

CENTRAL AMERICAN AND HAITIAN PARITY ACT OF
1999

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CENTRAL AMERICAN AND HAITIAN PARITY ACT OF 1999



AUGUST 6, 1999.—Message and accompanying papers referred to the
Committee on the Judiciary and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

To the Congress of the United States:

I am pleased to transmit for your immediate consideration and enactment the "Central American and Haitian Parity Act of 1999." Also transmitted is a section-by-section analysis. This legislative proposal, which would amend the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA), is part of my Administration's comprehensive effort to support the process of democratization and stabilization now underway in Central America and Haiti and to ensure equitable treatment for migrants from these countries. The proposed bill would allow qualified nationals of El Salvador, Guatemala, Honduras, and Haiti an opportunity to become lawful permanent residents of the United States. Consequently, under this bill, eligible nationals of these countries would receive treatment equivalent to that granted to the Nicaraguans and Cubans under NACARA.

Like Nicaraguans and Cubans, many Salvadorans, Guatemalans, Hondurans, and Haitians fled human rights abuses or unstable political and economic conditions in the 1980s and 1990s. Yet these latter groups received lesser treatment than that granted to Nicaraguans and Cubans by NACARA. The United States has a strong foreign policy interest in providing the same treatment to these similarly situated people. Moreover, the countries from which these migrants have come are young and fragile democracies in which the United States has played and will continue to play a very important role. The return of these migrants to these countries would place significant demands on their economic and political systems. By offering legal status to a number of nationals of these countries with long-standing ties in the United States, we can advance our commitment to peace and stability in the region.

Passage of the "Central American and Haitian Parity Act of 1999" will evidence our commitment to fair and even-handed treatment of nationals from these countries and to the strengthening of democracy and economic stability among important neighbors. I urge the prompt and favorable consideration of this legislative proposal by the Congress.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *August 5, 1999.*

1 **A BILL**

2
3 **To amend the Nicaraguan Adjustment and Central American Relief Act to provide to**
4 **certain nationals of El Salvador, Guatemala, Honduras, and Haiti an opportunity to**
5 **apply for adjustment of status under that Act, and for other purposes.**
6

7 *Be it enacted by the Senate and House of Representatives of the United States of*
8 *America in Congress assembled,*
9

10 **SECTION 1. SHORT TITLE.**

11
12 This Act may be cited as the "Central American and Haitian Parity Act of 1999".
13

14 **SECTION 2. ADJUSTMENT OF STATUS FOR CERTAIN NATIONALS FROM EL SALVADOR,**
15 **GUATEMALA, HONDURAS, AND HAITI.**
16

17 (a) Section 202 of the Nicaraguan Adjustment and Central American Relief Act is
18 amended—

19 (1) in the section heading, by striking "NICARAGUANS AND CUBANS" and
20 inserting "NICARAGUANS, CUBANS, SALVADORANS, GUATEMALANS,
21 HONDURANS, and HAITIANS";

22 (2) in subparagraph (a)(1)(A), by striking "2000" and inserting "2003";

23 (3) in paragraph (b)(1), by striking "Nicaragua or Cuba" and inserting "Nicaragua,
24 Cuba, El Salvador, Guatemala, Honduras, or Haiti";

25 (4) in subparagraph (d)(1)(E), by striking "2000" and inserting "2003".

26 (b) EFFECTIVE DATE.—The amendments made by this section shall be effective upon the
27 date of enactment of this Act.
28

29 **SECTION 3. APPLICATIONS PENDING UNDER SECTION 203 OF THE NICARAGUAN**
30 **ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT.**
31

32 An application for relief properly filed by a national of Guatemala or El Salvador under
33 section 203 of the Nicaraguan Adjustment and Central American Relief Act which was filed on
34 or before the date of enactment of this Act, and on which a final administrative determination has
35 not been made, may be converted by the applicant to an application for adjustment of status
36 under the provisions of section 202 of the Nicaraguan Adjustment and Central American Relief

1 Act, as amended, upon the payment of any fees, and in accordance with procedures, that the
 2 Attorney General shall prescribe by regulation. The Attorney General shall not be required to
 3 refund any fees paid in connection with an application filed by a national of Guatemala or El
 4 Salvador under section 203 of the Nicaraguan Adjustment and Central American Relief Act.

