

111TH CONGRESS  
1ST SESSION

# S. 1247

To amend the Immigration and Nationality Act to promote family unity,  
and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 11, 2009

Mr. MENENDEZ (for himself, Mrs. GILLIBRAND, and Mr. LEAHY) introduced  
the following bill; which was read twice and referred to the Committee  
on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act to promote  
family unity, 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 “Orphans, Widows, and  
5 Widowers Protection Act”.

6 **SEC. 2. RELIEF FOR ORPHANS AND SPOUSES OF UNITED**  
7 **STATES CITIZENS AND RESIDENTS.**

8 (a) AMENDMENT.—Section 201(b)(2)(A)(i) of the  
9 Immigration and Nationality Act (8 U.S.C.  
10 1151(b)(2)(A)(i)) is amended—

1           (1) by inserting “or, if married to such citizen  
2           for less than 2 years at the time of the citizen’s  
3           death, an alien who proves by a preponderance of  
4           the evidence that the marriage was entered into in  
5           good faith and not solely for the purpose of obtain-  
6           ing an immigration benefit” after “for at least 2  
7           years at the time of the citizen’s death”; and

8           (2) by adding at the end the following: “For  
9           purposes of this subsection, an alien who was the  
10          child or parent of a citizen of the United States on  
11          the date of the citizen’s death shall be considered to  
12          remain an immediate relative after such date if the  
13          alien parent files a petition under section  
14          204(a)(1)(A)(ii) not later than 2 years after such  
15          date or the alien child files such a petition before  
16          reaching 21 years of age.”.

17          (b) SPECIAL RULE FOR ORPHANS AND SPOUSES.—  
18          In applying section 201(b)(2)(A)(i) of the Immigration  
19          and Nationality Act, as amended by subsection (a), to an  
20          alien whose citizen or lawful permanent resident relative  
21          died before the date of the enactment of this Act, the alien  
22          relative may file the classification petition under section  
23          204(a)(1)(A)(ii) of such Act not later than 2 years after  
24          the date of the enactment of this Act.

1           (c) ELIGIBILITY FOR PAROLE.—If an alien was ex-  
 2 cluded, deported, removed, or departed voluntarily before  
 3 the date of the enactment of this Act based solely upon  
 4 the alien’s lack of classification as an immediate relative  
 5 (as defined in section 201(b)(2)(A)(i) of the Immigration  
 6 and Nationality Act) due to the death of the alien’s citizen  
 7 relative—

8           (1) such alien shall be eligible for parole into  
 9 the United States pursuant to the Attorney Gen-  
 10 eral’s discretionary authority under section  
 11 212(d)(5) of such Act (8 U.S.C. 1182(d)(5)); and

12           (2) such alien’s application for adjustment of  
 13 status shall be considered notwithstanding section  
 14 212(a)(9) of such Act (8 U.S.C. 1182(a)(9)).

15 **SEC. 3. ADJUSTMENT OF STATUS.**

16           (a) SURVIVING SPOUSES, PARENTS, AND CHIL-  
 17 DREN.—Section 245 of the Immigration and Nationality  
 18 Act (8 U.S.C. 1255) is amended by adding at the end the  
 19 following:

20           “(n) APPLICATION FOR ADJUSTMENT OF STATUS BY  
 21 SURVIVING SPOUSES, PARENTS, AND CHILDREN.—

22           “(1) IN GENERAL.—An alien described in para-  
 23 graph (2) who applies for adjustment of status be-  
 24 fore the death of the qualifying relative may have

1 such application adjudicated as if such death had  
2 not occurred.

3 “(2) ALIEN DESCRIBED.—An alien described in  
4 this paragraph is an alien who—

5 “(A) is an immediate relative (as described  
6 in section 201(b)(2)(A));

7 “(B) is a family-sponsored immigrant (as  
8 described in subsection (a) or (d) of section  
9 203); or

10 “(C) is a derivative beneficiary of an em-  
11 ployment-based immigrant under section 203(b)  
12 (as described in section 203(d)).”.

13 (b) REFUGEES.—Section 209(b) of the Immigration  
14 and Nationality Act (8 U.S.C. 1259(b)) is amended by  
15 adding at the end the following “An alien who is the  
16 spouse or child of a refugee (as described in section  
17 207(c)(2)) or an asylee (as described in section 208(b)(3)  
18 who applies for adjustment of status before the death of  
19 a qualifying relative may have such application adju-  
20 dicated as if such death had not occurred.”.

