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S. 1545

To amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents.

IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 21), 2003

Mr. HATCH (for himself, Mr. DURBIN, Mr. LUGAR, Mr. LEAHY, Mr. CRAIG, Mr. FEINGOLD, Mr. CRAPO, Mr. GRASSLEY, Mr. KENNEDY, Mr. DEWINE, Mrs. BOXER, Mr. LIEBERMAN, Ms. CANTWELL, Mr. KERRY, Mr. BINGAMAN, Mr. NELSON of Florida, Mr. HAGEL, Mr. MCCAIN, Mr. CORZINE, Mrs. FEINSTEIN, Mr. CARPER, Mr. BAYH, Ms. LANDRIEU, Mrs. CLINTON, Mr. BROWNBACK, Mr. DODD, Mr. COLEMAN, Mr. REID, Mr. SCHUMER, Mr. LAUTENBERG, Mr. SARBANES, Mr. HARKIN, Mr. DAYTON, Mr. NELSON of Nebraska, Mr. EDWARDS, Mr. SPECTER, Mrs. LINCOLN, Mr. GRAHAM of Florida, Mr. KOHL, Mr. LEVIN, Mrs. MURRAY, and Mr. FITZGERALD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

NOVEMBER 25, 2003

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to

authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents.

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 “Development, Relief,
 5 and Education for Alien Minors Act of 2003” or
 6 “DREAM Act”.

7 **SEC. 2. DEFINITION OF INSTITUTION OF HIGHER EDU-**
 8 **CATION.**

9 In this Act, the term “institution of higher edu-
 10 cation” has the meaning given the term in section 101
 11 of the Higher Education Act of 1965 (20 U.S.C. 1001).

12 **SEC. 3. RESTORATION OF STATE OPTION TO DETERMINE**
 13 **RESIDENCY FOR PURPOSES OF HIGHER EDU-**
 14 **CATION BENEFITS.**

15 (a) **IN GENERAL.**—Section 505 of the Illegal Immi-
 16 gration Reform and Immigrant Responsibility Act of 1996
 17 (8 U.S.C. 1623) is repealed.

18 (b) **EFFECTIVE DATE.**—The repeal described in sub-
 19 section (a) shall take effect as if included in the enactment
 20 of the Illegal Immigration Reform and Immigrant Respon-
 21 sibility Act of 1996.

1 **SEC. 4. CANCELLATION OF REMOVAL AND ADJUSTMENT OF**
2 **STATUS OF CERTAIN LONG-TERM RESIDENTS**
3 **WHO ENTERED THE UNITED STATES AS CHIL-**
4 **DREN.**

5 (a) **SPECIAL RULE FOR ALIENS IN QUALIFIED INSTI-**
6 **TUTIONS OF HIGHER EDUCATION.—**

7 (1) **IN GENERAL.**—Notwithstanding any other
8 provision of law and except as otherwise provided in
9 this Act, the Secretary of Homeland Security may
10 cancel removal of, and adjust to the status of an
11 alien lawfully admitted for permanent residence,
12 subject to the conditional basis described in section
13 5, an alien who is inadmissible or deportable from
14 the United States, if the alien demonstrates that—

15 (A) the alien has been physically present in
16 the United States for a continuous period of
17 not less than 5 years immediately preceding the
18 date of enactment of this Act, and had not yet
19 reached the age of 16 years at the time of ini-
20 tial entry;

21 (B) the alien has been a person of good
22 moral character since the time of application;

23 (C) the alien—

24 (i) is not inadmissible under para-
25 graph (2), (3), (6)(B), (6)(C), (6)(E),
26 (6)(F), or (6)(G) of section 212(a) of the

1 Immigration and Nationality Act (8 U.S.C.
2 1182(a)), or, if inadmissible solely under
3 subparagraphs (C) and (F) of paragraph
4 (6) of such section by reason of a false
5 representation of United States citizenship,
6 the alien was under the age of 16 years
7 when the representation was made and was
8 not the principal applicant in the fraudu-
9 lent or false application for benefit under
10 the Immigration and Nationality Act (8
11 U.S.C. 1101 et seq.); and

12 (ii) is not deportable under paragraph
13 (1)(E), (1)(G), (2), (3)(B), (3)(C), (3)(D),
14 (4), or (6) of section 237(a) of the Immi-
15 gration and Nationality Act (8 U.S.C.
16 1227(a));

17 (D) the alien, at the time of application,
18 has been admitted to an institution of higher
19 education, or has earned a high school diploma
20 or obtained a general education development
21 certificate; and

22 (E) the alien has never been under a final
23 administrative or judicial order of exclusion, de-
24 portation, or removal, unless the alien has re-
25 mained in the United States under color of law

1 or received the order before attaining the age of
2 16 years.

3 (F) The Secretary of Homeland Security
4 may waive the grounds of ineligibility under
5 section 212(a)(6) of the Immigration and Na-
6 tionality Act and the grounds of deportability
7 under paragraphs (1), (3), and (6) of section
8 237(a) of that Act for humanitarian purposes
9 or family unity or when it is otherwise in the
10 public interest.