5
 6 **SECTION 4. APPLICATIONS PENDING UNDER THE HAITIAN REFUGEE IMMIGRATION FAIRNESS**
 7 **ACT OF 1998.**

8
 9 An application for adjustment of status properly filed by a national of Haiti under the
 10 Haitian Refugee Immigration Fairness Act of 1998 which was filed on or before the date of
 11 enactment of this Act, and on which a final administrative determination has not been made, may
 12 be considered by the Attorney General, in her unreviewable discretion, to also constitute an
 13 application for adjustment of status under the provisions of section 202 of the Nicaraguan
 14 Adjustment and Central American Relief Act, as amended.

15
 16 **SECTION 5. TECHNICAL AMENDMENTS TO THE NICARAGUAN ADJUSTMENT AND CENTRAL**
 17 **AMERICAN RELIEF ACT.**

18
 19 (a) Section 202 of the Nicaraguan Adjustment and Central American Relief Act is
 20 amended—

21 (1) in subparagraph (a)(1)(B), by adding after the word "apply"—

22 "and the Attorney General may, in her unreviewable discretion, waive the
 23 grounds of inadmissibility specified in clause 212(a)(1)(A)(i) and paragraph
 24 212(a)(6)(C) of the Immigration and Nationality Act for humanitarian purposes,
 25 to assure family unity, or when it is otherwise in the public interest";

26 (2) in subsection (a), by redesignating paragraph (2) as paragraph (3), and adding
 27 the following as paragraph (2)—

28 "(2) INAPPLICABILITY OF CERTAIN PROVISIONS.— In determining the
 29 eligibility of an alien described in subsections (b) or (d) for either adjustment of
 30 status under this section or other relief necessary to establish eligibility for such
 31 adjustment, the provisions of section 241(a)(5) of the Immigration and Nationality
 32 Act shall not apply. In addition, an alien who would otherwise be inadmissible

1 pursuant to sections 212(a)(9)(A) or (C) of the Immigration and Nationality Act
2 may apply for the Attorney General's consent to reapply for admission without
3 regard to the requirement that the consent be granted prior to the date of the alien's
4 reembarkation at a place outside the United States or attempt to be admitted from
5 foreign contiguous territory, in order to qualify for the exception to those grounds
6 of inadmissibility set forth in sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(ii) of the
7 Immigration and Nationality Act."

8 (3) in subsection (a), by striking redesignated paragraph (3), and inserting in its
9 place—

10 "(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS. — An alien
11 present in the United States who has been ordered excluded, deported, or
12 removed, or ordered to depart voluntarily from the United States under any
13 provision of the Immigration and Nationality Act may, notwithstanding such
14 order, apply for adjustment of status under paragraph (1). Such an alien may not
15 be required, as a condition of submitting or granting such application, to file a
16 separate motion to reopen, reconsider, or vacate such order. Such an alien may be
17 required to seek a stay of such an order in accordance with subsection (c) to
18 prevent the execution of that order pending the adjudication of the application for
19 adjustment of status. If the Attorney General denies a stay of a final order of
20 exclusion, deportation, or removal, or if the Attorney General renders a final
21 administrative determination to deny the application for adjustment of status, the
22 order shall be effective and enforceable to the same extent as if the application
23 had not been made. If the Attorney General grants the application for adjustment
24 of status, the Attorney General shall cancel the order."

25 (4) in paragraph (b)(1), by adding at the end the following—

26 "However, subsection (a) shall not apply to an alien lawfully admitted for
27 permanent residence, unless he or she is applying for such relief in deportation or
28 removal proceedings."

29 (5) in paragraph (c)(1), by adding at the end the following—

1 "Nothing in this Act shall require the Attorney General to stay the removal
2 of an alien who is ineligible for adjustment of status under this Act."

