

111TH CONGRESS  
1ST SESSION

# H. R. 1751

To amend the Illegal Immigration Reform and Immigrant Responsibility Act 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 alien students who are long-term United States residents and who entered the United States as children, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 2009

Mr. BERMAN (for himself, Ms. ROYBAL-ALLARD, Mr. LINCOLN DIAZ-BALART of Florida, Ms. ZOE LOFGREN of California, Mr. NUNES, Mr. POLIS of Colorado, Mr. CAO, Ms. ROS-LEHTINEN, Mr. CONYERS, and Mr. MARIO DIAZ-BALART of Florida) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Illegal Immigration Reform and Immigrant Responsibility Act 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 alien students who are long-term United States residents and who entered the United States as children, 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 “American Dream Act”.

5 **SEC. 2. DEFINITIONS.**

6       In this Act:

7           (1) INSTITUTION OF HIGHER EDUCATION.—The  
8       term “institution of higher education” has the  
9       meaning given that term in section 101 of the High-  
10      er Education Act of 1965 (20 U.S.C. 1001).

11          (2) UNIFORMED SERVICES.—The term “uni-  
12      formed services” has the meaning given that term in  
13      section 101(a) of title 10, United States Code.

14 **SEC. 3. RESTORATION OF STATE OPTION TO DETERMINE**  
15                   **RESIDENCY FOR PURPOSES OF HIGHER EDU-**  
16                   **CATION BENEFITS.**

17          (a) IN GENERAL.—Section 505 of the Illegal Immi-  
18      gration Reform and Immigrant Responsibility Act of 1996  
19      (8 U.S.C. 1623) is repealed.

20          (b) EFFECTIVE DATE.—The repeal under subsection  
21      (a) shall take effect as if included in the enactment of the  
22      Illegal Immigration Reform and Immigrant Responsibility  
23      Act of 1996.

1 **SEC. 4. CANCELLATION OF REMOVAL AND ADJUSTMENT OF**  
2 **STATUS OF CERTAIN LONG-TERM RESIDENTS**  
3 **WHO ENTERED THE UNITED STATES AS CHIL-**  
4 **DREN.**

5 (a) SPECIAL RULE FOR CERTAIN LONG-TERM RESI-  
6 DENTS WHO ENTERED THE UNITED STATES AS CHIL-  
7 DREN.—

8 (1) IN GENERAL.—Notwithstanding any other  
9 provision of law and except as otherwise provided in  
10 this Act, the Secretary of Homeland Security may  
11 cancel removal of, and adjust to the status of an  
12 alien lawfully admitted for permanent residence,  
13 subject to the conditional basis described in section  
14 5, an alien who is inadmissible or deportable from  
15 the United States, if the alien demonstrates that—

16 (A) the alien has been physically present in  
17 the United States for a continuous period of  
18 not less than 5 years immediately preceding the  
19 date of enactment of this Act, and had not yet  
20 reached the age of 16 years at the time of ini-  
21 tial entry;

22 (B) the alien has been a person of good  
23 moral character since the time of application;

24 (C) the alien—

25 (i) is not inadmissible under para-  
26 graph (2), (3), or (6)(E) of section 212(a)

1 of the Immigration and Nationality Act (8  
2 U.S.C. 1182(a)); and

3 (ii) is not deportable under paragraph  
4 (1)(E), (2), or (4) of section 237(a) of the  
5 Immigration and Nationality Act (8 U.S.C.  
6 1227(a)); and

7 (D) the alien, at the time of application,  
8 has been admitted to an institution of higher  
9 education in the United States, or has earned  
10 a high school diploma or obtained a general  
11 education development certificate in the United  
12 States.

13 (2) WAIVER.—Notwithstanding paragraph (1),  
14 the Secretary of Homeland Security may waive the  
15 grounds of ineligibility under section 212(a)(2) of  
16 the Immigration and Nationality Act, and the  
17 grounds of deportability under paragraphs (1)(E)  
18 and (2) of section 237(a) of such Act, if the Sec-  
19 retary determines that the alien’s removal would re-  
20 sult in extreme hardship to the alien, the alien’s  
21 child, or (in the case of an alien who is a child) to  
22 the alien’s parent.

23 (3) PROCEDURES.—The Secretary of Homeland  
24 Security shall provide a procedure by regulation al-  
25 lowing eligible individuals to apply affirmatively for

1 the relief available under this subsection without  
2 being placed in removal proceedings.