11 (2) PROCEDURES.—The Secretary of Homeland
12 Security shall provide a procedure by regulation al-
13 lowing eligible individuals to apply affirmatively for
14 the relief available under this subsection without
15 being placed in removal proceedings.

16 (b) TERMINATION OF CONTINUOUS PERIOD.—For
17 purposes of this section, any period of continuous resi-
18 dence or continuous physical presence in the United States
19 of an alien who applies for cancellation of removal under
20 this section shall not terminate when the alien is served
21 a notice to appear under section 239(a) of the Immigra-
22 tion and Nationality Act (8 U.S.C. 1229(a)).

23 (c) TREATMENT OF CERTAIN BREAKS IN PRES-
24 ENCE.—

1 (1) IN GENERAL.—An alien shall be considered
2 to have failed to maintain continuous physical pres-
3 ence in the United States under subsection (a) if the
4 alien has departed from the United States for any
5 period in excess of 90 days or for any periods in the
6 aggregate exceeding 180 days.

7 (2) EXTENSIONS FOR EXCEPTIONAL CIR-
8 CUMSTANCES.—The Secretary of Homeland Security
9 may extend the time periods described in paragraph
10 (1) if the alien demonstrates that the failure to time-
11 ly return to the United States was due to excep-
12 tional circumstances. The exceptional circumstances
13 determined sufficient to justify an extension should
14 be no less compelling than serious illness of the
15 alien, or death or serious illness of a parent, grand-
16 parent, sibling, or child.

17 (d) EXEMPTION FROM NUMERICAL LIMITATIONS.—
18 Nothing in this section may be construed to apply a nu-
19 merical limitation on the number of aliens who may be
20 eligible for cancellation of removal or adjustment of status
21 under this section.

22 (e) REGULATIONS.—

23 (1) PROPOSED REGULATIONS.—Not later than
24 180 days after the date of enactment of this Act, the
25 Secretary of Homeland Security shall publish pro-

1 posed regulations implementing this section. Such
2 regulations shall be effective immediately on an in-
3 terim basis, but are subject to change and revision
4 after public notice and opportunity for a period for
5 public comment.

6 (2) INTERIM, FINAL REGULATIONS.—Within a
7 reasonable time after publication of the interim reg-
8 ulations in accordance with paragraph (1), the Sec-
9 retary of Homeland Security shall publish final regu-
10 lations implementing this section.

11 (f) REMOVAL OF ALIEN.—The Secretary of Home-
12 land Security shall not remove any alien who has a pend-
13 ing application for conditional status under this Act.

14 **SEC. 5. CONDITIONAL PERMANENT RESIDENT STATUS.**

15 (a) IN GENERAL.—

16 (1) CONDITIONAL BASIS FOR STATUS.—Not-
17 withstanding any other provision of law, and except
18 as provided in section 6, an alien whose status has
19 been adjusted under section 4 to that of an alien
20 lawfully admitted for permanent residence shall be
21 considered to have obtained such status on a condi-
22 tional basis subject to the provisions of this section.
23 Such conditional resident status shall be valid for a
24 period of 6 years, subject to termination under sub-
25 section (b).

1 (2) NOTICE OF REQUIREMENTS.—

2 (A) AT TIME OF OBTAINING PERMANENT
3 RESIDENCE.—At the time an alien obtains per-
4 manent resident status on a conditional basis
5 under paragraph (1), the Secretary of Home-
6 land Security shall provide for notice to the
7 alien regarding the provisions of this section
8 and the requirements of subsection (e)(1) to
9 have the conditional basis of such status re-
10 moved.

11 (B) EFFECT OF FAILURE TO PROVIDE NO-
12 TICE.—The failure of the Secretary of Home-
13 land Security to provide a notice under this
14 paragraph—

15 (i) shall not affect the enforcement of
16 the provisions of this Act with respect to
17 the alien; and

18 (ii) shall not give rise to any private
19 right of action by the alien.

20 (b) TERMINATION OF STATUS.—

21 (1) IN GENERAL.—The Secretary of Homeland
22 Security shall terminate the conditional permanent
23 resident status of any alien who obtained such sta-
24 tus under this Act, if the Secretary determines that
25 the alien—

1 (A) has violated any provision of subpara-
2 graph (B) or (C) of section 4(a)(1);

3 (B) has become a public charge; or

4 (C) in the case of an alien who received
5 conditional permanent resident status under
6 section 4(a)(1)(B); has received a dishonorable
7 or other than honorable discharge from the
8 Armed Forces of the United States.

9 (2) RETURN TO PREVIOUS IMMIGRATION STA-
10 TUS.—Any alien whose permanent resident status is
11 terminated under paragraph (1) shall return to the
12 immigration status the alien had immediately prior
13 to receiving conditional permanent resident status
14 under this Act.