3 (6) in subsection (d)—

4 (A) by revising the subsection heading to read "SPOUSES, CHILDREN, AND
5 UNMARRIED SONS AND DAUGHTERS.—";

6 (B) in paragraph (1), by revising the heading to read "ADJUSTMENT OF
7 STATUS.—";

8 (C) by striking subparagraph (1)(A), and replacing it with the following—

9 "(A) the alien entered the United States on or before the date of
10 enactment of the Central American and Haitian Parity Act of 1999;";

11 (D) in subparagraph (1)(B), by inserting the following after "except
12 that"—

13 ":(i) in the case of such a spouse, stepchild, or unmarried stepson
14 or stepdaughter, the qualifying marriage was entered into before the date
15 of enactment of the Central American and Haitian Parity Act of 1999; and
16 (ii)"; and

17 (E) by creating a new paragraph (3) to read as follows—

18 "ELIGIBILITY OF CERTAIN SPOUSES AND CHILDREN FOR ISSUANCE
19 OF IMMIGRANT VISAS.—

20 (A) In accordance with regulations to be promulgated by the
21 Attorney General and the Secretary of State, upon approval of an
22 application for adjustment of status to that of an alien lawfully admitted
23 for permanent residence under subsection (a), an alien who is the spouse
24 or child of the alien being granted such status may be issued a visa for
25 admission to the United States as an immigrant following to join the
26 principal applicant, provided that the spouse or child:

27 (i) meets the requirements in subparagraphs (1)(B) and (D); and

28 (ii) applies for such a visa within a time period to be established by
29 regulation.

1 (B) The Secretary of State may retain fees to recover the cost of
 2 immigrant visa application processing and issuance for certain spouses and
 3 children of aliens whose applications for adjustment of status under
 4 subsection (a) have been approved, provided that such fees:

5 (i) shall be deposited as an offsetting collection to any Department
 6 of State appropriation to recover the cost of such processing and issuance;
 7 and

8 (ii) shall be available until expended for the same purposes of such
 9 appropriation to support consular activities.";

10 (7) in subsection (g), by inserting after "for permanent residence" the following—
 11 "or an immigrant classification"; and

12 (8) by adding at the end the following subsection—

13 "(i) ADMISSIONS. Nothing in this section shall be construed as authorizing
 14 an alien to apply for admission to, be admitted to, be paroled into, or otherwise
 15 lawfully return to the United States, to apply for or to pursue an application for
 16 adjustment of status under this section without the express authorization of the
 17 Attorney General."

18 (b) EFFECTIVE DATE.—The amendments made by sections 5(a)(3), 5(a)(4), and 5(a)(8) of
 19 this Act shall be effective as if included in the enactment of the Nicaraguan and Central
 20 American Relief Act. The amendments made by sections 5(a)(1), 5(a)(2), 5(a)(5), 5(a)(6), and
 21 5(a)(7) shall be effective as of the date of enactment of this Act.

22
 23 **SECTION 6. TECHNICAL AMENDMENTS TO THE HAITIAN REFUGEE IMMIGRATION FAIRNESS**
 24 **ACT OF 1998.**

25
 26 (a) Section 902 of the Haitian Refugee Immigration Fairness Act of 1998 is amended—

27 (1) in subparagraph (a)(1)(B), by adding after the word "apply"—

28 "and the Attorney General may, in her unreviewable discretion, waive the
 29 grounds of inadmissibility specified in clause 212(a)(1)(A)(i) and paragraph

1 212(a)(6)(C) of the Immigration and Nationality Act for humanitarian purposes,
2 to assure family unity, or when it is otherwise in the public interest";

3 (2) in subsection (a), by redesignating paragraph (2) as paragraph (3), and adding
4 the following as paragraph (2)—

