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110TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
110–909

SEPTEMBER 11 FAMILY HUMANITARIAN RELIEF AND PATRIOTISM ACT

OCTOBER 3, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1071]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1071) to provide the nonimmigrant spouses and children of nonimmigrant aliens who perished in the September 11 terrorist attacks an opportunity to adjust their status to that of an alien lawfully admitted for permanent residence, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "September 11 Family Humanitarian Relief and Patriotism Act".

SEC. 2. ADJUSTMENT OF STATUS FOR CERTAIN NONIMMIGRANT VICTIMS OF TERRORISM.

(a) ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—The status of any alien described in subsection (b) shall be adjusted by the Secretary of Homeland Security to that of an alien lawfully admitted for permanent residence, if the alien—

(A) applies for such adjustment not later than 2 years after the date on which the Secretary promulgates final regulations to implement this section; and

(B) is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(2) RULES IN APPLYING CERTAIN PROVISIONS.—In the case of an alien described in subsection (b) who is applying for adjustment of status under this section—

(A) the provisions of section 241(a)(5) of the Immigration and Nationality Act shall not apply; and

(B) the Secretary of Homeland Security may grant the alien a waiver of the grounds of inadmissibility under subparagraphs (A) and (C) of section 212(a)(9) of such Act.

In granting waivers under subparagraph (B), the Secretary shall use standards used in granting consent under subparagraphs (A)(iii) and (C)(ii) of such section 212(a)(9).

(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—An alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) may, notwithstanding such order, apply for adjustment of status under paragraph (1). Such an alien may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate such order. If the Secretary of Homeland Security grants the application, the Secretary shall cancel the order. If the Secretary renders a final administrative decision to deny the application, the order shall be effective and enforceable to the same extent as if the application had not been made.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—The benefits provided by subsection (a) shall apply to any alien who—

(1) was lawfully present in the United States as a nonimmigrant alien described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) on September 10, 2001;

(2) was, on such date, the spouse, child, dependent son, or dependent daughter of an alien who—

(A) was lawfully present in the United States as a nonimmigrant alien described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) on such date; and

(B) died as a direct result of a specified terrorist activity; and

(3) was deemed to be a beneficiary of, and by, the September 11th Victim Compensation Fund of 2001 (42 U.S.C. 40101).

(c) STAY OF REMOVAL; WORK AUTHORIZATION.—

(1) IN GENERAL.—The Secretary of Homeland Security and the Attorney General shall provide by regulation for an alien subject to a final order of removal to seek a stay of such order based on the filing of an application under subsection (a).

(2) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the Attorney General shall not order any alien to be removed from the United States, if the alien is in removal proceedings under any provision of such Act and has applied for ad-

justment of status under subsection (a), except where the Secretary has rendered a final administrative determination to deny the application.

(3) WORK AUTHORIZATION.—The Secretary of Homeland Security shall authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application.

(d) AVAILABILITY OF ADMINISTRATIVE REVIEW.—The Secretary of Homeland Security shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to—

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

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

SEC. 3. CANCELLATION OF REMOVAL FOR CERTAIN IMMIGRANT VICTIMS OF TERRORISM.

(a) IN GENERAL.—Subject to the provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), other than subsections (b)(1), (d)(1), and (e) of section 240A of such Act (8 U.S.C. 1229b), the Attorney General shall, under such section 240A, cancel the removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien described in subsection (b), if the alien applies for such relief.

(b) ALIENS ELIGIBLE FOR CANCELLATION OF REMOVAL.—The benefits provided by subsection (a) shall apply to any alien who—

(1) was, on September 10, 2001, the spouse, child, dependent son, or dependent daughter of an alien who died as a direct result of a specified terrorist activity; and

(2) was deemed to be a beneficiary of, and by, the September 11th Victim Compensation Fund of 2001 (49 U.S.C. 40101).

(c) STAY OF REMOVAL; WORK AUTHORIZATION.—

(1) IN GENERAL.—The Secretary of Homeland Security and the Attorney General shall provide by regulation for an alien subject to a final order of removal to seek a stay of such order based on the filing of an application under subsection (a).