3 (b) TERMINATION OF CONTINUOUS PERIOD.—For  
4 purposes of this section, any period of continuous resi-  
5 dence or continuous physical presence in the United States  
6 of an alien who applies for cancellation of removal under  
7 this section shall not terminate when the alien is served  
8 a notice to appear under section 239(a) of the Immigra-  
9 tion and Nationality Act (8 U.S.C. 1229(a)).

10 (c) TREATMENT OF CERTAIN BREAKS IN PRES-  
11 ENCE.—

12 (1) IN GENERAL.—An alien shall not be consid-  
13 ered to have failed to maintain continuous physical  
14 presence in the United States for purposes of sub-  
15 section (a)(1)(A) by virtue of brief, casual, and inno-  
16 cent absences from the United States.

17 (2) WAIVER.—The Secretary of Homeland Se-  
18 curity may waive breaks in presence beyond brief,  
19 casual, or innocent absences for humanitarian pur-  
20 poses, family unity, or when it is otherwise in the  
21 public interest.

22 (d) EXEMPTION FROM NUMERICAL LIMITATIONS.—  
23 Nothing in this section may be construed to apply a nu-  
24 merical limitation on the number of aliens who may be

1 eligible for cancellation of removal or adjustment of status  
2 under this section.

3 (e) REGULATIONS.—

4 (1) PROPOSED REGULATIONS.—Not later than  
5 180 days after the date of the enactment of this Act,  
6 the Secretary of Homeland Security shall publish  
7 proposed regulations implementing this section.  
8 Such regulations shall be effective immediately on an  
9 interim basis, but are subject to change and revision  
10 after public notice and opportunity for a period for  
11 public comment.

12 (2) INTERIM, FINAL REGULATIONS.—Not later  
13 than 90 days after publication of the interim regula-  
14 tions in accordance with paragraph (1), the Sec-  
15 retary of Homeland Security shall publish final regu-  
16 lations implementing this section.

17 (f) REMOVAL OF ALIEN.—The Secretary of Home-  
18 land Security may not remove any alien who has a pending  
19 application for conditional status under this Act.

20 **SEC. 5. CONDITIONAL PERMANENT RESIDENT STATUS.**

21 (a) IN GENERAL.—

22 (1) CONDITIONAL BASIS FOR STATUS.—Not-  
23 withstanding any other provision of law, and except  
24 as provided in section 6, an alien whose status has  
25 been adjusted under section 4 to that of an alien

1 lawfully admitted for permanent residence shall be  
2 considered to have obtained such status on a condi-  
3 tional basis subject to the provisions of this section.  
4 Such conditional permanent resident status shall be  
5 valid for a period of 6 years, subject to termination  
6 under subsection (b).

7 (2) NOTICE OF REQUIREMENTS.—

8 (A) AT TIME OF OBTAINING PERMANENT  
9 RESIDENCE.—At the time an alien obtains per-  
10 manent resident status on a conditional basis  
11 under paragraph (1), the Secretary of Home-  
12 land Security shall provide for notice to the  
13 alien regarding the provisions of this section  
14 and the requirements of subsection (c) to have  
15 the conditional basis of such status removed.

16 (B) EFFECT OF FAILURE TO PROVIDE NO-  
17 TICE.—The failure of the Secretary of Home-  
18 land Security to provide a notice under this  
19 paragraph—

20 (i) shall not affect the enforcement of  
21 the provisions of this Act with respect to  
22 the alien; and

23 (ii) shall not give rise to any private  
24 right of action by the alien.

25 (b) TERMINATION OF STATUS.—

1           (1) IN GENERAL.—The Secretary of Homeland  
2 Security shall terminate the conditional permanent  
3 resident status of any alien who obtained such sta-  
4 tus under this Act, if the Secretary determines that  
5 the alien—

6           (A) ceases to meet the requirements of  
7 subparagraph (B) or (C) of section 4(a)(1);

8           (B) has become a public charge; or

9           (C) has received a dishonorable or other  
10 than honorable discharge from the uniformed  
11 services.

12           (2) RETURN TO PREVIOUS IMMIGRATION STA-  
13 TUS.—Any alien whose conditional permanent resi-  
14 dent status is terminated under paragraph (1) shall  
15 return to the immigration status the alien had im-  
16 mediately prior to receiving conditional permanent  
17 resident status under this Act.

18           (c) REQUIREMENTS OF TIMELY PETITION FOR RE-  
19 MOVAL OF CONDITION.—

20           (1) IN GENERAL.—In order for the conditional  
21 basis of permanent resident status obtained by an  
22 alien under subsection (a) to be removed, the alien  
23 must file with the Secretary of Homeland Security,  
24 in accordance with paragraph (3), a petition which  
25 requests the removal of such conditional basis and



1       which provides, under penalty of perjury, the facts  
2       and information so that the Secretary may make the  
3       determination described in paragraph (2)(A).