5 "(2) INAPPLICABILITY OF CERTAIN PROVISIONS.— In determining the
6 eligibility of an alien described in subsections (b) or (d) for either adjustment of
7 status under this section or other relief necessary to establish eligibility for such
8 adjustment, or for permission to reapply for admission to the United States for the
9 purpose of adjustment of status under this section, the provisions of section
10 241(a)(5) of the Immigration and Nationality Act shall not apply. In addition, an
11 alien who would otherwise be inadmissible pursuant to sections 212(a)(9)(A) or
12 (C) of the Immigration and Nationality Act may apply for the Attorney General's
13 consent to reapply for admission without regard to the requirement that the
14 consent be granted prior to the date of the alien's reembarkation at a place outside
15 the United States or attempt to be admitted from foreign contiguous territory, in
16 order to qualify for the exception to those grounds of inadmissibility set forth in
17 sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(ii) of the Immigration and Nationality
18 Act."

19 (3) in subsection (a), by striking redesignated paragraph (3), and inserting in its
20 place—

21 "(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS. — An alien
22 present in the United States who has been ordered excluded, deported, or
23 removed, or ordered to depart voluntarily from the United States under any
24 provision of the Immigration and Nationality Act may, notwithstanding such
25 order, apply for adjustment of status under paragraph (1). Such an alien may not
26 be required, as a condition of submitting or granting such application, to file a
27 separate motion to reopen, reconsider, or vacate such order. Such an alien may be
28 required to seek a stay of such an order in accordance with subsection (c) to
29 prevent the execution of that order pending the adjudication of the application for
30 adjustment of status. If the Attorney General denies a stay of a final order of

1 exclusion, deportation, or removal, or if the Attorney General renders a final
 2 administrative determination to deny the application for adjustment of status, the
 3 order shall be effective and enforceable to the same extent as if the application
 4 had not been made. If the Attorney General grants the application for adjustment
 5 of status, the Attorney General shall cancel the order."

6 (4) in paragraph (b)(1), by adding at the end the following—

7 "However, subsection (a) shall not apply to an alien lawfully admitted for
 8 permanent residence, unless he or she is applying for such relief in deportation or
 9 removal proceedings."

10 (5) in paragraph (c)(1), by adding at the end the following—

11 "Nothing in this Act shall require the Attorney General to stay the removal
 12 of an alien who is ineligible for adjustment of status under this Act."

13 (6) in subsection (d)—

14 (A) by revising the subsection heading to read "SPOUSES, CHILDREN, AND
 15 UNMARRIED SONS AND DAUGHTERS.—";

16 (B) in paragraph (1), by revising the heading to read "ADJUSTMENT OF
 17 STATUS.—";

18 (C) by striking subparagraph (1)(A), and replacing it with the following—

19 "(A) the alien entered the United States on or before the date of
 20 enactment of the Central American and Haitian Parity Act of 1999;";

21 (D) in subparagraph (1)(B), by inserting the following after "except
 22 that"—

23 "": (i) in the case of such a spouse, stepchild, or unmarried stepson
 24 or stepdaughter, the qualifying marriage was entered into before the date
 25 of enactment of the Central American and Haitian Parity Act of 1999; and
 26 (ii)";

27 (E) in paragraph (1), by creating a new subparagraph (E) as follows—

28 "(E) the alien applies for such adjustment before April 3, 2003.";

29 and

30 (F) by creating a new paragraph (3) to read as follows—

1 "ELIGIBILITY OF CERTAIN SPOUSES AND CHILDREN FOR ISSUANCE
2 OF IMMIGRANT VISAS.—

3 (A) In accordance with regulations to be promulgated by the
4 Attorney General and the Secretary of State, upon approval of an
5 application for adjustment of status to that of an alien lawfully admitted
6 for permanent residence under subsection (a), an alien who is the spouse
7 or child of the alien being granted such status may be issued a visa for
8 admission to the United States as an immigrant following to join the
9 principal applicant, provided that the spouse or child:

10 (i) meets the requirements in subparagraphs (1)(B) and (D); and

11 (ii) applies for such a visa within a time period to be established by
12 regulation.