15 (c) REQUIREMENTS OF TIMELY PETITION FOR RE-
16 MOVAL OF CONDITION.—

17 (1) IN GENERAL.—In order for the conditional
18 basis of permanent resident status obtained by an
19 alien under subsection (a) to be removed, the alien
20 must file with the Secretary of Homeland Security,
21 in accordance with paragraph (3), a petition which
22 requests the removal of such conditional basis and
23 which states, under penalty of perjury, the facts and
24 information described in subsection (d)(1).

1 (2) ADJUDICATION OF PETITION TO REMOVE
2 CONDITION.—

3 (A) IN GENERAL.—If a petition is filed in
4 accordance with paragraph (1), the Secretary of
5 Homeland Security shall make a determination
6 as to whether the facts and information de-
7 scribed in subsection (d)(1) and alleged in the
8 petition are true with respect to the eligibility
9 of the alien.

10 (B) REMOVAL OF CONDITIONAL BASIS IF
11 FAVORABLE DETERMINATION.—If the Secretary
12 of Homeland Security determines that the facts
13 and information alleged in the petition are true,
14 the Secretary of Homeland Security shall so no-
15 tify the alien and shall immediately remove the
16 conditional basis of the status of the alien.

17 (C) TERMINATION IF ADVERSE DETER-
18 MINATION.—If the Secretary of Homeland Se-
19 curity determines that such facts and informa-
20 tion alleged in the petition are not true, the
21 Secretary of Homeland Security shall so notify
22 the alien and shall terminate the permanent
23 resident status of the alien as of the date of the
24 determination.

1 (3) TIME TO FILE PETITION.—An alien may pe-
2 tition to remove the conditional basis to lawful resi-
3 dent status during the period beginning 180 days
4 before and ending 2 years after either the date that
5 is 6 years after the date of the granting of condi-
6 tional resident status or any other expiration date of
7 the conditional resident status as extended by the
8 Secretary of Homeland Security in accordance with
9 this Act. The alien shall be deemed in lawful status
10 in the United States during the period in which the
11 petition is pending.

12 (d) DETAILS OF PETITION.—

13 (1) CONTENTS OF PETITION.—Each petition
14 under subsection (c)(1) shall contain the following
15 facts and information:

16 (A) The alien maintained good moral char-
17 acter during the entire period the alien has
18 been a conditional permanent resident.

19 (B) The alien continues to be in compli-
20 ance with subparagraphs (B) and (C) of section
21 4(a)(1).

22 (C) The alien has maintained continuous
23 physical residence in the United States since
24 adjustment of status to that of a conditional
25 permanent resident. For the purpose of deter-

1 mining continuous physical presence under this
2 subparagraph, section 4(e) shall apply.

3 ~~(D)~~ The alien has completed at least 1 of
4 the following:

5 (i) The alien has acquired a degree
6 from an institution of higher education or
7 has been a student in good standing for at
8 least 2 years in a program for a bachelor's
9 degree or higher degree.

10 (ii) The alien has served in the Armed
11 Forces of the United States for at least 2
12 years and, if discharged, has received an
13 honorable discharge.

14 (iii) The alien has performed at least
15 910 hours of volunteer community service
16 in a program of an organization that has
17 been determined to be eligible to receive
18 funds from the Combined Federal Cam-
19 paign administered by the United States
20 Office of Personnel Management or a pro-
21 gram approved by the Secretary of Home-
22 land Security in consultation with the Di-
23 rector of U.S.A. Freedom Corps.

24 ~~(2)~~ HARDSHIP EXCEPTION.—

1 (A) IN GENERAL.—The Secretary of
2 Homeland Security may, in the Secretary's dis-
3 cretion, remove the conditional status of an
4 alien if the alien—

5 (i) satisfies the requirements of sub-
6 paragraphs (A), (B), and (C) of paragraph
7 (1);

8 (ii) demonstrates compelling cir-
9 cumstances for the inability to complete
10 the requirements described in paragraph
11 (1)(D); and

12 (iii) demonstrates that the alien's re-
13 moval from the United States would result
14 in exceptional and extremely unusual hard-
15 ship to the alien or the alien's spouse, par-
16 ent, or child who is a citizen or a lawful
17 permanent resident of the United States.

18 (B) EXTENSION.—Upon a showing of good
19 cause, the Secretary of Homeland Security may
20 also extend the validity period of the conditional
21 resident status for the purpose of completing
22 the requirements described in paragraph
23 (1)(D).

24 (c) TREATMENT OF PERIOD FOR PURPOSES OF NAT-
25 URALIZATION.—For purposes of title III of the Immigra-

1 tion and Nationality Act (8 U.S.C. 1401 et seq.), in the
2 case of an alien who is in the United States as a lawful
3 permanent resident on a conditional basis under this sec-
4 tion, the alien shall be considered to have been admitted
5 as an alien lawfully admitted for permanent residence and
6 to be in the United States as an alien lawfully admitted
7 to the United States for permanent residence. However,
8 the conditional basis must be removed before the alien
9 may apply for naturalization.

