

TO AMEND THE IMMIGRATION AND NATIONALITY ACT TO TOLL, DURING ACTIVE-DUTY SERVICE ABROAD IN THE ARMED FORCES, THE PERIODS OF TIME TO FILE A PETITION AND APPEAR FOR AN INTERVIEW TO REMOVE THE CONDITIONAL BASIS FOR PERMANENT RESIDENT STATUS, AND FOR OTHER PURPOSES

JULY 8, 2011.—Committed to the Committee of the Whole House on the State of the Union 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 H.R. 398]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 398) to amend the Immigration and Nationality Act to toll, during active-duty service abroad in the Armed Forces, the periods of time to file a petition and appear for an interview to remove the conditional basis for permanent resident status, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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Purpose and Summary

H.R. 398 tolls the periods during which alien spouses who have conditional permanent residence and their U.S. citizen or permanent resident spouses must petition for the removal of the condi-

tional status and must attend an interview with the Department of Homeland Security during any period of time in which either spouse is a member of the Armed Forces of the United States and serving abroad in active-duty status.

Background and Need for the Legislation

A U.S. citizen can sponsor an alien spouse for permanent residence with no numerical limitation. A permanent resident can sponsor an alien spouse for permanent residence, but a yearly quota exists. In both cases, the alien spouse becomes a conditional permanent resident if the marriage was entered into less than 24 months before the date the alien obtains permanent resident status by virtue of such marriage.¹

After two years, the alien spouse and the U.S. citizen or permanent resident spouse must jointly file a petition with the Department of Homeland Security (“DHS”) for the removal of the conditional status.² If the petition is successful, the alien spouse becomes a permanent resident. The petition must be filed during the 90-day period before the second anniversary of the spouse’s becoming a conditional permanent resident unless the alien establishes to the satisfaction of DHS good cause and extenuating circumstances for failure to file on time.³ Upon the filing of the petition, DHS will interview the spouses to ascertain whether the marriage was entered into in accordance with the laws of the place where it took place, was not judicially annulled or terminated, was not entered into for the purpose of procuring an alien’s admission as an immigrant, and whether any improper fee or other consideration was given for the filing of an immigrant or certain nonimmigrant petitions.⁴ The interview must be conducted within 90 days of the submission of the petition unless DHS waives the deadline for the interview or the requirement for the interview.⁵

What happens in circumstances in which the spouse with conditional permanent residence or the U.S. citizen or permanent resident spouse is serving overseas in active duty status with the Armed Forces? It can lead to clear and unnecessary logistical difficulties for the military to have to facilitate a member of the Armed Forces deployed overseas being able to file a petition and travel to the U.S. for a personal interview with DHS, especially when the spouse is serving in a combat zone. It can of course also hinder the spouse’s ability to most ably carry out their military duties. While DHS can choose to delay this process in appropriate circumstances, a blanket tolling of the time periods while a spouse is serving abroad is appropriate.

H.R. 398 tolls the two time periods during any period of time in which one or both spouses are members of the Armed Forces of the United States and serving abroad in active-duty status. The spouses do retain the right to be able to file a petition within the normal time period at their choosing and DHS retains the right to waive the interview requirement in appropriate circumstances.

¹ See section 216(a)(1) of the Immigration and Nationality Act.

² See section 216(c) of the INA.

³ See section 216(d)(2) of the INA.

⁴ See section 216(d) of the INA.

⁵ See section 216(d)(3) of the INA.

Hearings

The Committee on the Judiciary held no hearings on H.R. 398.

Committee Consideration

On January 26, 2011, the Committee met in open session and ordered the bill H.R. 398 favorably reported without amendment, by a voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 398.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises 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.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives 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(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 398, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 2, 2011.