13 (B) The Secretary of State may retain fees to recover the cost of
14 immigrant visa application processing and issuance for certain spouses and
15 children of aliens whose applications for adjustment of status under
16 subsection (a) have been approved, provided that such fees:

17 (i) shall be deposited as an offsetting collection to any Department
18 of State appropriation to recover the cost of such processing and issuance;
19 and

20 (ii) shall be available until expended for the same purposes of such
21 appropriation to support consular activities.";

22 (7) in subsection (g), by inserting after "for permanent residence" the following—
23 "or an immigrant classification"; and

24 (8) by redesignating subsections (i), (j), and (k) as (j), (k), and (l) respectively, and
25 adding as subsection (i) the following—

26 "(i) ADMISSIONS. Nothing in this section shall be construed as authorizing
27 an alien to apply for admission to, be admitted to, be paroled into, or otherwise
28 lawfully return to the United States, to apply for or to pursue an application for
29 adjustment of status under this section without the express authorization of the
30 Attorney General."

1 (b) EFFECTIVE DATE.— The amendments made by sections 6(a)(3), 6(a)(4), and 6(a)(8) of
2 this Act shall be effective as if included in the enactment of the Haitian Refugee Immigration
3 Fairness Act of 1998. The amendments made by sections 6(a)(1), 6(a)(2), 6(a)(5), 6(a)(6), and
4 6(a)(7) shall be effective as of the date of enactment of this Act.

5

6 **SECTION 7. MOTIONS TO REOPEN.**

7 (a) Notwithstanding any time and number limitations imposed by law on motions to
8 reopen, a national of Haiti who, on the date of enactment of this Act, has a final administrative
9 denial of an application for adjustment of status under the Haitian Refugee Immigration Fairness
10 Act of 1988, and is made eligible for adjustment of status under that Act by the amendments
11 made by this Act, may file one motion to reopen exclusion, deportation, or removal proceedings
12 to have the application considered again. All such motions shall be filed within 180 days of the
13 date of enactment of this Act. The scope of any proceeding reopened on this basis shall be
14 limited to a determination of the alien's eligibility for adjustment of status under the Haitian
15 Refugee Immigration Fairness Act of 1988.

16 (b) Notwithstanding any time and number limitations imposed by law on motions to
17 reopen, a national of Cuba or Nicaragua who, on the date of enactment of the Act, has a final
18 administrative denial of an application for adjustment of status under the Nicaraguan Adjustment
19 and Central American Relief Act, and who is made eligible for adjustment of status under that
20 Act by the amendments made by this Act, may file one motion to reopen exclusion, deportation,
21 or removal proceedings to have the application considered again. All such motions shall be filed
22 within 180 days of the date of enactment of this Act. The scope of any proceeding reopened on
23 this basis shall be limited to a determination of the alien's eligibility for adjustment of status
24 under the Nicaraguan Adjustment and Central American Relief Act.

**Section-by-Section Analysis of the
"Central American and Haitian Parity Act of 1999."**

Background

The "Central American and Haitian Parity Act of 1999" is part of the Administration's comprehensive effort to support the process of democratization and stabilization now underway in Central America and Haiti and to ensure equitable treatment for migrants from these countries. The proposed bill would allow qualified nationals of El Salvador, Guatemala, Honduras and Haiti an opportunity to become lawful permanent residents of the United States. Consequently, under this bill, eligible nationals of these countries would receive treatment equivalent to that granted to the Nicaraguans and Cubans under the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA).

Currently, section 202 of NACARA allows certain nationals of Nicaragua and Cuba, and their qualified dependents, to have their immigration status adjusted to lawful permanent residence. Eligibility for this relief requires, among other things, continuous physical presence in the United States since December 1, 1995 (not counting absences totaling 180 days or less).