10 **SEC. 6. RETROACTIVE BENEFITS UNDER THIS ACT.**

11 An alien who, prior to the date of enactment of this
12 Act, has satisfied all the requirements of both sections 4
13 and 5, may petition the Secretary of Homeland Security
14 for permanent resident status without first becoming a
15 conditional resident.

16 **SEC. 7. EXCLUSIVE JURISDICTION.**

17 (a) IN GENERAL.—The Secretary of Homeland Secu-
18 rity shall have exclusive jurisdiction to determine eligibility
19 for relief under this Act, except where the alien has been
20 placed into deportation, exclusion, or removal proceedings
21 either prior to or after filing an application for relief under
22 this Act, in which case the Attorney General shall have
23 exclusive jurisdiction and shall assume all the powers and
24 duties of the Secretary of Homeland Security until pro-
25 ceedings are terminated, or if a final order of deportation,

1 exclusion, or removal is entered the Secretary of Home-
2 land Security shall resume all powers and duties delegated
3 to the Secretary of Homeland Security under this Act.

4 (b) STAY OF REMOVAL OF CERTAIN ALIENS EN-
5 ROLLED IN PRIMARY OR SECONDARY SCHOOL.—The At-
6 torney General shall stay the removal proceedings of any
7 alien who—

8 (1) meets all the requirements for relief under
9 this Act, except that the alien has not yet graduated
10 from high school;

11 (2) is at least 12 years of age; and

12 (3) is enrolled full-time in a primary or sec-
13 ondary school.

14 (c) EMPLOYMENT.—An alien whose removal is stayed
15 pursuant to subsection (b) may be engaged in employment
16 in the United States.

17 (d) LIFT OF STAY.—The Attorney General shall lift
18 the stay granted pursuant to subsection (b) if the alien—

19 (1) is no longer enrolled in a primary or sec-
20 ondary school; and

21 (2) fails to maintain prima facie eligibility for
22 relief under this Act.

1 **SEC. 8. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**
2 **TION.**

3 Whoever files an application for relief under this Act
4 and willfully and knowingly falsifies, misrepresents, or
5 conceals a material fact or makes any false or fraudulent
6 statement or representation, or makes or uses any false
7 writing or document knowing the same to contain any
8 false or fraudulent statement or entry, shall be fined in
9 accordance with title 18, United States Code, or impris-
10 oned not more than 5 years, or both.

11 **SEC. 9. CONFIDENTIALITY OF INFORMATION.**

12 (a) **PROHIBITION.**—No officer or employee of the
13 United States may—

14 (1) use the information furnished by the appli-
15 cant pursuant to an application filed under this Act
16 for any purpose other than to make a determination
17 on the application;

18 (2) make any publication whereby the informa-
19 tion furnished by any particular individual pursuant
20 to an application under this Act can be identified; or

21 (3) permit anyone other than an officer or em-
22 ployee of the Department of Justice or, in the case
23 of applications filed under this Act with a designated
24 entity, that designated entity, to examine applica-
25 tions filed under this Act.

1 (b) PENALTY.—Whoever knowingly uses, publishes,
2 or permits information to be examined in violation of this
3 section shall be fined not more than \$10,000.

4 **SEC. 10. EXPEDITED PROCESSING OF APPLICATIONS; PRO-**
5 **HIBITION ON FEES.**

6 Regulations promulgated under this Act shall provide
7 that applications under this Act will be considered on an
8 expedited basis and without a requirement for the pay-
9 ment by the applicant of any additional fee for such expe-
10 dited processing.

11 **SEC. 11. GAO REPORT.**

12 Seven years after the date of enactment of this Act,
13 the Comptroller General of the United States shall submit
14 a report to the Committees on the Judiciary of the Senate
15 and the House of Representatives setting forth—

16 (1) the number of aliens who were eligible for
17 cancellation of removal and adjustment of status
18 during the application period described in section
19 4(a)(1)(A);

20 (2) the number of aliens who applied for adjust-
21 ment of status under section 4(a);

22 (3) the number of aliens who were granted ad-
23 justment of status under section 4(a); and

1 (4) the number of aliens with respect to whom
 2 the conditional basis of their status was removed
 3 under section 5.

4 **SECTION 1. SHORT TITLE.**

5 *This Act may be cited as the “Development, Relief, and*
 6 *Education for Alien Minors Act of 2003” or “DREAM Act”.*

7 **SEC. 2. DEFINITION OF INSTITUTION OF HIGHER EDU-**
 8 **CATION.**

9 *In this Act, the term “institution of higher education”*
 10 *has the meaning given the term in section 101 of the Higher*
 11 *Education Act of 1965 (20 U.S.C. 1001).*

12 **SEC. 3. RESTORATION OF STATE OPTION TO DETERMINE**
 13 **RESIDENCY FOR PURPOSES OF HIGHER EDU-**
 14 **CATION BENEFITS.**

15 (a) *IN GENERAL.*—*Section 505 of the Illegal Immigra-*
 16 *tion Reform and Immigrant Responsibility Act of 1996 (8*
 17 *U.S.C. 1623) is repealed.*

