

FOR THE RELIEF OF MALIA MILLER

OCTOBER 11, 2000.—Referred to the Private Calendar and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany S. 2019]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (S. 2019) for the relief of Malia Miller, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

S. 2019 would allow Malia Mako Miller to adjust to permanent resident status.

BACKGROUND AND NEED FOR THE LEGISLATION

Malia Mako Miller is originally from Tonga. She moved to American Samoa in 1980 with her family. She met her husband, Todd Miller in 1995 while he was working as a marine electronics engineer in American Samoa. The couple came to the United States in 1996 so Malia could meet Mr. Miller's parents. In April 1997, the couple had a son, Nicholas Miller, in Prescott, Arizona. They mar-

ried in July 1997. Shortly after their marriage, Mr. Miller went back to American Samoa to temporarily work while Malia stayed in the United States to care for their son. In January 1998, they filed the documents to adjust Malia's status. Mr. Miller then returned to American Samoa on business. While in American Samoa, Mr. Miller was killed in a helicopter crash. The couple never had an opportunity to be scheduled for the interview on Malia's petition for conditional permanent residence.

I.N.A. regulations concerning the untimely death of a sponsoring spouse allow for a waiver of the two year marriage requirement only if the individual's petition for conditional permanent residence had been approved prior to the death. The interview for approval of Mrs. Miller's petition for conditional permanent residence had not been scheduled before her husband's death. Although the occurrence of death prior to two years of marriage is rare, the waiver is routinely given for humanitarian reasons in a case of this type if the petition for conditional permanent residence has been approved.

By all accounts this was a legitimate marriage, and it is through no fault of her own that Mrs. Miller has not met the marriage requirements of the I.N.A.

This case mirrors Private Law 105-7, legislation enacted on behalf of Jasmin Salehi. In that case, Mrs. Salehi and the deceased were married 9 months before he was killed in a robbery. However, in the case of Mrs. Miller, there is the additional factor of an American citizen child.

COMMITTEE CONSIDERATION

On October 11, 2000, the Committee on the Judiciary met in open session and ordered reported favorably the bill S. 2019 without amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee believes that the bill

would have no significant impact on the Federal budget. This is based on the Congressional Budget Office cost estimate on S. 2019. That Congressional Budget Office cost estimate follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 11, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed 11 private relief acts, which were ordered reported by the House Committee on the Judiciary on October 11, 2000. CBO estimates that their enactment would have no significant impact on the federal budget. These acts could have a very small effect on fees collected by the Immigration and Naturalization Service and on benefits paid under certain federal entitlement programs. Because these fees and expenditures are classified as direct spending, pay-as-you-go procedures would apply. The act reviewed is:

- S. 2019, an act for the relief of Malia Miller; and

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

Sincerely,

DAN L. CRIPPEN, *Director.*

cc: Honorable John Conyers Jr.
Ranking Democratic Member

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 8, clause 4 of the Constitution.

AGENCY VIEWS

The comments of the Immigration and Naturalization Service on S. 2019 are as follows:

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, DC, May 31, 2000.

Hon. ORRIN HATCH, *Chairman,*
Committee on the Judiciary,
United States Senate, Washington, DC.

DEAR MR. CHAIRMAN: In response to your request for a report relative to S. 2019, for the relief of Malia Miller, there is enclosed a memorandum of information concerning the beneficiary.

The bill would grant the beneficiary eligibility for issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of the Immigration and Nationality Act or for adjustment of status to lawful permanent resident. The bill would also direct the proper visa

number deduction of immigrant visas available to natives of the beneficiary's country of birth.

Sincerely,

GERRI L. RATLIFF, *Acting Director,*
Congressional Relations.

Enclosure

cc: Department of State, Visa Office
District Director—PHO—FYI

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND
NATURALIZATION SERVICE RECORDS RE: S. 2019

The beneficiary, Maria Miller, whose full name is Malia Mako Miller, A77 139 427, a native and citizen of Tonga was born on December 29, 1968. Mr. Miller currently resides at 7901 Siesta Lane, Prescott Valley, Arizona with her United States Citizen son, Nicolar Miller.

On June 29, 1996, Ms. Miller was admitted into the United States at Hawaii as a B-2 Visitor for Pleasure. On June 16, 1997, Ms. Miller married Mr. Todd Miller, a United States Citizen in Prescott, Arizona.

On June 15, 1998, Mr. Todd Miller was killed in a helicopter crash while employed by the Star Kist Tuna company in Samoa. Ms. Miller was residing in the United States at the time of her husband's death. Form I-130, Petition for Alien Relative, listing Ms. Miller as the beneficiary, and Form I-485. Application to Adjust Status, had not been approved.

Title 8, Code of Federal Regulations (CFR), Part 205.1, states that the Attorney General, in his/her discretion may determine that for humanitarian reasons the approved petition should not be revoked. However, the regulations provide for humanitarian consideration only when the Form I-130 has been previously approved. In the case of Ms. Miller, the Form I-130 was filed with the Form I-485 and was still pending adjudication at the time of Mr. Miller's death.

Title 8, CFR, Part 204.2(b), also provides for the self-petitioning of the widow of a United States Citizen. However, this requires that the self-petitioner prove that he/she was married to the United States Citizen for at least 2 years. The record indicates that Mr. and Ms. Miller were married for less than 2 years.

On June 25, 1998, Ms. Miller was granted humanitarian parole for the purpose of allowing her to leave the United States in order to make arrangements for her husband's funeral. The parole also allowed her to return to the United States to settle her affairs. The term of parole expired on June 25, 1999.

On October 8, 1999, Ms. Miller's Form I-130 and Form I-485 were denied.

On October 8, 1999, Form I-131, Application for Travel Document, requesting humanitarian parole for Ms. Miller was filed by the attorney of record.

On December 7, 1999, Ms. Miller was notified that her Form I-131 was denied.

On February 4, 2000, Ms. Miller filed Form I-131 for advance parole for the purpose of pursuing a private bill that was submitted by Senator John Kyl on January 31, 2000. The Form I-131 was

subsequently granted and the term of parole was granted until February 1, 2001.

The relationship between Mr. Miller and Ms. Miller resulted in the birth of their only child, Nicolas Miller, born in Prescott, Arizona on April 29, 1997. Nicolas Miller is the only grandchild of Mr. Miller's parents.

The Immigration and Naturalization Service Investigator's Handbook, section 4-7.2, under GENERAL INFORMATION, states that, "As specifically relates to this chapter, the private bill is introduced in Congress to provide a benefit for, or provide for exemptions from the provisions of law for, individual persons who have been adversely affected by some provision of the Immigration and Nationality Act." This investigation did not reveal where Ms. Miller would be adversely affected.

Ms. Miller has established a life for herself and her child within their community. They are living in personal property that is free from any liens and Ms. Miller is currently attending college. It should be noted that Ms. Miller purchased the residential property during a period in which she (Ms. Miller) knew that her status in the United States was unresolved. Ms. Miller also owns two vehicles and other personal property.

The investigation also indicates that 2-year old Nicolas Miller would be adversely affected if he were raised in a foreign country. The breaking of the common bond that has been created between the child, his paternal grandparents, and other members of the community will be a hardship on Nicolas Miller. The paternal grandparents would also be affected in that they would be separated from their only grandchild.

Records indicate that Ms. Miller is currently unemployed. However, she receives an annuity of about \$3,000 monthly that she will receive for life as a result of her late husband's death.

A check of the National Crime Information Center system, and also fingerprint checks for the beneficiary were conducted with negative results.