Although section 203 of NACARA permits certain Guatemalans and Salvadorans to apply for permanent relief from deportation or removal, it does not offer the same opportunities available under section 202. Section 203 does not provide for direct adjustment of status, but instead permits an applicant to apply for suspension of deportation or cancellation of removal. These are discretionary forms of relief which may be denied even if the applicant meets basic eligibility requirements. In addition, the eligibility requirements for section 203 relief are generally more restrictive than for section 202 relief. For instance, most Salvadorans and Guatemalans seeking relief under section 203 must establish that they entered the United States prior to 1991 and that they filed an asylum application within a designated time period. Moreover, eligibility for suspension of deportation and cancellation of removal under section 203 generally requires seven years of continuous physical presence in the United States, as well as a case-by-case determination that the applicant or a qualified family member would suffer extreme hardship if the applicant were deported.

Similarly, while the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) provides special opportunities for relief to certain Haitian nationals, those opportunities are not equal to the benefits provided by section 202. HRIFA does provide for direct adjustment of status, like section 202 of NACARA, but contains narrower eligibility requirements. In general, to be eligible for HRIFA a Haitian national must have filed for asylum or been paroled into the United States before December 31, 1995, and is required to have been continuously present in the United States since that date.

Section-by-Section Analysis

Section 1. This bill may be cited as the "Central American and Haitian Parity Act of 1999."

Section 2(a). This section adds Salvadorans, Guatemalans, Hondurans, and Haitians where NACARA section 202 currently refers to Cubans and Nicaraguans, except in subparagraph (d)(1)(A), relating to dependents. A technical amendment below proposes eliminating the restriction that a dependent must be a particular nationality to adjust under NACARA. In addition, this section extends the application deadline from April 1, 2000, to April 1, 2003, for both principals and dependents. This extension is necessary to provide those made eligible for benefits under this Act with sufficient time to apply for benefits. The extension is made applicable to Cubans and Nicaraguans in the interest of a uniform deadline, and because some individuals of those nationalities are made eligible by the technical amendments in section 5.

Section 2(b). This section provides that the amendments made by section 2(a) shall be effective on the date of enactment.

Section 3. This section allows an applicant to convert an application filed under section 203 of NACARA, which is pending on the date of enactment of this Act and which has not been finally adjudicated, to an application under section 202 of NACARA as amended, pursuant to regulations established by the Attorney General. Many section 203 applicants will be eligible for adjustment of status under amended section 202. However, the application filed under section 203 for suspension of deportation or cancellation of removal will not usually contain the necessary information to make a determination of eligibility for adjustment of status under section 202. Thus, a further application may be required. In addition, the Attorney General may wish to include in conversion procedures a mechanism for allowing the 203 application to be converted without the payment of a new filing fee or with the payment of a supplemental fee. The amendment makes clear that the Attorney General may charge a fee to cover the costs of conversion processing, and that the conversion process does not require the Attorney General to refund fees already paid in connection with an application filed under NACARA section 203.

Section 4. This section allows the Attorney General discretion to consider an application filed under HRIFA, which is pending on the date of enactment of this Act and which has not been finally adjudicated, to be an application under section 202 of NACARA, as amended. This will save the government the expense of processing a new application if the applicant would be denied under HRIFA, but granted under NACARA. In such cases the applicant will be saved the time and money associated with filing a new application under section 202.

Sections 5(a)(1) and 6(a)(1). These amendments provide that the Attorney General may waive both the health-related ground of inadmissibility for aliens with a communicable disease of public health significance and the ground of inadmissibility based upon

misrepresentations made by an alien to seek to procure any benefit provided under the Immigration and Nationality Act (INA), in determining an alien's eligibility for adjustment of status under NACARA or HRIFA. In either case, the waiver may be granted for humanitarian reasons, to assure family unity, or when it is otherwise in the public interest. Currently, some aliens who would otherwise be eligible for adjustment under NACARA and HRIFA cannot qualify for the waiver of these grounds of inadmissibility contained in sections 212(g)(1) and 212(i) of the INA because they do not have the required family relationship to a United States citizen or lawful permanent resident.