18 (b) *EFFECTIVE DATE.*—*The repeal described in sub-*
 19 *section (a) shall take effect as if included in the enactment*
 20 *of the Illegal Immigration Reform and Immigrant Respon-*
 21 *sibility Act of 1996.*

1 **SEC. 4. CANCELLATION OF REMOVAL AND ADJUSTMENT OF**
2 **STATUS OF CERTAIN LONG-TERM RESIDENTS**
3 **WHO ENTERED THE UNITED STATE AS CHIL-**
4 **DREN.**

5 (a) *SPECIAL RULE FOR ALIENS IN QUALIFIED INSTI-*
6 *TUTIONS OF HIGHER EDUCATION.—*

7 (1) *IN GENERAL.—Notwithstanding any other*
8 *provision of law and except as otherwise provided in*
9 *this Act, the Secretary of Homeland Security may*
10 *cancel removal of, and adjust to the status of an alien*
11 *lawfully admitted for permanent residence, subject to*
12 *the conditional basis described in section 5, an alien*
13 *who is inadmissible or deportable from the United*
14 *States, if the alien demonstrates that—*

15 (A) *the alien has been physically present in*
16 *the United States for a continuous period of not*
17 *less than 5 years immediately preceding the date*
18 *of enactment of this Act, and had not yet reached*
19 *the age of 16 years at the time of initial entry;*

20 (B) *the alien has been a person of good*
21 *moral character since the time of application;*

22 (C) *the alien—*

23 (i) *is not inadmissible under para-*
24 *graph (2), (3), (6)(B), (6)(C), (6)(E),*
25 *(6)(F), or (6)(G) of section 212(a) of the*
26 *Immigration and Nationality Act (8 U.S.C.*

1 1182(a)), or, if inadmissible solely under
2 subparagraphs (C) or (F) of paragraph (6)
3 of such section, the alien was under the age
4 of 16 years at the time the violation was
5 committed; and

6 (ii) is not deportable under paragraph
7 (1)(E), (1)(G), (2), (3)(B), (3)(C), (3)(D),
8 (4), or (6) of section 237(a) of the Immigra-
9 tion and Nationality Act (8 U.S.C.
10 1227(a)), or, if deportable solely under sub-
11 paragraphs (C) or (D) of paragraph (3) of
12 such section, the alien was under the age of
13 16 years at the time the violation was com-
14 mitted;

15 (D) the alien, at the time of application,
16 has been admitted to an institution of higher
17 education in the United States, or has earned a
18 high school diploma or obtained a general edu-
19 cation development certificate in the United
20 States; and

21 (E) the alien has never been under a final
22 administrative or judicial order of exclusion, de-
23 portation, or removal, unless the alien has re-
24 mained in the United States under color of law

1 *or received the order before attaining the age of*
2 *16 years.*

3 (2) *WAIVER.—The Secretary of Homeland Secu-*
4 *urity may waive the grounds of ineligibility under sec-*
5 *tion 212(a)(6) of the Immigration and Nationality*
6 *Act and the grounds of deportability under para-*
7 *graphs (1), (3), and (6) of section 237(a) of that Act*
8 *for humanitarian purposes or family unity or when*
9 *it is otherwise in the public interest.*

10 (3) *PROCEDURES.—The Secretary of Homeland*
11 *Security shall provide a procedure by regulation al-*
12 *lowing eligible individuals to apply affirmatively for*
13 *the relief available under this subsection without*
14 *being placed in removal proceedings.*

15 (b) *TERMINATION OF CONTINUOUS PERIOD.—For pur-*
16 *poses of this section, any period of continuous residence or*
17 *continuous physical presence in the United States of an*
18 *alien who applies for cancellation of removal under this sec-*
19 *tion shall not terminate when the alien is served a notice*
20 *to appear under section 239(a) of the Immigration and Na-*
21 *tionality Act (8 U.S.C. 1229(a)).*

22 (c) *TREATMENT OF CERTAIN BREAKS IN PRESENCE.—*

23 (1) *IN GENERAL.—An alien shall be considered*
24 *to have failed to maintain continuous physical pres-*
25 *ence in the United States under subsection (a) if the*

1 *alien has departed from the United States for any pe-*
2 *riod in excess of 90 days or for any periods in the*
3 *aggregate exceeding 180 days.*

4 (2) *EXTENSIONS FOR EXCEPTIONAL CIR-*
5 *CUMSTANCES.—The Secretary of Homeland Security*
6 *may extend the time periods described in paragraph*
7 *(1) if the alien demonstrates that the failure to timely*
8 *return to the United States was due to exceptional*
9 *circumstances. The exceptional circumstances deter-*
10 *mined sufficient to justify an extension should be no*
11 *less compelling than serious illness of the alien, or*
12 *death or serious illness of a parent, grandparent, sib-*
13 *ling, or child.*