21 **SEC. 4. TRANSITION PERIOD.**

22 (a) IN GENERAL.—Notwithstanding a denial of an  
23 application for adjustment of status for an alien whose  
24 qualifying relative died before the date of the enactment  
25 of this Act, such application may be renewed by the alien

1 through a motion to reopen, without fee, if such motion  
2 is filed not later than 2 years after such date of enact-  
3 ment.

4 (b) ELIGIBILITY FOR PAROLE.—If an alien described  
5 in section 245(n)(2) of the Immigration and Nationality  
6 Act (8 U.S.C. 1255(n)(2)) was excluded, deported, re-  
7 moved, or departed voluntarily before the date of the en-  
8 actment of this Act—

9 (1) such alien shall be eligible for parole into  
10 the United States pursuant to the Attorney Gen-  
11 eral’s discretionary authority under section  
12 212(d)(5) of the Immigration and Nationality Act (8  
13 U.S.C. 1182(d)(5)); and

14 (2) such alien’s application for adjustment of  
15 status shall be considered notwithstanding section  
16 212(a)(9) of such Act (8 U.S.C. 1182(a)(9)).

17 **SEC. 5. PROCESSING OF IMMIGRANT VISAS AND DERIVA-**  
18 **TIVE PETITIONS.**

19 (a) IN GENERAL.—Section 204(b) of the Immigra-  
20 tion and Nationality Act (8 U.S.C. 1154(b)) is amended—

21 (1) by striking “After an investigation” and in-  
22 serting the following:

23 “(1) IN GENERAL.—After an investigation”;  
24 and

25 (2) by adding at the end the following:

1 “(2) DEATH OF QUALIFYING RELATIVE.—

2 “(A) IN GENERAL.—Any alien described in  
3 subparagraph (B) whose qualifying relative died  
4 before the completion of immigrant visa proc-  
5 essing may have an immigrant visa application  
6 adjudicated as if such death had not occurred.  
7 An immigrant visa issued before the death of  
8 the qualifying relative shall remain valid after  
9 such death.

10 “(B) ALIEN DESCRIBED.—An alien de-  
11 scribed in this subparagraph is an alien who  
12 is—

13 “(i) an immediate relative (as de-  
14 scribed in section 201(b)(2)(A));

15 “(ii) a family-sponsored immigrant  
16 (as described in subsection (a) or (d) of  
17 section 203);

18 “(iii) a derivative beneficiary of an  
19 employment-based immigrant under section  
20 203(b) (as described in section 203(d)); or

21 “(iv) the spouse or child of a refugee  
22 (as described in section 207(c)(2)) or an  
23 asylee (as described in section  
24 208(b)(3)).”.

25 (b) TRANSITION PERIOD.—

1           (1) IN GENERAL.—Notwithstanding a denial or  
2           revocation of an application for an immigrant visa  
3           for an alien whose qualifying relative died before the  
4           date of the enactment of this Act, such application  
5           may be renewed by the alien through a motion to re-  
6           open, without fee, if such motion is filed not later  
7           than 2 years after such date of enactment.

8           (2) INAPPLICABILITY OF BARS TO ENTRY.—  
9           Notwithstanding section 212(a)(9) of the Immigra-  
10          tion and Nationality Act (8 U.S.C. 1182(a)(9)), an  
11          alien’s application for an immigrant visa shall be  
12          considered if the alien was excluded, deported, re-  
13          moved, or departed voluntarily before the date of the  
14          enactment of this Act.

15 **SEC. 6. NATURALIZATION.**

16          Section 319(a) of the Immigration and Nationality  
17          Act (8 U.S.C. 1430(a)) is amended by inserting “(or, if  
18          the spouse is deceased, the spouse was a citizen of the  
19          United States)” after “citizen of the United States”.

20 **SEC. 7. EFFECTIVE DATE.**

21          The amendments made by this Act shall apply to all  
22          petitions or applications described in such amendments  
23          that—

24                 (1) are pending as of the date of the enactment  
25                 of this Act; or

1           (2) have been denied, but would have been ap-  
2           proved if such amendments had been in effect at the  
3           time of adjudication of the petition or application.

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