

116TH CONGRESS
2D SESSION

H. R. 8585

To amend section 240A of the Immigration and Nationality Act to provide for cancellation of removal and temporary resident status for certain parents of citizens of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 13, 2020

Mr. RUSH introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 240A of the Immigration and Nationality Act to provide for cancellation of removal and temporary resident status for certain parents of citizens of the United States, 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 “American Right to
5 Family Act”.

1 **SEC. 2. CANCELLATION OF REMOVAL AND TEMPORARY**
2 **RESIDENT STATUS FOR CERTAIN LONG-TERM**
3 **RESIDENT PARENTS.**

4 Section 240A of the Immigration and Nationality Act
5 (8 U.S.C. 1229b) is amended by adding at the end the
6 following:

7 “(f) CANCELLATION OF REMOVAL AND TEMPORARY
8 RESIDENT STATUS FOR CERTAIN LONG-TERM RESIDENT
9 PARENTS.—

10 “(1) IN GENERAL.—Notwithstanding any other
11 provision of law, the Secretary of Homeland Security
12 or the Attorney General shall cancel the removal of,
13 and adjust to the status of an alien having lawful
14 temporary residence, an alien who is inadmissible or
15 deportable from the United States if—

16 “(A) the alien—

17 “(i) has been physically present in the
18 United States for a continuous period of
19 not less than 10 years immediately pre-
20 ceding the date of the alien’s application;

21 “(ii) subject to paragraph (7), was re-
22 moved, deported, or permitted to depart
23 voluntarily from the United States after
24 having been physically present in the
25 United States for a continuous period of
26 not less than 10 years;

1 “(iii) has deferred action pursuant to
2 the Deferred Action for Childhood Arrivals
3 policy announced by the Secretary of
4 Homeland Security on June 15, 2012; or

5 “(iv) would have been eligible for a
6 grant of deferred action pursuant to such
7 policy, if the memorandum announcing the
8 policy were fully in effect since the date
9 issued;

10 “(B) the alien is the parent of a son or
11 daughter who—

12 “(i) is a citizen or national of the
13 United States; or

14 “(ii) initially entered the United
15 States while under 16 years of age and has
16 been continuously physically present in the
17 United States since such entry; and

18 “(C) the alien—

19 “(i) is not inadmissible under para-
20 graph (1), (6)(E), (6)(G), (8), or (10) of
21 section 212(a);

22 “(ii) has not ordered, incited, assisted,
23 or otherwise participated in the persecution
24 of any person on account of race, religion,

1 nationality, membership in a particular so-
2 cial group, or political opinion; and

3 “(iii) is not barred from adjustment of
4 status under this subsection based on the
5 criminal and national security grounds de-
6 scribed under paragraph (3), subject to the
7 provisions of such paragraph.

8 “(2) DETERMINATION OF CONTINUOUS PRES-
9 ENCE.—

10 “(A) EFFECT OF NOTICE TO APPEAR.—

11 Any period of continuous physical presence in
12 the United States of an alien who applies for
13 temporary resident status under this subsection
14 shall not terminate when the alien is served a
15 notice to appear under section 239(a).

16 “(B) TREATMENT OF CERTAIN BREAKS IN
17 PRESENCE OR RESIDENCE.—

18 “(i) IN GENERAL.—Except as pro-
19 vided in clauses (ii) and (iii), an alien shall
20 be considered to have failed to maintain
21 continuous physical presence in the United
22 States under this subsection if the alien
23 has departed from the United States for
24 any period exceeding 90 days or for any

1 periods, in the aggregate, exceeding 180
2 days.

3 “(ii) EXTENSIONS FOR EXTENUATING
4 CIRCUMSTANCES.—The Secretary may ex-
5 tend the time period described in clause (i)
6 for an alien who demonstrates that the
7 failure to timely return to the United
8 States was due to extenuating cir-
9 cumstances beyond the alien’s control, in-
10 cluding the serious illness of the alien, or
11 death or serious illness of a parent, grand-
12 parent, sibling, or child of the alien.

13 “(iii) TRAVEL AUTHORIZED BY THE
14 SECRETARY.—Any period of travel outside
15 of the United States by an alien that was
16 authorized by the Secretary of Homeland
17 Security may not be counted toward any
18 period of departure from the United States
19 under clause (i).

20 “(3) CRIMINAL AND NATIONAL SECURITY
21 BARS.—

22 “(A) GROUNDS OF INELIGIBILITY.—Ex-
23 cept as provided in subparagraphs (B) and (C),
24 an alien is ineligible for cancellation of removal

1 and adjustment of status under this subsection
2 if any of the following apply:

3 “(i) The alien is inadmissible under
4 paragraph (2) or (3) of section 212(a) of
5 the Immigration and Nationality Act.