14 (d) *EXEMPTION FROM NUMERICAL LIMITATIONS.—*
15 *Nothing in this section may be construed to apply against*
16 *the numerical limitation on the number of aliens who may*
17 *be eligible for cancellation of removal under section 240A*
18 *of the Immigration and Nationality Act (8 U.S.C. 1229b).*

19 (e) *REGULATIONS.—*

20 (1) *PROPOSED REGULATIONS.—Not later than*
21 *180 days after the date of enactment of this Act, the*
22 *Secretary of Homeland Security shall publish pro-*
23 *posed regulations implementing this section. Such*
24 *regulations shall be effective immediately on an in-*
25 *terim basis, but are subject to change and revision*

1 *after public notice and opportunity for a period for*
2 *public comment.*

3 (2) *INTERIM, FINAL REGULATIONS.*—*Within a*
4 *reasonable time after publication of the interim regu-*
5 *lations in accordance with paragraph (1), the Sec-*
6 *retary of Homeland Security shall publish final regu-*
7 *lations implementing this section.*

8 (f) *REMOVAL OF ALIEN.*—*The Secretary of Homeland*
9 *Security shall not remove any alien who has a pending ap-*
10 *plication for conditional status under this Act.*

11 **SEC. 5. CONDITIONAL PERMANENT RESIDENT STATUS.**

12 (a) *IN GENERAL.*—

13 (1) *CONDITIONAL BASIS FOR STATUS.*—*Notwith-*
14 *standing any other provision of law, and except as*
15 *provided in section 6, an alien whose status has been*
16 *adjusted under section 4 to that of an alien lawfully*
17 *admitted for permanent residence shall be considered*
18 *to have obtained such status on a conditional basis*
19 *subject to the provisions of this section. Such condi-*
20 *tional resident status shall be valid for a period of 6*
21 *years, subject to termination under subsection (b).*

22 (2) *NOTICE OF REQUIREMENTS.*—

23 (A) *AT TIME OF OBTAINING PERMANENT*
24 *RESIDENCE.*—*At the time an alien obtains per-*
25 *manent resident status on a conditional basis*

1 under paragraph (1), the Secretary of Homeland
 2 Security shall provide for notice to the alien re-
 3 garding the provisions of this section and the re-
 4 quirements of subsection (c)(1) to have the condi-
 5 tional basis of such status removed.

6 (B) *EFFECT OF FAILURE TO PROVIDE NO-*
 7 *TICE.—The failure of the Secretary of Homeland*
 8 *Security to provide a notice under this para-*
 9 *graph—*

10 (i) *shall not affect the enforcement of*
 11 *the provisions of this Act with respect to the*
 12 *alien; and*

13 (ii) *shall not give rise to any private*
 14 *right of action by the alien.*

15 (b) *TERMINATION OF STATUS.—*

16 (1) *IN GENERAL.—The Secretary of Homeland*
 17 *Security shall terminate the conditional permanent*
 18 *resident status of any alien who obtained such status*
 19 *under this Act, if the Secretary determines that the*
 20 *alien—*

21 (A) *has violated any provision of subpara-*
 22 *graph (B) or (C) of section 4(a)(1);*

23 (B) *has become a public charge; or*

24 (C) *in the case of an alien who received con-*
 25 *ditional permanent resident status under section*

1 4(a)(1)(B), has received a dishonorable or other
2 than honorable discharge from the Armed Forces
3 of the United States.

4 (2) *RETURN TO PREVIOUS IMMIGRATION STA-*
5 *TUS.*—Any alien whose permanent resident status is
6 terminated under paragraph (1) shall return to the
7 immigration status the alien had immediately prior
8 to receiving conditional permanent resident status
9 under this Act.

10 (c) *REQUIREMENTS OF TIMELY PETITION FOR RE-*
11 *MOVAL OF CONDITION.*—

12 (1) *IN GENERAL.*—In order for the conditional
13 basis of permanent resident status obtained by an
14 alien under subsection (a) to be removed, the alien
15 must file with the Secretary of Homeland Security, in
16 accordance with paragraph (3), a petition which re-
17 quests the removal of such conditional basis and
18 which states, under penalty of perjury, the facts and
19 information described in subsection (d)(1).

20 (2) *ADJUDICATION OF PETITION TO REMOVE*
21 *CONDITION.*—

22 (A) *IN GENERAL.*—If a petition is filed in
23 accordance with paragraph (1), the Secretary of
24 Homeland Security shall make a determination
25 as to whether the facts and information described

1 *in subsection (d)(1) and alleged in the petition*
2 *are true with respect to the eligibility of the*
3 *alien.*

4 *(B) REMOVAL OF CONDITIONAL BASIS IF FA-*
5 *VORABLE DETERMINATION.—If the Secretary of*
6 *Homeland Security determines that the facts and*
7 *information alleged in the petition are true, the*
8 *Secretary of Homeland Security shall so notify*
9 *the alien and shall immediately remove the con-*
10 *ditional basis of the status of the alien.*