(2) WORK AUTHORIZATION.—The Secretary of Homeland Security shall authorize an alien who has applied for cancellation of removal under subsection (a) to engage in employment in the United States during the pendency of such application.

(d) MOTIONS TO REOPEN REMOVAL PROCEEDINGS.—Notwithstanding any limitation imposed by law on motions to reopen removal proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43))), any alien who has become eligible for cancellation of removal as a result of the enactment of this section may file one motion to reopen removal proceedings to apply for such relief. The Secretary of Homeland Security and the Attorney General shall designate a specific time period in which all such motions to reopen are required to be filed. The period shall begin not later than 60 days after the date of the enactment of this Act and shall extend for a period not to exceed 240 days.

SEC. 4. EXCEPTIONS.

Notwithstanding any other provision of this Act, an alien may not be provided relief under this Act if the alien is—

(1) inadmissible under paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), or deportable under paragraph (2) or (4) of section 237(a) of such Act (8 U.S.C. 1227(a)), including any individual culpable for a specified terrorist activity; or

(2) a member of the family of an alien described in paragraph (1).

SEC. 5. EVIDENCE OF DEATH.

For purposes of this Act, the Secretary of Homeland Security and the Attorney General shall use the standards established under section 426 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 in determining whether death occurred as a direct result of a specified terrorist activity.

SEC. 6. DEFINITIONS.

(a) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—Except as otherwise specifically provided in this Act, the definitions used in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) (excluding the definitions applicable exclusively to title III of such Act) shall apply in the administration of this Act.

(b) SPECIFIED TERRORIST ACTIVITY.—For purposes of this Act, the term "specified terrorist activity" means any terrorist activity conducted against the Government or the people of the United States on September 11, 2001.

PURPOSE AND SUMMARY

H.R. 1071, the "September 11 Family Humanitarian Relief and Patriotism Act," allows the eligible surviving dependents of nonimmigrant and undocumented aliens who died as a result of the terrorist attacks of September 11, 2001 to become lawful permanent residents of the United States.

BACKGROUND AND NEED FOR THE LEGISLATION

Among the victims of the 9/11 attacks were nonimmigrant foreign nationals and undocumented immigrants. Their deaths left behind husbands, wives and dependent children lacking a legal immigration status and with no way to become legal residents of the United States. H.R. 1071, the September 11 Family Humanitarian Relief and Patriotism Act, will grant those survivors lawful permanent resident status.

The bill allows the eligible surviving dependents of nonimmigrant and undocumented aliens who died as a result of the terrorist attacks of September 11, 2001 to become lawful permanent residents of the United States. H.R. 1071 limits eligibility to those survivors who registered with and received compensation under the Victims Compensation Fund (VCF). Because the VCF stopped accepting applications in December 2003, using the VCF as a filter provides for a closed class of individuals in need of adjustment of their status. Under the bill, survivors may not obtain lawful permanent residence if they are criminals or have criminal records that would make them inadmissible to the United States, nor may they be related to those who perpetrated the horrible terrorist attacks of September 11, 2001.

HEARINGS

The Committee on the Judiciary held no hearings on H.R. 1071.

COMMITTEE CONSIDERATION

On July 27, 2007, the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law met in open session and ordered the bill, H.R. 1071, favorably reported without amendment, by a vote of 9 to 3, a quorum being present. On August 2, 2007, the Committee met in open session and ordered the bill, H.R. 1071, favorably reported without amendment, by a rollcall vote of 21 to 10, 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 the following rollcall votes occurred during the Committee's consideration of H.R. 1071.

