

109TH CONGRESS
1ST SESSION

S. 644

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

IN THE SENATE OF THE UNITED STATES

MARCH 16, 2005

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Widows and Orphans
5 Act of 2005”.

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

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

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

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

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

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

8 “(i) who is—

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

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

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

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

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

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

7 “(ii) who is—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (4) ADMINISTRATIVE AND JUDICIAL REVIEW.—

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

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

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

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

○