11 *(C) TERMINATION IF ADVERSE DETERMINA-*
12 *TION.—If the Secretary of Homeland Security*
13 *determines that such facts and information al-*
14 *leged in the petition are not true, the Secretary*
15 *of Homeland Security shall so notify the alien*
16 *and shall terminate the permanent resident sta-*
17 *tus of the alien as of the date of the determina-*
18 *tion.*

19 *(3) TIME TO FILE PETITION.—An alien may pe-*
20 *tition to remove the conditional basis to lawful resi-*
21 *dent status during the period beginning 180 days be-*
22 *fore and ending 2 years after either the date that is*
23 *6 years after the date of the granting of conditional*
24 *resident status or any other expiration date of the*
25 *conditional resident status as extended by the Sec-*

1 *retary of Homeland Security in accordance with this*
2 *Act. The alien shall be deemed in lawful status in the*
3 *United States during the period in which the petition*
4 *is pending.*

5 *(d) DETAILS OF PETITION.—*

6 *(1) CONTENTS OF PETITION.—Each petition*
7 *under subsection (c)(1) shall contain the following*
8 *facts and information:*

9 *(A) The alien maintained good moral char-*
10 *acter during the entire period the alien has been*
11 *a conditional permanent resident.*

12 *(B) The alien continues to be in compliance*
13 *with subparagraphs (B) and (C) of section*
14 *4(a)(1).*

15 *(C) The alien has not abandoned his or her*
16 *residence in the United States. There shall be a*
17 *presumption that the alien has abandoned his or*
18 *her residence if the alien is absent from the*
19 *United States for more that 365 days in the ag-*
20 *gregate during the period of conditional resi-*
21 *dence, unless the alien demonstrates that he or*
22 *she did not in fact abandon residence in the*
23 *United States. The presumption shall not apply*
24 *to an alien whose absence is due to active service*
25 *in the Armed Forces of the United States.*

1 (D) *The alien has completed at least 1 of*
2 *the following:*

3 (i) *The alien has acquired a degree*
4 *from an institution of higher education in*
5 *the United States or has completed at least*
6 *2 years, in good standing, in a program for*
7 *a bachelor's degree or higher degree in the*
8 *United States.*

9 (ii) *The alien has served in the Armed*
10 *Forces of the United States for at least 2*
11 *years and, if discharged, has received an*
12 *honorable discharge.*

13 (E) *All secondary education institutions at-*
14 *tended in the United States.*

15 (2) *HARDSHIP EXCEPTION.—*

16 (A) *IN GENERAL.—The Secretary of Home-*
17 *land Security may, in the Secretary's discretion,*
18 *remove the conditional status of an alien if the*
19 *alien—*

20 (i) *satisfies the requirements of sub-*
21 *paragraphs (A), (B), and (C) of paragraph*
22 *(1);*

23 (ii) *demonstrates compelling cir-*
24 *cumstances for the inability to complete the*

1 requirements described in paragraph
2 (1)(D); and

3 (iii) demonstrates that the alien's re-
4 moval from the United States would result
5 in exceptional and extremely unusual hard-
6 ship to the alien or the alien's spouse, par-
7 ent, or child who is a citizen or a lawful
8 permanent resident of the United States.

9 (B) *EXTENSION*.—Upon a showing of good
10 cause, the Secretary of Homeland Security may
11 also extend the validity period of the conditional
12 resident status for the purpose of completing the
13 requirements described in paragraph (1)(D).

14 (e) *TREATMENT OF PERIOD FOR PURPOSES OF NATU-*
15 *RALIZATION*.—For purposes of title III of the Immigration
16 and Nationality Act (8 U.S.C. 1401 et seq.), in the case
17 of an alien who is in the United States as a lawful perma-
18 nent resident on a conditional basis under this section, the
19 alien shall be considered to have been admitted as an alien
20 lawfully admitted for permanent residence and to be in the
21 United States as an alien lawfully admitted to the United
22 States for permanent residence. However, the conditional
23 basis must be removed before the alien may apply for natu-
24 ralization.

1 **SEC. 6. RETROACTIVE BENEFITS UNDER THIS ACT.**

2 *If, upon the date of enactment of this Act, an alien*
3 *has satisfied all the requirements of section 4 and complied*
4 *with section 5(d)(1)(D), the Secretary of Homeland Secu-*
5 *rity may adjust the status of the alien to that of a condi-*
6 *tional resident in accordance with section 4. The alien may*
7 *petition for removal of such condition at the end of the con-*
8 *ditional residence period in accordance with section 5(c)*
9 *if the alien has complied with subparagraphs (A), (B), and*
10 *(C) of section 5(d)(1) during the entire period of conditional*
11 *residence.*