6 “(ii) Excluding any offense under
7 State law for which an essential element is
8 the alien’s immigration status, and any
9 minor traffic offense, the alien has been
10 convicted of—

11 “(I) any felony offense;

12 “(II) three or more misdemeanor
13 offenses (excluding simple possession
14 of cannabis or cannabis-related para-
15 phernalia, any offense involving can-
16 nabis or cannabis-related para-
17 phernalia which is no longer prosecut-
18 able in the State in which the convic-
19 tion was entered, and any offense in-
20 volving civil disobedience without vio-
21 lence) not occurring on the same date,
22 and not arising out of the same act,
23 omission, or scheme of misconduct; or

24 “(III) a misdemeanor offense of
25 domestic violence, unless the alien

1 demonstrates that such crime is re-
2 lated to the alien having been—

3 “(aa) a victim of domestic
4 violence, sexual assault, stalking,
5 child abuse or neglect, abuse or
6 neglect in later life, or human
7 trafficking;

8 “(bb) battered or subjected
9 to extreme cruelty; or

10 “(cc) a victim of criminal ac-
11 tivity described in section
12 101(a)(15)(U)(iii).

13 “(B) TREATMENT OF CERTAIN OFFENSE
14 INVOLVING DRIVING.—Notwithstanding section
15 101(h), any crime of reckless driving or of driv-
16 ing while intoxicated or under the influence of
17 alcohol or of prohibited substances shall only be
18 considered for purposes of this subsection if—

19 “(i) such crime involves personal in-
20 jury or death to another; or

21 “(ii) the alien has been convicted of
22 reckless driving or of driving while intoxi-
23 cated or under the influence of alcohol or
24 of prohibited substances more than once

1 during the 10 years immediately preceding
2 the date of the alien's application.

3 “(C) WAIVERS FOR CERTAIN MIS-
4 DEMEANORS.—For humanitarian purposes,
5 family unity, or if otherwise in the public inter-
6 est, the Secretary may—

7 “(i) waive the grounds of inadmis-
8 sibility under subparagraphs (A), (C), and
9 (D) of section 212(a)(2), unless the convic-
10 tion forming the basis for inadmissibility
11 would otherwise render the alien ineligible
12 under subparagraph (A)(ii) (subject to
13 clause (ii)); and

14 “(ii) for purposes of subclauses (II)
15 and (III) of subparagraph (A)(ii), waive
16 consideration of—

17 “(I) one misdemeanor offense if
18 the alien has not been convicted of
19 any offense in the 5-year period pre-
20 ceding the date on which the alien ap-
21 plies for adjustment of status under
22 this subsection; or

23 “(II) up to two misdemeanor of-
24 fenses if the alien has not been con-
25 victed of any offense in the 10-year

1 period preceding the date on which
2 the alien applies for adjustment of
3 status under this subsection.

4 “(D) AUTHORITY TO CONDUCT SEC-
5 ONDARY REVIEW.—

6 “(i) IN GENERAL.—Notwithstanding
7 an alien’s eligibility for adjustment of sta-
8 tus under this subsection, and subject to
9 the procedures described in this subpara-
10 graph, the Secretary of Homeland Security
11 or the Attorney General may, as a matter
12 of non-delegable discretion, provisionally
13 deny an application for adjustment of sta-
14 tus if the Secretary or the Attorney Gen-
15 eral, based on clear and convincing evi-
16 dence, which shall include credible law en-
17 forcement information, determines that the
18 alien is described in clause (ii) or (iv).

19 “(ii) PUBLIC SAFETY.—An alien is de-
20 scribed in this clause if—

21 “(I) excluding simple possession
22 of cannabis or cannabis-related para-
23 phernalia, any offense involving can-
24 nabis or cannabis-related para-
25 phernalia which is no longer prosecut-

1 able in the State in which the convic-
2 tion was entered, any offense under
3 State law for which an essential ele-
4 ment is the alien’s immigration sta-
5 tus, any offense involving civil disobe-
6 dience without violence, and any
7 minor traffic offense, the alien—

8 “(aa) has been convicted of
9 a misdemeanor offense punish-
10 able by a term of imprisonment
11 of more than 30 days; or

12 “(bb) has been adjudicated
13 delinquent in a State or local ju-
14 venile court proceeding that re-
15 sulted in a disposition ordering
16 placement in a secure facility;
17 and

18 “(II) the alien poses a significant
19 and continuing threat to public safety
20 related to such conviction or adjudica-
21 tion.