Hon. LAMAR SMITH, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 398, a bill to amend the Immigration and Nationality Act to toll, during active-duty service abroad in the Armed Forces, the periods of time to file a petition and appear for an interview to remove the conditional basis for permanent resident status, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 398—A bill to amend the Immigration and Nationality Act to toll, during active-duty service abroad in the Armed Forces, the periods of time to file a petition and appear for an interview to remove the conditional basis for permanent resident status, and for other purposes

H.R. 398 would extend the period of time available for certain members of the U.S. Armed Forces and their spouses to complete requirements to gain permanent U.S. residence. This legislation would affect a small number of people, and CBO estimates that it would have no significant effect on the Federal budget. Because the bill could affect direct spending for visa and immigration matters and increase the cost of Federal assistance programs, pay-as-you-go procedures apply; however, we estimate that those costs would be insignificant.

H.R. 398 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of State, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 398 tolls the periods during which alien spouses who have conditional permanent residence and their U.S. citizen or permanent resident spouses must petition for the removal of the conditional status and must attend an interview with DHS during any period in which either spouse is a member of the Armed Forces of the United States and serving abroad in active-duty status.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 398 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Section 1. Tolling Periods of Time to File Petition and Have Interview for Removal of Condition

Subsection (a) of section 1 of the bill modifies section 216 of the Immigration and Nationality Act to provide that the 90-day period for filing a petition to remove the conditional permanent resident status of an alien spouse of a U.S. citizen or permanent resident shall be tolled during any period of time in which the alien spouse or petitioning spouse is a member of the Armed Forces of the United States and serving abroad in an active duty status in the Armed Forces, except that, at the option of the petitioners, the peti-

tion may be filed during such active-duty service at any time after the commencement of such period.

Subsection (a) also provides that the 90-day period for the personal interview with DHS shall be tolled during any period of time in which the alien spouse or petitioning spouse is a member of the Armed Forces of the United States and serving abroad in an active-duty status in the Armed Forces, except that this shall not be construed as to prohibit the Secretary of Homeland Security from waiving the requirement for an interview pursuant to the Secretary's authority.

Subsection (b) of section 1 contains conforming amendments.

Section 2. Compliance with PAYGO

Section 2 of the bill provides that the budgetary effects of the bill, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled "Budgetary Effects of PAYGO Legislation" for the bill, submitted for printing in the Congressional Record by the Chairman of the Committee on the Budget of the House of Representatives provided that such statement has been submitted prior to the vote on passage.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

* * * * *

TITLE II—IMMIGRATION

* * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * *

CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

SEC. 216. (a) IN GENERAL.—

(1) **CONDITIONAL BASIS FOR STATUS.**—Notwithstanding any other provision of this Act, an alien spouse (as defined in subsection [(g)(1)] (h)(1)) and an alien son or daughter (as defined in subsection [(g)(2)] (h)(2)) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

(2) **NOTICE OF REQUIREMENTS.**—

(A) AT TIME OF OBTAINING PERMANENT RESIDENCE.—At the time an alien spouse or alien son or daughter obtains permanent resident status on a conditional basis under paragraph (1), the [Attorney General] *Secretary of Homeland Security* shall provide for notice to such a spouse, son, or daughter respecting the provisions of this section and the requirements of subsection (c)(1) to have the conditional basis of such status removed.

(B) AT TIME OF REQUIRED PETITION.—In addition, the [Attorney General] *Secretary of Homeland Security* shall attempt to provide notice to such a spouse, son, or daughter, at or about the beginning of the 90-day period described in subsection (d)(2)(A), of the requirements of subsections (c)(1).

(C) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the [Attorney General] *Secretary of Homeland Security* to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such a spouse, son, or daughter.

(b) TERMINATION OF STATUS IF FINDING THAT QUALIFYING MARRIAGE IMPROPER.—

(1) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if the [Attorney General] *Secretary of Homeland Security* determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

(A) * * *

* * * * *

the [Attorney General] *Secretary of Homeland Security* shall so notify the parties involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (or aliens) involved as of the date of the determination.

(2) HEARING IN REMOVAL PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the [Attorney General] *Secretary of Homeland Security* to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

(c) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—

(1) IN GENERAL.—In order for the conditional basis established under subsection (a) for an alien spouse or an alien son or daughter to be removed—

(A) the alien spouse and the petitioning spouse (if not deceased) jointly must submit to the [Attorney General] *Secretary of Homeland Security*, during the period described in subsection (d)(2), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1), and

(B) in accordance with subsection (d)(3), the alien spouse and the petitioning spouse (if not deceased) must appear for a personal interview before an officer or employee of

the **【Service】** *Department of Homeland Security* respecting the facts and information described in subsection (d)(1).