12 **SEC. 7. EXCLUSIVE JURISDICTION.**

13 *(a) IN GENERAL.—The Secretary of Homeland Secu-*
14 *rity shall have exclusive jurisdiction to determine eligibility*
15 *for relief under this Act, except where the alien has been*
16 *placed into deportation, exclusion, or removal proceedings*
17 *either prior to or after filing an application for relief under*
18 *this Act, in which case the Attorney General shall have ex-*
19 *clusive jurisdiction and shall assume all the powers and du-*
20 *ties of the Secretary of Homeland Security until pro-*
21 *ceedings are terminated, or if a final order of deportation,*
22 *exclusion, or removal is entered the Secretary of Homeland*
23 *Security shall resume all powers and duties delegated to*
24 *the Secretary of Homeland Security under this Act.*

1 (b) *STAY OF REMOVAL OF CERTAIN ALIENS ENROLLED*
 2 *IN PRIMARY OR SECONDARY SCHOOL.—The Attorney Gen-*

3 *eral shall stay the removal proceedings of any alien who—*

4 (1) *meets all the requirements for relief under*
 5 *this Act, except that the alien has not yet graduated*
 6 *from high school;*

7 (2) *is at least 12 years of age; and*

8 (3) *is enrolled full-time in a primary or sec-*
 9 *ondary school.*

10 (c) *EMPLOYMENT.—An alien whose removal is stayed*
 11 *pursuant to subsection (b) may be engaged in employment*
 12 *in the United States, consistent with the Fair Labor Stand-*
 13 *ards Act (29 U.S.C. 201 et seq.), and State and local laws*
 14 *governing minimum age for employment.*

15 (d) *LIFT OF STAY.—The Attorney General shall lift*
 16 *the stay granted pursuant to subsection (b) if the alien—*

17 (1) *is no longer enrolled in a primary or sec-*
 18 *ondary school; and*

19 (2) *fails to maintain prima facie eligibility for*
 20 *relief under this Act.*

21 **SEC. 8. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**
 22 **TION.**

23 *Whoever files an application for relief under this Act*
 24 *and willfully and knowingly falsifies, misrepresents, or con-*
 25 *ceals a material fact or makes any false or fraudulent state-*

1 *ment or representation, or makes or uses any false writing*
2 *or document knowing the same to contain any false or*
3 *fraudulent statement or entry, shall be fined in accordance*
4 *with title 18, United States Code, or imprisoned not more*
5 *than 5 years, or both.*

6 **SEC. 9. CONFIDENTIALITY OF INFORMATION.**

7 (a) *PROHIBITION.*—*No officer or employee of the*
8 *United States may—*

9 (1) *use the information furnished by the appli-*
10 *cant pursuant to an application filed under this Act*
11 *to initiate removal proceedings against any persons*
12 *identified in the application;*

13 (2) *make any publication whereby the informa-*
14 *tion furnished by any particular individual pursuant*
15 *to an application under this Act can be identified; or*

16 (3) *permit anyone other than an officer or em-*
17 *ployee of the United States Government or, in the*
18 *case of applications filed under this Act with a des-*
19 *ignated entity, that designated entity, to examine ap-*
20 *plications filed under this Act.*

21 (b) *REQUIRED DISCLOSURE.*—*The Attorney General*
22 *or the Secretary of Homeland Security shall provide the*
23 *information furnished under this section, and any other in-*
24 *formation derived from such furnished information, to—*

1 **SEC. 12. HIGHER EDUCATION ASSISTANCE.**

2 *Notwithstanding any provision of the Higher Edu-*
3 *cation Act of 1965 (20 U.S.C. 1001 et seq.), with respect*
4 *to assistance provided under title IV of the Higher Edu-*
5 *cation Act of 1965 (20 U.S.C. 1070 et seq.), an alien who*
6 *adjusts status to that of a lawful permanent resident under*
7 *this Act shall be eligible only for the following assistance*
8 *under such title:*

9 (1) *Student loans under parts B, D, and E of*
10 *such title IV (20 U.S.C. 1071 et seq., 1087a et seq.,*
11 *1087aa et seq.), subject to the requirements of such*
12 *parts.*

13 (2) *Federal work-study programs under part C*
14 *of such title IV (42 U.S.C. 2751 et seq.), subject to the*
15 *requirements of such part.*

16 (3) *Services under such title IV (20 U.S.C. 1070*
17 *et seq.), subject to the requirements for such services.*

18 **SEC. 13. GAO REPORT.**

19 *Seven years after the date of enactment of this Act,*
20 *the Comptroller General of the United States shall submit*
21 *a report to the Committees on the Judiciary of the Senate*
22 *and the House of Representatives setting forth—*

23 (1) *the number of aliens who were eligible for*
24 *cancellation of removal and adjustment of status dur-*
25 *ing the application period described in section*
26 *4(a)(1)(A);*

1 (2) *the number of aliens who applied for adjust-*
2 *ment of status under section 4(a);*

3 (3) *the number of aliens who were granted ad-*
4 *justment of status under section 4(a); and*

5 (4) *the number of aliens with respect to whom*
6 *the conditional basis of their status was removed*
7 *under section 5.*

Calendar No. 415

108TH CONGRESS
1ST SESSION

S. 1545

A BILL

To amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents.

NOVEMBER 25, 2003

Reported with an amendment