

AMERICAN DREAM ACT

Congressman Howard Berman (for himself, Mr. Lincoln Diaz-Balart of Florida, Ms. Roybal-Allard, and Ms. Ros-Lehtinen) introduced the “American Dream Act” (Bill H.R.1275) on March 1, 2007 in the House of Representatives to amend the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) 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 aliens students who are who are long-term United States residents and who entered the United States as children, and for other purposes. A companion measure was also introduced in the Senate by Senator Durbin (for himself, Mr. Hagel, and Mr. Lugar).

Under the American Dream Act, qualified students would be eligible for temporary legal immigration status upon high school graduation that would lead to permanent legal residency if they go to college or serve in the military. The American Dream Act would also eliminate a federal provision that discourages states from providing in-state college tuition to immigrant students who have long resided in their states. Despite meeting state residency requirements, immigrant students in certain states are charged out-of-state or international tuition rates, which can be triple the cost of in-state tuition.

The relevant provisions of the bill, which maybe of interest to our readers, are reproduced hereunder:

Cancellation Of Removal And Adjustment Of Status Of Certain Long-Term Residents Who Entered The United States As Children

The Secretary of Homeland Security may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States, if the alien demonstrates that:

- (i) the alien has been physically present in the United States for a continuous period of not less than 5 years immediately preceding the date of enactment of this Act, and had not yet reached the age of 16 years at the time of initial entry;
- (ii) the alien has been a person of good moral character since the time of application;
- (iii) the alien is not inadmissible or deportable under certain provisions of the Immigration and Nationality Act (INA);
- (iv) the alien, at the time of application, has been admitted to an institution of higher education in the United States, or has earned a high school diploma or obtained a general education development certificate in the United States.

The Secretary of Homeland Security may waive the grounds of ineligibility and the grounds of deportability if the Secretary determines that the alien's removal would result in extreme hardship to the alien, the alien's child, or (in the case of an alien who is a child) to the alien's parent.

Treatment of Certain Breaks in Presence: An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. The Secretary of Homeland Security may

waive breaks in presence beyond brief, casual, or innocent absences for humanitarian purposes, family unity, or when it is otherwise in the public interest.

Conditional Permanent Resident Status

An alien whose status has been adjusted to that of an alien lawfully admitted for permanent residence shall be considered to have obtained such status on a conditional basis. Such conditional permanent resident status shall be valid for a period of 6 years.

In order for the conditional basis of permanent resident status obtained by an alien to be removed, the alien must file with the Secretary of Homeland Security a petition which requests the removal of such conditional basis and which provides, under penalty of perjury, the facts and information so that the Secretary may make the determination.

An alien may petition to remove the conditional basis to lawful resident status during the period beginning 180 days before and ending 2 years after either the date, that is, 6 years after the date of the granting of conditional permanent resident status or any other expiration date of the conditional permanent resident status as extended by the Secretary of Homeland Security in accordance with this Act. The alien shall be deemed to be in conditional permanent resident status in the United States during the period in which the petition is pending

Each petition for an alien shall contain information to permit the Secretary of Homeland Security to determine whether each of the following requirements is met:

- A. The alien has demonstrated good moral character during the entire period the alien has been a conditional permanent resident;
- B. The alien is not inadmissible or deportable under certain sections of INA;
- C. The alien has not abandoned his/her residence in the United States. The Secretary shall presume that the alien has abandoned such residence if the alien is absent from the United States for more than 365 days, in the aggregate, during the period of conditional residence, unless the alien demonstrates that he/she has not abandoned residence. An alien who is absent from the United States due to active service in the uniformed services shall not be considered to have abandoned residence in the United States during the period of such service;
- D. The alien has completed at least one of the following:
 - (i) The alien has acquired a degree from an institution of higher education in the United States or has completed at least 2 years, in good standing, in a program for a bachelor's degree or higher degree in the United States.
 - (ii) The alien has served in the uniformed services for at least 2 years and, if discharged, has received an honorable discharge.
 - (iii) The alien has provided a list of all of the secondary educational institutions the alien attended in the United States.

If the alien demonstrates compelling circumstances for the inability to complete the requirements and demonstrates that his/her removal from the United States would result in exceptional and extremely unusual hardship to the alien or the alien's spouse, parent, or child who is a citizen or a lawful permanent resident of the United States, the Secretary of Homeland Security may, in the Secretary's discretion, remove the

conditional status of such an alien, if the alien satisfies the other requirements listed in A, B & C above.

Upon a showing of good cause, the Secretary of Homeland Security may extend the period of the conditional resident status for the purpose of completing the requirements described in the above paragraph (D).

Naturalization

An alien who is in the United States as a lawful permanent resident on a conditional basis shall be considered to be an alien lawfully admitted to the United States for permanent residence. However, the conditional basis must be removed before the alien may apply for naturalization.

Stay of Removal

The Attorney General shall stay the removal proceedings of any alien who

- (i) is at least 12 years of age;
- (ii) is enrolled full time in a primary or secondary school; and
- (iii) meets certain requirements of this Act

An alien whose removal is stayed may be engaged in employment in the United States

COMMENTS BY REPRESENTATIVES

"This bill would remove barriers confronted by young undocumented students who, as children, were brought to this country illegally by their parents," said Berman. "Many of them are honors students and valedictorians who, through no fault of their own, exist in a legal limbo with no way to adjust their status."

"When they finish high school, these students must choose between working illegally or trying somehow to continue their education while under a legal cloud," Berman continued. "They have grown up here, and America is the only home they know. They consider themselves Americans. But their lives are filled with uncertainty, and their future is limited so long as they have no legal status."

"Each year, hard working and talented students graduate from U.S. high schools, but due to their immigration status and despite having lived in this country for many years, face enormous barriers to furthering their education," Congresswoman Lucille Roybal-Allard said. "The American Dream Act recognizes the tremendous fortitude of these immigrant students who have overcome great obstacles in their lives to excel in school and dream of obtaining a better life through a college education."

Congresswoman Roybal-Allard said the bipartisan initiative would also strengthen our nation's workforce. "As a country, we can only gain from passage of the Dream Act. We hinder our competitiveness in the global economy by keeping large numbers of U.S.-educated immigrant young people out of college, and ultimately the skilled workforce, solely because of decisions made years ago by adults who brought their families to this country illegally."