

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 644

To establish new special immigrant categories, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 16, 2005

Mr. BROWNBACK (for himself, Mr. BINGAMAN, Ms. CANTWELL, and Mr. DODD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To establish new special immigrant categories, 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 “Widows and Orphans  
5       Act of 2005”.

6       **SEC. 2. NEW SPECIAL IMMIGRANT CATEGORY.**

7       (a) CERTAIN CHILDREN AND WOMEN AT RISK OF  
8       HARM.—Section 101(a)(27) of the Immigration and Na-  
9       tionality Act (8 U.S.C. 1101(a)(27)) is amended—

1           (1) in subparagraph (L), by inserting a semi-  
2 colon at the end;

3           (2) in subparagraph (M), by striking the period  
4 at the end and inserting “; or”; and

5           (3) by adding at the end the following:

6           “(N) subject to subsection (j), an immi-  
7 grant who is not present in the United States—

8           “(i) who is—

9           “(I) referred to a consular, immi-  
10 gration, or other designated official by  
11 a United States Government agency,  
12 an international organization, or rec-  
13 ognized nongovernmental entity des-  
14 ignated by the Secretary of State for  
15 purposes of such referrals; and

16           “(II) determined by such official  
17 to be a minor under 18 years of age  
18 (as determined under subsection  
19 (j)(5))—

20           “(aa) for whom no parent or  
21 legal guardian is able to provide  
22 adequate care;

23           “(bb) who faces a credible  
24 fear of harm related to his or her  
25 age;

1                   “(cc) who lacks adequate  
2 protection from such harm; and

3                   “(dd) for whom it has been  
4 determined to be in his or her  
5 best interests to be admitted to  
6 the United States; or

7                   “(ii) who is—

8                   “(I) referred to a consular or im-  
9 migration official by a United States  
10 Government agency, an international  
11 organization or recognized nongovern-  
12 mental entity designated by the Sec-  
13 retary of State for purposes of such  
14 referrals; and

15                   “(II) determined by such official  
16 to be a female who has—

17                   “(aa) a credible fear of  
18 harm related to her sex; and

19                   “(bb) a lack of adequate  
20 protection from such harm.”.

21           (b) STATUTORY CONSTRUCTION.—Section 101 of the  
22 Immigration and Nationality Act (8 U.S.C. 1101) is  
23 amended by adding at the end the following:

24           “(j)(1) No natural parent or prior adoptive parent  
25 of any alien provided special immigrant status under sub-

1 section (a)(27)(N)(i) shall thereafter, by virtue of such  
2 parentage, be accorded any right, privilege, or status  
3 under this Act.

4 “(2)(A) No alien who qualifies for a special immi-  
5 grant visa under subsection (a)(27)(N)(ii) may apply for  
6 derivative status or petition for any spouse who is rep-  
7 resented by the alien as missing, deceased, or the source  
8 of harm at the time of the alien’s application and admis-  
9 sion. The Secretary of Homeland Security may waive this  
10 requirement for an alien who demonstrates that the alien’s  
11 representations regarding the spouse were bona fide.

12 “(B) An alien who qualifies for a special immigrant  
13 visa under subsection (a)(27)(N) may apply for derivative  
14 status or petition for any sibling under the age of 18 years  
15 or children under the age of 18 years of any such alien,  
16 if accompanying or following to join the alien. For pur-  
17 poses of this subparagraph, a determination of age shall  
18 be made using the age of the alien on the date the petition  
19 is filed with the Department of Homeland Security.

20 “(3) An alien who qualifies for a special immigrant  
21 visa under subsection (a)(27)(N) shall be treated in the  
22 same manner as a refugee solely for purposes of section  
23 412.

24 “(4) The provisions of paragraphs (4), (5), and  
25 (7)(A) of section 212(a) shall not be applicable to any

1 alien seeking admission to the United States under sub-  
2 section (a)(27)(N), and the Secretary of Homeland Secu-  
3 rity may waive any other provision of such section (other  
4 than paragraph 2(C) or subparagraph (A), (B), (C), or  
5 (E) of paragraph (3) with respect to such an alien for  
6 humanitarian purposes, to assure family unity, or when  
7 it is otherwise in the public interest. Any such waiver by  
8 the Secretary of Homeland Security shall be in writing  
9 and shall be granted only on an individual basis following  
10 an investigation. The Secretary of Homeland Security  
11 shall provide for the annual reporting to Congress of the  
12 number of waivers granted under this paragraph in the  
13 previous fiscal year and a summary of the reasons for  
14 granting such waivers.

15       “(5) For purposes of subsection (a)(27)(N)(i)(II), a  
16 determination of age shall be made using the age of the  
17 alien on the date on which the alien was referred to the  
18 consular, immigration, or other designated official.

19       “(6) The Secretary of Homeland Security shall waive  
20 any application fee for a special immigrant visa for an  
21 alien described in section 101(a)(27)(N).”.

22       (c) ALLOCATION OF SPECIAL IMMIGRANT VISAS.—  
23 Section 203(b)(4) of the Immigration Nationality Act (8  
24 U.S.C. 1153(b)(4)) is amended by striking “(A) or (B)  
25 thereof” and inserting “(A), (B), or (N) thereof”.