1. An amendment offered by Mr. King to limit the number of beneficiaries under the Act to twenty. Defeated 11 to 17.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Ms. Sutton			
Mr. Gutierrez		X	
Mr. Sherman			
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz			
Mr. Ellison			
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon			
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney			
Mr. Franks	X		
Mr. Gohmert			
Mr. Jordan	X		
Total	11	17	

2. An amendment by Mr. King to require the beneficiaries of the Act to demonstrate their presence within the United States on or prior to September 10, 2001, and continuously thereafter (with a departure period from the country enduring no more than 90 consecutive days, or 180 days in aggregate). Defeated 12 to 20.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Delahunt		X	
Mr. Wexler		X	

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Ms. Sutton			
Mr. Gutierrez		X	
Mr. Sherman		X	
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison			
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte			
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon			
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney			
Mr. Franks	X		
Mr. Gohmert			
Mr. Jordan	X		
Total	12	20	

3. A motion to report the bill favorably. Passed 21 to 10.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Delahunt	X		
Mr. Wexler	X		
Ms. Sánchez	X		
Mr. Cohen	X		
Mr. Johnson	X		
Ms. Sutton			
Mr. Gutierrez	X		
Mr. Sherman	X		
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Davis	X		
Ms. Wasserman Schultz	X		
Mr. Ellison			
Mr. Smith (Texas)		X	
Mr. Sensenbrenner, Jr.			
Mr. Coble		X	

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Lungren	X		
Mr. Cannon			
Mr. Keller		X	
Mr. Issa		X	
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney			
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan		X	
Total	21	10	

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. 1071, 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, August 16, 2007.

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. 1071, the "September 11 Family Humanitarian Relief and Patriotism Act."

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. 1071—September 11 Family Humanitarian Relief and Patriotism Act.

H.R. 1071 would grant permanent U.S. residence to certain spouses and dependents of aliens who died in the terrorist attacks of September 11, 2001. Enacting this legislation could affect direct spending of immigration fees by the Department of Homeland Security and the cost of certain federal assistance programs. The bill would likely affect a small number of persons, however, and CBO estimates that enacting H.R. 1071 would have no significant budgetary impact. Enacting the bill would not affect revenues.

H.R. 1071 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no significant costs on State, local, or tribal governments.

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. 1071 requires the Secretary of Homeland Security and the Attorney General to promulgate expeditiously regulations or other guidance providing for the implementation and administration of this Act, and to take steps to ensure that each eligible applicant who applies for benefits under this Act receives such benefits within 6 months of the date of his or application for such benefits.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds authority for this legislation in article I, 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. 1071 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. Short title. Section 1 sets forth the short title of the bill as the "September 11 Family Humanitarian Relief and Patriotism Act."

Sec. 2. Adjustment of Status for Certain Nonimmigrant Victims of Terrorism. Section 2 provides adjustment to "permanent resident status" for an individual who, on September 10, 2001, was the spouse, child, or dependent child of a lawful nonimmigrant alien who died as a result of the September 11, 2001 terrorist attacks against the United States. An applicant must have been deemed to

have been a beneficiary of the September 11th Victims Compensation Fund of 2001. There is a 2-year deadline for applying for a benefit under this section once the Secretary of Homeland Security promulgates regulations.

Applicants under this section must be otherwise admissible to the United States, although the inadmissibility grounds listed in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act will not apply to applicants under this section. Applicants under this section who have been ordered excluded, deported, removed, or granted voluntary departure may file for and be granted permanent residence without having to file a separate motion to reopen their exclusion, deportation, or removal proceedings.

Section 2 further provides that applicants must be given an opportunity to apply for a stay of removal based on the filing of an application to adjust their status to that of a lawful permanent resident. The Secretary of Homeland Security must provide work authorization to applicants while their applications are pending.

Sec. 3. Cancellation of Removal for Certain Immigrant Victims of Terrorism. Section 3 provides for cancellation of removal and adjustment to "permanent resident status" for an individual who was: (1) on September 10, 2001, the spouse, child, or dependent child of an alien who died as a result of the September 11, 2001, terrorist attacks against the United States; and (2) deemed to be a beneficiary of the September 11th Victim Compensation Fund of 2001. It provides that subsections (b)(1), (d)(1), and (e) of section 240A of the Immigration and Nationality Act do not apply to applications for cancellation of removal filed pursuant to this section.