22 “(iii) PUBLIC SAFETY DETERMINA-
23 TION.—For purposes of clause (ii)(II), the
24 Secretary shall consider the recency of the
25 conviction or adjudication; the length of

1 any imposed sentence or placement; the
2 nature and seriousness of the conviction or
3 adjudication, including whether the ele-
4 ments of the offense include the unlawful
5 possession or use of a deadly weapon to
6 commit an offense or other conduct in-
7 tended to cause serious bodily injury; and
8 any mitigating factors pertaining to the
9 alien’s role in the commission of the of-
10 fense.

11 “(iv) GANG PARTICIPATION.—An alien
12 is described in this clause if the alien has,
13 within the 5 years immediately preceding
14 the date of the application, knowingly, will-
15 fully, and voluntarily participated in of-
16 fenses committed by a criminal street gang
17 (as described in subsections (a) and (c) of
18 section 521 of title 18, United States
19 Code) with the intent to promote or fur-
20 ther the commission of such offenses.

21 “(v) EVIDENTIARY LIMITATION.—For
22 purposes of clause (iv), allegations of gang
23 membership obtained from a State or Fed-
24 eral in-house or local database, or a net-
25 work of databases used for the purpose of

1 recording and sharing activities of alleged
2 gang members across law enforcement
3 agencies, shall not establish the participa-
4 tion described in such clause.

5 “(vi) NOTICE.—

6 “(I) IN GENERAL.—Prior to ren-
7 dering a discretionary decision under
8 this subparagraph, the Secretary of
9 Homeland Security or the Attorney
10 General shall provide written notice of
11 the intent to provisionally deny the
12 application to the alien (or the alien’s
13 counsel of record, if any) by certified
14 mail and, if an electronic mail address
15 is provided, by electronic mail (or
16 other form of electronic communica-
17 tion). Such notice shall—

18 “(aa) articulate with speci-
19 ficity all grounds for the prelimi-
20 nary determination, including the
21 evidence relied upon to support
22 the determination; and

23 “(bb) provide the alien with
24 not less than 90 days to respond.

1 “(II) SECOND NOTICE.—Not
2 more than 30 days after the issuance
3 of the notice under subclause (I), the
4 Secretary of Homeland Security or
5 the Attorney General shall provide a
6 second written notice that meets the
7 requirements of such clause.

8 “(III) NOTICE NOT RECEIVED.—
9 Notwithstanding any other provision
10 of law, if an applicant provides good
11 cause for not contesting a provisional
12 denial under this paragraph, including
13 a failure to receive notice as required
14 under this subparagraph, the Sec-
15 retary of Homeland Security or the
16 Attorney General shall, upon a motion
17 filed by the alien, reopen an applica-
18 tion for adjustment of status under
19 this subsection and allow the appli-
20 cant an opportunity to respond, con-
21 sistent with subclause (I)(bb).

22 “(E) DEFINITIONS.—For purposes of this
23 paragraph—

24 “(i) the term ‘felony offense’ means
25 an offense under Federal or State law that

1 is punishable by a maximum term of im-
2 prisonment of more than 1 year;

3 “(ii) the term ‘misdemeanor offense’
4 means an offense under Federal or State
5 law that is punishable by a term of impris-
6 onment of more than 5 days but not more
7 than 1 year;

8 “(iii) the term ‘crime of domestic vio-
9 lence’ means any offense that has as an
10 element the use, attempted use, or threat-
11 ened use of physical force against a person
12 committed by a current or former spouse
13 of the person, by an individual with whom
14 the person shares a child in common, by
15 an individual who is cohabiting with or has
16 cohabited with the person as a spouse, by
17 an individual similarly situated to a spouse
18 of the person under the domestic or family
19 violence laws of the jurisdiction where the
20 offense occurs, or by any other individual
21 against a person who is protected from
22 that individual’s acts under the domestic
23 or family violence laws of the United
24 States or any State, Indian tribal govern-
25 ment, or unit of local government; and

1 “(iv) the terms ‘convicted’, ‘convic-
2 tion’, ‘adjudicated’, and ‘adjudication’ do
3 not include a judgment that has been ex-
4 punged or set aside, that resulted in a re-
5 habilitative disposition, or the equivalent.

6 “(4) WORK AUTHORIZATION.—In the case of an
7 alien who has temporary resident status under this
8 subsection, the Secretary of Homeland Security shall
9 authorize the alien to engage in employment in the
10 United States and provide the alien with an ‘employ-
11 ment authorized’ endorsement or other appropriate
12 work permit. Work authorization provided under this
13 paragraph shall be effective throughout the period
14 the alien is in temporary resident status under this
15 subsection.