In keeping with the ameliorative purpose of NACARA and HRIFA, this amendment would allow a very limited number of aliens to apply for a waiver of the health-related ground of inadmissibility. Of particular concern are Haitian nationals who were paroled into the United States long ago from Guantanamo Bay, Cuba, after they were determined to be infected with the Human Immunodeficiency Virus (HIV). With regard to misrepresentations, the amendment would provide the Attorney General with greater flexibility to grant waivers in compelling cases. It is noted that some applicants for relief may have been fleeing persecution and forced to use false identification documents to secure passage out of their homeland and to the United States. Allowing for waivers in this context is in keeping with the Attorney General's authority to grant waivers under similar circumstances in cases involving the adjustment of status of refugees and asylees.

Sections 5(a)(2) and 6(a)(2). These amendments remove obstacles to adjusting under NACARA and HRIFA for those with a previous order of deportation or removal subject to reinstatement, and those inadmissible under section 212(a)(9)(A) or 212(a)(9)(C) of the INA for having been previously removed or being unlawfully present after a previous immigration violation and subsequently entering (or attempting to enter) the United States without being admitted. These amendments are in keeping with the ameliorative nature of NACARA and HRIFA. INA section 241(a)(5) bars from any relief under the INA aliens who reenter the U.S. illegally after having been removed or having departed voluntarily under an order of removal. The amendment would allow these aliens to adjust status under NACARA and HRIFA, whether they are principal applicants or the family members covered in subsection (d).

In addition, in order to qualify for an exception to the inadmissibility grounds in sections 212(a)(9)(A) and 212(a)(9)(C) of the INA relating to aliens previously removed or unlawfully present after entering the United States without being admitted, an alien must generally obtain consent from the Attorney General to reapply for admission while the alien is outside the United States. The amendment would allow such consent to qualify an applicant for an exception even if consent were given while the alien was in the United States.

Section 5(a)(3) and 6(a)(3). These amendments resolve a potential conflict between subsection (c) and paragraph (a)(2) of NACARA, and the same sections of HRIFA.

Subsection (c) is clear that an applicant with a final order of deportation or removal is not entitled to an automatic stay of deportation, based solely on the filing of an adjustment application. Rather, the alien must apply for a stay. The last sentence of paragraph (a)(2), however, could be read to contain the negative inference that the final order is not effective and enforceable until the application is adjudicated. This would effectively provide an automatic stay in contradiction to subsection (c). While congressional intent seems plain in subsection (c), and the Immigration and Naturalization Service (INS) has implemented NACARA and HRIFA that way, the amendment would remove any potential ambiguity.

Sections 5(a)(4) and 6(a)(4). These amendments clarify that aliens who are currently in lawful permanent resident alien status cannot "readjust" to the same status under NACARA or HRIFA solely for the purpose of providing benefits to their spouses or dependents. NACARA and HRIFA were designed to provide adjustment to those who did not already have lawful permanent resident status. Spouses and dependents can obtain benefits under the current family-based immigration petitioning system, based on the alien's current status. The INS has interpreted and applied NACARA and HRIFA in this manner, but the amendments would remove any ambiguity. The amendments provide an exception for aliens in deportation or removal proceedings who file for adjustment under NACARA or HRIFA as relief from deportation, to leave undisturbed the current rule that lawful permanent residents may assert adjustment as a defense in these proceedings. These amendments have a greater significance in combination with the amendment below which eliminates the requirement that a dependent be of a particular nationality to receive benefits.

Section 5(a)(5) and 6(a)(5). These amendments provide that NACARA and HRIFA do not require the Attorney General to stay the removal of an alien who is ineligible to adjust under those Acts. Currently, NACARA and HRIFA only address stays sought on the basis of the filing of an application. However, upon passage of this Act aliens with final orders who are made eligible for adjustment will not be able to apply for that relief until a method of application is established. These amendments will address stays in this interim period, where aliens may seek to avoid removal based on the intention to file an application. The amendments will clarify that the Attorney General may deny a stay in this situation if warranted. This is especially important for detained aliens with a final order, to ensure that their removal is not delayed if they are ineligible under NACARA or HRIFA.