1 (d) EXPEDITED PROCESS.—Not later than 45 days  
2 from the date of referral to a consular, immigration, or  
3 other designated official as described in section  
4 101(a)(27)(N) of the Immigration and Nationality Act, as  
5 added by subsection (a), special immigrant status shall be  
6 adjudicated and, if granted, the alien shall be paroled to  
7 the United States pursuant to section 212(d)(5) of that  
8 Act (8 U.S.C. 1182(d)(5)) and allowed to apply for adjust-  
9 ment of status to permanent residence under section 245  
10 of that Act (8 U.S.C. 1255) within 1 year of the alien’s  
11 arrival in the United States.

12 (e) REPORT TO CONGRESS.—Not later than 1 year  
13 after the date of enactment of this Act, the Secretary of  
14 Homeland Security shall report to the Committee on the  
15 Judiciary of the Senate and the Committee on the Judici-  
16 ary of the House of Representatives on the progress of  
17 the implementation of this Act and the amendments made  
18 by this Act, including—

19 (1) data related to the implementation of this  
20 Act and the amendments made by this Act;

21 (2) data regarding the number of placements of  
22 females and children who faces a credible fear of  
23 harm as referred to in section 101(a)(27)(N) of the  
24 Immigration and Nationality Act, as added by sub-  
25 section (a); and

1           (3) any other information that the Secretary of  
2           Homeland Security determines to be appropriate.

3           (f) AUTHORIZATION OF APPROPRIATIONS.—There is  
4           authorized to be appropriated such sums as may be nec-  
5           essary to carry out this section and the amendments made  
6           by this section.

7           **SEC. 3. REQUIREMENTS FOR ALIENS.**

8           (a) REQUIREMENT PRIOR TO ENTRY INTO THE UN-  
9           TIED STATES.—

10           (1) DATABASE SEARCH.—An alien may not be  
11           admitted to the United States until the Secretary of  
12           Homeland Security has ensured that a search of  
13           each database maintained by an agency or depart-  
14           ment of the United States has been conducted to de-  
15           termine whether such alien is ineligible to be admit-  
16           ted to the United States on criminal, security, or re-  
17           lated grounds.

18           (2) COOPERATION AND SCHEDULE.—The Sec-  
19           retary of Homeland Security and the head of each  
20           appropriate agency or department of the United  
21           States shall work cooperatively to ensure that each  
22           database search required by paragraph (1) is com-  
23           pleted not later than 45 days after the date on  
24           which an alien files a petition seeking a special im-  
25           migration visa under section 101(a)(27)(N) of the

1 Immigration and Nationality Act, as added by sec-  
2 tion 2(a).

3 (b) REQUIREMENT AFTER ENTRY INTO THE UNITED  
4 STATES.—

5 (1) REQUIREMENT TO SUBMIT FINGER-  
6 PRINTS.—

7 (A) IN GENERAL.—Not later than 30 days  
8 after the date that an alien enters the United  
9 States, the alien shall be fingerprinted and sub-  
10 mit to the Secretary of Homeland Security such  
11 fingerprints and any other personal biometric  
12 data required by the Secretary.

13 (B) OTHER REQUIREMENTS.—The Sec-  
14 retary of Homeland Security may prescribe reg-  
15 ulations that permit fingerprints submitted by  
16 an alien under section 262 of the Immigration  
17 and National Act (8 U.S.C. 1302) or any other  
18 provision of law to satisfy the requirement to  
19 submit fingerprints of subparagraph (A).

20 (2) DATABASE SEARCH.—The Secretary of  
21 Homeland Security shall ensure that a search of  
22 each database that contains fingerprints that is  
23 maintained by an agency or department of the  
24 United States be conducted to determine whether  
25 such alien is ineligible for an adjustment of status

1 under any provision of the Immigration and Nation-  
2 ality Act (8 U.S.C. 1101 et seq.) on criminal, secu-  
3 rity, or related grounds.

4 (3) COOPERATION AND SCHEDULE.—The Sec-  
5 retary of Homeland Security and the head of each  
6 appropriate agency or department of the United  
7 States shall work cooperatively to ensure that each  
8 database search required by paragraph (2) is com-  
9 pleted not later than 180 days after the date on  
10 which the alien enters the United States.

11 (4) ADMINISTRATIVE AND JUDICIAL REVIEW.—

12 (A) IN GENERAL.—There may be no re-  
13 view of a determination by the Secretary of  
14 Homeland Security, after a search required by  
15 paragraph (2), that an alien is ineligible for an  
16 adjustment of status, under any provision of  
17 the Immigration and Nationality Act (8 U.S.C.  
18 1101 et seq.) on criminal, security, or related  
19 grounds except as provided in this paragraph.

20 (B) ADMINISTRATIVE REVIEW.—An alien  
21 may appeal a determination described in sub-  
22 paragraph (A) through the Administrative Ap-  
23 peals Office of the Bureau of Citizenship and  
24 Immigration Services of the Department of  
25 Homeland Security. The Secretary of Homeland

1 Security shall ensure that a determination on  
2 such appeal is made not later than 60 days  
3 after the date that the appeal is filed.

4 (C) JUDICIAL REVIEW.—There may be no  
5 judicial review of a determination described in  
6 subparagraph (A).

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