16 “(5) TERMS OF STATUS.—

17 “(A) IN GENERAL.—Temporary resident
18 status under this subsection shall be valid for a
19 period of 3 years, unless such period is ex-
20 tended or renewed.

21 “(B) RENEWAL.—In the case of an alien
22 who has temporary resident status under this
23 subsection, the Secretary of Homeland Security
24 shall renew the status in 3-year increments,

1 with no limit on the number of such renewals,
2 if—

3 “(i) the alien files a nonfrivolous ap-
4 plication for renewal before the date of ex-
5 piration of the period of stay authorized by
6 the Secretary; and

7 “(ii) the Secretary determines that
8 the alien continues to meet the conditions
9 for adjustment of status under this sub-
10 section.

11 “(C) AUTOMATIC EXTENSION DURING
12 PENDENCY OF APPLICATION.—In the case of an
13 alien who files a nonfrivolous application for re-
14 newal before the date of expiration of the period
15 of stay authorized by the Secretary, the alien’s
16 period of temporary resident status and work
17 authorization shall be deemed extended during
18 the pendency of the application.

19 “(6) DOCUMENTS ESTABLISHING CONTINUOUS
20 PHYSICAL PRESENCE.—To establish that an alien
21 has been continuously physically present in the
22 United States, as required under paragraph (1), the
23 alien may submit the following forms of evidence:

24 “(A) Passport entries, including admission
25 stamps on the alien’s passport.

1 “(B) Any document from the Department
2 of Justice or the Department of Homeland Se-
3 curity noting the alien’s date of entry into the
4 United States.

5 “(C) Records from any educational institu-
6 tion the alien has attended in the United
7 States.

8 “(D) Employment records of the alien that
9 include the employer’s name and contact infor-
10 mation, or other records demonstrating earned
11 income.

12 “(E) Records of service from the Uni-
13 formed Services.

14 “(F) Official records from a religious enti-
15 ty confirming the alien’s participation in a reli-
16 gious ceremony.

17 “(G) A birth certificate for a child who
18 was born in the United States.

19 “(H) Hospital or medical records showing
20 medical treatment or hospitalization, the name
21 of the medical facility or physician, and the
22 date of the treatment or hospitalization.

23 “(I) Automobile license receipts or reg-
24 istration.

1 “(J) Deeds, mortgages, or rental agree-
2 ment contracts.

3 “(K) Rent receipts or utility bills bearing
4 the alien’s name or the name of an immediate
5 family member of the alien, and the alien’s ad-
6 dress.

7 “(L) Tax receipts.

8 “(M) Insurance policies.

9 “(N) Remittance records, including copies
10 of money order receipts sent in or out of the
11 country.

12 “(O) Travel records.

13 “(P) Dated bank transactions.

14 “(Q) Two or more sworn affidavits from
15 individuals who are not related to the alien who
16 have direct knowledge of the alien’s continuous
17 physical presence in the United States, that
18 contain—

19 “(i) the name, address, and telephone
20 number of the affiant; and

21 “(ii) the nature and duration of the
22 relationship between the affiant and the
23 alien.

1 “(R) Any other evidence determined to be
2 credible by the Secretary of Homeland Security
3 or the Attorney General.

4 “(7) ELIGIBILITY OF REMOVED, DEPORTED, OR
5 VOLUNTARILY DEPARTED ALIENS.—An alien who
6 was removed, deported, or permitted to depart vol-
7 untarily from the United States may apply for relief
8 under this subsection from abroad if the reason for
9 their removal, deportation, or voluntary departure
10 was that the alien—

11 “(A) was present in the United States
12 after the expiration of the period of stay au-
13 thorized by the Secretary of Homeland Security
14 or was present in the United States without
15 being admitted or paroled; or

16 “(B) committed an offense, if that offense
17 does not render the alien ineligible for relief
18 under this subsection pursuant to the provisions
19 of paragraph (3).

20 “(8) CONSTRUCTION.—

21 “(A) IN GENERAL.—A denial of cancella-
22 tion of removal under any other provision of
23 this section shall not prejudice a decision under
24 this subsection. An alien’s eligibility for tem-
25 porary resident status under this subsection

1 shall not preclude the alien from seeking any
2 status under any other provision of law for
3 which the alien may otherwise be eligible.

4 “(B) DETERMINATION OF CONTINUOUS
5 PRESENCE AND RESIDENCE.—Subsection (d)
6 shall not apply to cancellation of removal or ad-
7 justment of status under this subsection.

8 “(C) ANNUAL LIMITATION.—Subsection
9 (e) shall not apply to cancellation of removal or
10 adjustment of status under this subsection.”.

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