Section 3 further provides that eligible applicants may file one motion to reopen their exclusion, deportation or removal proceedings, notwithstanding any other limitations on such filing (with the exception of limitations premised on an alien's aggravated felony conviction). Applicants must be given an opportunity to apply for a stay of removal based on the filing of an application for cancellation of removal under this section. The Secretary of Homeland Security must provide work authorization to applicants while their applications are pending.

Sec. 4. Exceptions. Section 4 makes the provisions of the Act inapplicable to an individual who was: (1) inadmissible or deportable under criminal or security grounds, including September 11, 2001 terrorist activity; or (2) a family member of such an alien. This section ensures that applicants will not be granted adjustment of status if they would be otherwise disqualified for certain criminal activities and it clarifies that the bill does not permit issuing immigration benefits to the September 11th hijackers.

Sec. 5. Evidence of Death. Section 5 provides that the Secretary of Homeland Security and the Attorney General use the standards established under section 426 of the USA PATRIOT Act of 2001 in determining whether death occurred as a direct result of a specified terrorist activity.

Sec. 6. Definitions. Section 6 provides that the definitions used in the Immigration and Nationality Act, excluding the definitions applicable exclusively to title III of such Act, apply in the administration of H.R. 1071. This section also defines the term "specified terrorist activity" to mean any terrorist activity conducted against

the Government or the people of the United States on September 11, 2001.

AGENCY VIEWS

SEP 1 1 2007

Assistant Secretary for Legislative Affairs
U.S. Department of Homeland Security
Washington, DC 20528

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Department of Homeland Security (DHS) is providing its views on H.R. 1071, the "September 11 Family Humanitarian Relief and Patriotism Act," which was approved by the House Judiciary Committee on August 2, 2007. H.R. 1071 would allow certain aliens who lost a spouse or a parent in the September 11, 2001, terrorist attacks to become lawful permanent residents. DHS has a number of substantial technical concerns with this bill that it strongly recommends Congress address prior to final consideration by the House of Representatives.

1. Overlapping and Redundant Adjustment of Status Provisions

In general, the Adjustment of Status provisions in sections 2 and 3 are redundant and unnecessarily complex given that the nonimmigrant group described in section 2 is merely a subset of the broader class described in section 3, and the relief available, adjustment of status, is the same, whether it is called an "adjustment" or a "cancellation of removal" process. The provision can be substantially streamlined and made easier to implement by simply striking section 2(b) (page 4, lines 4 through 20), inserting in its place section 3(b) (page 6, lines 16 through 22), striking all the rest of section 3, and redesignating subsequent sections accordingly.

Relatedly, the repeated descriptions of the bill in its short title and purpose as providing relief for "nonimmigrant" family members of "nonimmigrant" victims focus exclusively on the more limited subset of beneficiaries covered by section 2, while ignoring the broader set of beneficiaries actually covered by section 3, which again includes, but is not limited to, the section 2 nonimmigrants. These references to nonimmigrants should be deleted for the sake of clarity and accuracy as well as conformity with the change suggested above.

2. Authority of the Secretary

The bill provides that any alien meeting the relevant criteria "shall" have his or her status adjusted. This language, which is in section 2(a)(1) of the bill (page 2, line 5) (and the "shall" in section 3(a)(1) (page 6, line 9) if section 3 is retained) should be changed to allow for the exercise of discretion (e.g., "may be adjusted by the Secretary in his discretion"). This would

make these provisions consistent with the general provisions for adjustment of status in section 245(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1§ 1255(a)), and for cancellation of removal as provided in section 240A of the INA (8 U.S.C. § 1229b). DHS has been given the impression through discussion with Congressional staff that the group of beneficiaries is believed to be very small, perhaps no more than ten. Such a small group surely is individually identifiable and could be made the subject of a private bill. The private bill process would involve individual reports on the merits of each beneficiary to be prepared by DHS and considered by Congress before approving the legislation. Here, by contrast, the task of considering the merits of these specific but unidentified beneficiaries' claims is given to DHS. It would be appropriate therefore to give DHS the authority and flexibility to consider the totality of the circumstances, including any unanticipated relevant facts, in determining whether as a matter of discretion the benefit of permanent residence in the United States should be granted to them.

