided
17 to—

18 (1) applicants for adjustment of status under
19 section 245 of the Immigration and Nationality Act;
20 or

21 (2) aliens subject to removal proceedings under
22 section 240 of such Act.

23 (f) LIMITATION ON JUDICIAL REVIEW.—A deter-
24 mination by the Attorney General as to whether the status

1 of any alien should be adjusted under this section is final
2 and shall not be subject to review by any court.

3 (g) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—

4 When an alien is granted the status of having been law-
5 fully admitted for permanent resident pursuant to this
6 section, the Secretary of State shall not be required to re-
7 duce the number of immigrant visas authorized to be is-
8 sued under any provision of the Immigration and Nation-
9 ality Act.

10 (h) APPLICATION OF IMMIGRATION AND NATIONAL-

11 ITY ACT PROVISIONS.—Except as otherwise specifically

12 provided in this Act, the definitions contained in the Immi-

13 gration and Nationality Act shall apply in the administra-

14 tion of this section. Nothing contained in this Act shall

15 be held to repeal, amend, alter, modify, effect, or restrict

16 the powers, duties, functions, or authority of the Attorney

17 General in the administration and enforcement of such

18 Act or any other law relating to immigration, nationality,

19 or naturalization. The fact that an alien may be eligible

20 to be granted the status of having been lawfully admitted

21 for permanent residence under this section shall not pre-

22 clude the alien from seeking such status under any other

23 provision of law for which the alien may be eligible.

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