Section 5(a)(6) and 6(a)(6). In the interest of family unity, the amendments lift the restriction in NACARA and HRIFA that the spouse or dependent of a principal applicant must also be a Nicaraguan, Cuban, or Haitian national to be granted adjustment of status under those Acts. At the same time, the amendments would require dependents to have entered the United States before the date of enactment of this Act to be eligible for adjustment of status, but would establish an immigrant visa process for dependents outside the United States on that date. The dependent must apply for the immigrant visa within a time period to be established by regulation, and is not subject to the filing

deadline applicable to dependents applying for adjustment of status. These amendments will discourage dependents from seeking to enter the United States illegally in order to apply for benefits under NACARA or HRIFA, while ensuring that families of eligible principal applicants will be reunited quickly. The amendments also authorize the Department of State to use the immigrant visa application processing and issuance fees collected from dependents of aliens granted adjustment of status under NACARA and HRIFA. This authority is intended to provide resources necessary to meet workload demands caused by the establishment of an immigrant visa process for eligible dependents outside the United States and to meet the needs of consular activities.

The amendments also add a requirement for spouses, stepchildren, and unmarried stepsons and stepdaughters that the qualifying marriage was established by the date of enactment of this Act. A similar amendment is made for HRIFA. This will prevent fraud by eliminating the incentive to marry solely for the purpose of obtaining NACARA or HRIFA benefits. A further amendment to HRIFA limits the application period for adjustment of status for dependents to April 1, 2003, the same deadline applicable to dependents under NACARA as amended by this Act. This makes NACARA and HRIFA consistent. There is currently no deadline under HRIFA for dependents.

Section 5(a)(7) and 6(a)(7). NACARA and HRIFA contain specific provisions that no offset is required to the number of visas available under the INA when an alien's status is adjusted under those Acts. The amendments extend this provision to an alien granted an immigrant visa classification under the new procedures established in this Act. In general, these new visa procedures provide an alternate avenue of obtaining benefits for dependents who would have been able to adjust under NACARA and HRIFA. This amendment is necessary to ensure that the granting of benefits under this Act, whether in the United States or abroad, will not affect the availability of immigrant visas.

Section 5(a)(8) and 6(a)(8). The amendments clarify that NACARA and HRIFA do not authorize the admission into the United States of an alien to apply for benefits under those Acts. This is to ensure that an alien cannot come to a port of entry without valid documents and claim eligibility to file for adjustment under NACARA or HRIFA to prevent removal. The INS has interpreted these Acts in this way, but the amendment would remove any ambiguity. The INS has established an overseas parole application process for aliens seeking NACARA and HRIFA benefits. The amendment would ensure that aliens who are overseas must follow this process or seek another legal method of entering the United States to apply for those benefits, such as the immigrant visa process for dependents proposed above.

Section 5(b) and 6(b). These amendments provide that certain technical amendments to NACARA and HRIFA made by sections 5(a) and 6(a) are effective as if included in the enactment of those Acts, and that others are effective as of the date of enactment of this Act. The amendments made effective as if included in the original Acts are generally those which clarify ambiguous language in a manner consistent with the way in which the Attorney General has implemented the Acts. The amendments made effective on the date

of enactment of this Act are generally those which affect the scope of eligibility under NACARA and HRIFA, or those which specify new procedural requirements.

Section 7. Due to the technical amendments in sections 5 and 6 of this Act, some individuals may be made eligible for NACARA or HRIFA benefits who have a final administrative denial of an application under one of those Acts. The amendments in this section would ensure that such individuals are not barred from filing a motion to reopen, for the purpose of having their application reconsidered, by any time or numerical limits imposed by law on filing such motions. Such limits are contained in 8 C.F.R. sections 3.2(c)(2) and 3.23(b), for example, which provide that an alien may file one motion to reopen proceedings, and that in most cases the motion to reopen must be filed within 90 days of the date of entry of a final administrative order. Proceedings reopened for this purpose would be limited to consideration of the application for adjustment of status.