In addition, the bill provides that the Secretary "shall" provide employment authorization during the pendency of applications. This language, which is in sections 2(c)(3) and 3(c)(2) of the bill (page 5, line 14 and page 6, line 25), again makes mandatory what is typically discretionary as a matter of statute and regulation. E.g., section 274A(h)(3) of the INA (8 U.S.C. § 1324a(h)(3)); 8 C.F.R. § 274a.13(a). While as noted above DHS understands that the group of intended beneficiaries is expected to be small, if the legislation requires work authorization to be given to all applicants, there is no control over who may apply (but not ultimately be eligible). When the significant benefit of work authorization is provided just for applying, there could be an incentive to file a false application to obtain it.

3. Unnecessary Regulations

It is counterproductive to require the Secretary to promulgate regulations for a program for this very limited class of beneficiaries. This regulatory burden is unnecessary and is likely to delay relief for the intended beneficiaries. All references to regulations should be changed to "procedures" and the bill also should include a provision affirmatively providing that regulations are not required, similar to the one included in the broader, successfully implemented relief provisions of the USA PATRIOT Act: "The Secretary and the Attorney General shall carry out this Act as expeditiously as possible, and are not required to promulgate regulations prior to implementing this Act." See, Section 426 of P.L. 107-56.

4. Family Member Bar

The "family member" bar to eligibility in section 3(b) of the bill (page 8, lines 11 through 12) is confusing. Family members generally are able to apply and qualify for cancellation without regard to the illicit activity of a family member as long as the applicant is not covered by any of the disqualifying grounds of inadmissibility or deportability and merits a grant of relief as a matter of discretion. If the intent is to ensure that relatives of the 9/11 perpetrators are ineligible, this provision should not be necessary because the limitation elsewhere in the bill to beneficiaries of the 9/11 fund already excludes them.

The Honorable John Conyers
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5. Authority of the Attorney General

The bill does not take into account the division of responsibilities for immigration matters between the Attorney General (EOIR) and the Secretary under the Homeland Security Act of 2002. All references to actions taken in removal proceedings should include the Attorney General.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of these views to Congress.

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative Affairs at (202) 447-5890.

Sincerely,

Donald H. Kent, Jr.
Assistant Secretary
Office of Legislative Affairs

(In addition to the Honorable John Conyers, Jr., the preceding letter was also sent to the Honorable Lamar S. Smith, the Honorable Nancy Pelosi, and the Honorable John A. Boehner.)

DISSENTING VIEWS

We oppose H.R. 1071, the "September 11 Family Humanitarian and Patriotism Act of 2007."

HR. 1071 provides lawful permanent resident status or cancellation of removal and permanent resident status to aliens who were: (1) on September 10, 2001, the spouse, child, or dependent son or daughter of an illegal immigrant or temporary visitor or worker who died as a result of the September 11, 2001, terrorist attacks against the United States; and (2) deemed to be a beneficiary of, and by, the September 11th Victim Compensation Fund of 2001.

The attacks of September 11, 2001, were heinous acts of international terrorism carried out inside U.S. borders. Over 3,000 individuals were murdered on that day and the entire Nation grieved with the families and friends of those who died.

But sympathy for the loss of a loved one is no reason to grant legal immigration status to those who have violated U.S. law to enter and remain in the United States. Such a grant is clearly amnesty.

This issue has been raised previously, most recently during the enactment of the USA PATRIOT Act (Pub. L. No. 107–56). The PATRIOT Act gave lawful permanent resident status to the alien spouse and children of U.S. citizens or lawful permanent residents who were killed as a result of the 9/11 terrorist attacks. During PATRIOT Act negotiations, Congress deliberately decided not to grant permanent residence to the family members of illegal immigrants or temporary visitors or workers.