4               (2) ADJUDICATION OF PETITION TO REMOVE  
5       CONDITION.—

6               (A) IN GENERAL.—If a petition is filed in  
7       accordance with paragraph (1) for an alien, the  
8       Secretary of Homeland Security shall make a  
9       determination as to whether the alien meets the  
10      requirements set out in subparagraphs (A)  
11      through (E) of subsection (d)(1).

12              (B) REMOVAL OF CONDITIONAL BASIS IF  
13      FAVORABLE DETERMINATION.—If the Secretary  
14      determines that the alien meets such require-  
15      ments, the Secretary shall notify the alien of  
16      such determination and immediately remove the  
17      conditional basis of the status of the alien.

18              (C) TERMINATION IF ADVERSE DETER-  
19      MINATION.—If the Secretary determines that  
20      the alien does not meet such requirements, the  
21      Secretary shall notify the alien of such deter-  
22      mination and terminate the conditional perma-  
23      nent resident status of the alien as of the date  
24      of the determination.

1           (3) TIME TO FILE PETITION.—An alien may pe-  
2           tition to remove the conditional basis to lawful resi-  
3           dent status during the period beginning 180 days  
4           before and ending 2 years after either the date that  
5           is 6 years after the date of the granting of condi-  
6           tional permanent resident status or any other expi-  
7           ration date of the conditional permanent resident  
8           status as extended by the Secretary of Homeland  
9           Security in accordance with this Act. The alien shall  
10          be deemed in conditional permanent resident status  
11          in the United States during the period in which the  
12          petition is pending.

13          (d) DETAILS OF PETITION.—

14               (1) CONTENTS OF PETITION.—Each petition  
15               for an alien under subsection (c)(1) shall contain in-  
16               formation to permit the Secretary of Homeland Se-  
17               curity to determine whether each of the following re-  
18               quirements is met:

19                       (A) The alien has demonstrated good  
20                       moral character during the entire period the  
21                       alien has been a conditional permanent resi-  
22                       dent.

23                       (B) The alien is in compliance with section  
24                       4(a)(1)(C).

1           (C) The alien has not abandoned the  
2 alien's residence in the United States. The Sec-  
3 retary shall presume that the alien has aban-  
4 doned such residence if the alien is absent from  
5 the United States for more than 365 days, in  
6 the aggregate, during the period of conditional  
7 residence, unless the alien demonstrates that  
8 alien has not abandoned the alien's residence.  
9 An alien who is absent from the United States  
10 due to active service in the uniformed services  
11 shall not be considered to have abandoned the  
12 alien's residence in the United States during  
13 the period of such service.

14           (D) The alien has completed at least 1 of  
15 the following:

16           (i) The alien has acquired a degree  
17 from an institution of higher education in  
18 the United States or has completed at  
19 least 2 years, in good standing, in a pro-  
20 gram for a bachelor's degree or higher de-  
21 gree in the United States.

22           (ii) The alien has served in the uni-  
23 formed services for at least 2 years and, if  
24 discharged, has received an honorable dis-  
25 charge.

1           (E) The alien has provided a list of all of  
2 the secondary educational institutions that the  
3 alien attended in the United States.

4           (2) HARDSHIP EXCEPTION.—

5           (A) IN GENERAL.—The Secretary of  
6 Homeland Security may, in the Secretary’s dis-  
7 cretion, remove the conditional status of an  
8 alien if the alien—

9                   (i) satisfies the requirements of sub-  
10 paragraphs (A), (B), and (C) of paragraph  
11 (1);

12                   (ii) demonstrates compelling cir-  
13 cumstances for the inability to complete  
14 the requirements described in paragraph  
15 (1)(D); and

16                   (iii) demonstrates that the alien’s re-  
17 moval from the United States would result  
18 in exceptional and extremely unusual hard-  
19 ship to the alien or the alien’s spouse, par-  
20 ent, or child who is a citizen or a lawful  
21 permanent resident of the United States.

22           (B) EXTENSION.—Upon a showing of good  
23 cause, the Secretary of Homeland Security may  
24 extend the period of the conditional resident

1 status for the purpose of completing the re-  
2 quirements described in paragraph (1)(D).

3 (e) TREATMENT OF PERIOD FOR PURPOSES OF NAT-  
4 URALIZATION.—Except as otherwise provided under this  
5 Act, an alien who is in the United States as a lawful per-  
6 manent resident on a conditional basis under this section  
7 shall be considered to have been admitted as an alien law-  
8 fully admitted for permanent residence and to be in the  
9 United States as an alien lawfully admitted to the United  
10 States for permanent residence. However, the conditional  
11 basis must be removed before the alien may apply for nat-  
12 uralization.