H.R. 1071 predicates adjustment of immigration status on whether the illegal immigrant was deemed to be a beneficiary of the September 11th Victim Compensation Fund of 2001. In essence, if the illegal immigrant submitted a claim for, and received compensation from, the September 11th Victim Compensation Fund of 2001 due to the death or injury of a family member, they are eligible for adjustment of status under this bill.

The September 11th Victim Compensation Fund of 2001 was created by the "Air Transportation Safety and System Stabilization Act of 2001" (P.L. 107–42). The purpose of the Fund was to "provide compensation to any individual (or relatives of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes of September 11, 2001." [1]

Supporters of H.R. 1071 state that only 16 people would be affected by this legislation since the eligible class is closed (the deadline for making a claim for compensation under the September 11th Victim Compensation Fund was December 22, 2003).

Over 7,300 claims for death or injury were paid out by the Fund and over 98% of eligible families of a deceased victim submitted

[1] Section 403.

claims.[2] The average claim award for a deceased victim was $2,082,127.00. The minimum claim awarded by the fund was $250,000 and the maximum claim awarded was $7.1 million.

Since H.R. 1071 applies to a closed and relatively small group of individuals, it is a de facto private relief bill. Committee Members are provided with full and complete evidence, including biographical background information, on private relief bill beneficiaries prior to the consideration of the bill by the Judiciary Committee.[3]

Members of the Minority requested, through both oral and written communications, on several occasions specific biographical background information regarding the potential beneficiaries of H.R. 1071. Specifically the Minority Members requested that the following information be supplied separately for each potential beneficiary:

- City and state or nation of current residence;
- Date and place of birth;
- Occupation & current employment;
- Through what means the person entered the United States (ie: crossed the border illegally, entered on a temporary visa, etc.);
- Date on which the person initially entered the United States;
- Date and duration of any departures from the United States;
- Amount of monetary award from the September 11 Victim Compensation Fund;
- Country of national origin;
- Date of birth of any U.S. citizen children; and
- Any criminal history, including date of arrest, case resolution and penalty served or paid.[4]

Despite the repeated requests, and assurances from Majority Members that the information would be provided, very little information has been provided to the Minority Members as of the time we are filing these views. In fact, no information specific to any potential beneficiary was supplied. All Members of the Committee should have the opportunity to know exactly who may receive the benefit of H.R. 1071.

Proponents of H.R. 1071 cite as one of the main reasons for supporting the legislation that if these illegal immigrants are deported, they may be put at risk of kidnapping and other crimes involving "exploitation for their assets." In essence, proponents of H.R. 1071 are claiming that because the illegal immigrants are now wealthy, they should be granted permanent residency. This would seem to set a precedent that wealthy people in countries with high rates of crime should receive asylum because of their wealth.

In addition, the results of H.R. 1071 are unfair to the families of illegal immigrants or temporary workers of visitors who die each

[2] Closing Statement from the Special Master, Mr. Kenneth R. Feinberg, on the Shutdown of the September 11 Victim Compensation Fund.

[3] Rules of Procedure for Private Claims Bills, Subc. On Immigration, Citizenship, Refugees, Border Security and International Law, Rule 1.

[4] Letter from Immigration Subcommittee Ranking Member Steve King to Immigration Subcommittee Chair Zoe Lofgren, Aug. 21, 2007.

year in the U.S. as a result of accidents, environmental disasters, criminal activity or natural causes.

Enactment of H.R. 1071 would set a precedent should there be any future terrorist attacks, or other disasters, in which illegal immigrants or temporary visitors or workers are killed. It will be used as justification for similar amnesties in the event of such attacks.

H.R. 1071 undermines the rule of law and American sovereignty with a grant of legal immigration status to those who lost loved ones in the September 11, 2001 terrorist attacks, based solely on the fact of their loss. While it is certainly understandable, the grant of such a benefit will set an unjustified precedent.

LAMAR SMITH.
STEVE KING.

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