13 **SEC. 6. APPLICABILITY.**

14 If, on the date of the enactment of this Act, an alien  
15 has satisfied all the requirements of subparagraphs (A)  
16 through (D) of section 4(a)(1) and section 5(d)(1)(D), the  
17 Secretary of Homeland Security may adjust the status of  
18 the alien to that of a conditional resident in accordance  
19 with section 4. The alien may petition for removal of such  
20 condition at the end of the conditional residence period  
21 in accordance with section 5(c) if the alien has met the  
22 requirements of subparagraphs (A), (B), and (C) of sec-  
23 tion 5(d)(1) during the entire period of conditional resi-  
24 dence.

1 **SEC. 7. EXCLUSIVE JURISDICTION.**

2 (a) IN GENERAL.—The Secretary of Homeland Secu-  
3 rity shall have exclusive jurisdiction to determine eligibility  
4 for relief under this Act, except where the alien has been  
5 placed into deportation, exclusion, or removal proceedings  
6 either prior to or after filing an application for relief under  
7 this Act, in which case the Attorney General shall have  
8 exclusive jurisdiction and shall assume all the powers and  
9 duties of the Secretary until proceedings are terminated,  
10 or if a final order of deportation, exclusion, or removal  
11 is entered the Secretary shall resume all powers and duties  
12 delegated to the Secretary under this Act.

13 (b) STAY OF REMOVAL OF CERTAIN ALIENS EN-  
14 ROLLED IN PRIMARY OR SECONDARY SCHOOL.—The At-  
15 torney General shall stay the removal proceedings of any  
16 alien who—

17 (1) meets all the requirements of subpara-  
18 graphs (A), (B), (C), and (E) of section 4(a)(1);

19 (2) is at least 12 years of age; and

20 (3) is enrolled full time in a primary or sec-  
21 ondary school.

22 (c) EMPLOYMENT.—An alien whose removal is stayed  
23 pursuant to subsection (b) may be engaged in employment  
24 in the United States, consistent with the Fair Labor  
25 Standards Act of 1938 (29 U.S.C. 201 et seq.), and State  
26 and local laws governing minimum age for employment.

1 (d) LIFT OF STAY.—The Attorney General shall lift  
2 the stay granted pursuant to subsection (b) if the alien—

3 (1) is no longer enrolled in a primary or sec-  
4 ondary school; or

5 (2) ceases to meet the requirements of sub-  
6 section (b)(1).

7 **SEC. 8. CONFIDENTIALITY OF INFORMATION.**

8 (a) PROHIBITION.—No officer or employee of the  
9 United States may—

10 (1) use the information furnished by the appli-  
11 cant pursuant to an application filed under this Act  
12 to initiate removal proceedings against any persons  
13 identified in the application;

14 (2) make any publication whereby the informa-  
15 tion furnished by any particular individual pursuant  
16 to an application under this Act can be identified; or

17 (3) permit anyone other than an officer or em-  
18 ployee of the United States Government or, in the  
19 case of applications filed under this Act with a des-  
20 ignated entity, that designated entity, to examine  
21 applications filed under this Act.

22 (b) REQUIRED DISCLOSURE.—The Attorney General  
23 or the Secretary of Homeland Security shall provide the  
24 information furnished under this section, and any other  
25 information derived from such furnished information, to—





1 et seq.), with respect to Federal financial education assist-  
2 ance, an alien who is lawfully admitted for permanent resi-  
3 dence under this Act and has not had the conditional basis  
4 removed shall not be eligible for—

5 (1) Federal Pell grants under part A of title IV  
6 of the Higher Education Act of 1965 (20 U.S.C.  
7 1070a et seq.); and

8 (2) Federal supplemental educational oppor-  
9 tunity grants under part A of title IV of that Act  
10 (20 U.S.C. 1070b et seq.).

11 **SEC. 11. GAO REPORT.**

12 Not later than 7 years after the date of enactment  
13 of this Act, the Comptroller General of the United States  
14 shall submit a report to the Committees on the Judiciary  
15 of the Senate and the House of Representatives setting  
16 forth—

17 (1) the number of aliens who were eligible for  
18 cancellation of removal and adjustment of status  
19 under section 4(a);

20 (2) the number of aliens who applied for adjust-  
21 ment of status under section 4(a);

22 (3) the number of aliens who were granted ad-  
23 justment of status under section 4(a); and

1           (4) the number of aliens whose conditional per-  
2           manent resident status was removed under section  
3           5.

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