(2) TERMINATION OF PERMANENT RESIDENT STATUS FOR FAILURE TO FILE PETITION OR HAVE PERSONAL INTERVIEW.—

(A) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if—

(i) * * *

* * * * *

the **【Attorney General】** *Secretary of Homeland Security* shall terminate the permanent resident status of the alien as of the second anniversary of the alien's lawful admission for permanent residence.

* * * * *

(3) DETERMINATION AFTER PETITION AND INTERVIEW.—

(A) IN GENERAL.—If—

(i) * * *

* * * * *

the **【Attorney General】** *Secretary of Homeland Security* shall make a determination, within 90 days of the date of the interview, as to whether the facts and information described in subsection (d)(1) and alleged in the petition are true with respect to the qualifying marriage.

(B) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the **【Attorney General】** *Secretary of Homeland Security* determines that such facts and information are true, the **【Attorney General】** *Secretary of Homeland Security* shall so notify the parties involved and shall remove the conditional basis of the parties effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(C) TERMINATION IF ADVERSE DETERMINATION.—If the **【Attorney General】** *Secretary of Homeland Security* determines that such facts and information are not true, the **【Attorney General】** *Secretary of Homeland Security* shall so notify the parties involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien spouse or an alien son or daughter as of the date of the determination.

(D) HEARING IN REMOVAL PROCEEDING.—Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the **【Attorney General】** *Secretary of Homeland Security* to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) and alleged in the petition are not true with respect to the qualifying marriage.

(4) HARDSHIP WAIVER.—The **【Attorney General】** *Secretary of Homeland Security*, in the Attorney General's discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that—

(A) * * *

* * * * *

In determining extreme hardship, the [Attorney General] *Secretary of Homeland Security* shall consider circumstances occurring only during the period that the alien was admitted for permanent residence on a conditional basis. In acting on applications under this paragraph, the [Attorney General] *Secretary of Homeland Security* shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Attorney General] *Secretary of Homeland Security*. The [Attorney General] *Secretary of Homeland Security* shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child.

(d) DETAILS OF PETITION AND INTERVIEW.—

(1) * * *

(2) PERIOD FOR FILING PETITION.—

(A) * * *

(B) DATE PETITIONS FOR GOOD CAUSE.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the [Attorney General] *Secretary of Homeland Security* good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) FILING OF PETITIONS DURING REMOVAL.—In the case of an alien who is the subject of removal hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the [Attorney General] *Secretary of Homeland Security* may stay such removal proceedings against an alien pending the filing of the petition under subparagraph (B).

(3) PERSONAL INTERVIEW.—The interview under subsection (c)(1)(B) shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) and at a local office of the [Service] *Department of Homeland Security*, designated by the [Attorney General] *Secretary of Homeland Security*, which is convenient to the parties involved. The [Attorney General] *Secretary of Homeland Security*, in the [Attorney General's] *Secretary's* discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

* * * * *

(g) SERVICE IN ARMED FORCES.—

(1) FILING PETITION.—The 90-day period described in subsection (d)(2)(A) shall be tolled during any period of time in which the alien spouse or petitioning spouse is a member of the Armed Forces of the United States and serving abroad in an active-duty status in the Armed Forces, except that, at the option of the petitioners, the petition may be filed during such active-duty service at any time after the commencement of such 90-day period.

(2) *PERSONAL INTERVIEW.*—The 90-day period described in the first sentence of subsection (d)(3) shall be tolled during any period of time in which the alien spouse or petitioning spouse is a member of the Armed Forces of the United States and serving abroad in an active-duty status in the Armed Forces, except that nothing in this paragraph shall be construed to prohibit the Secretary of Homeland Security from waiving the requirement for an interview under subsection (c)(1)(B) pursuant to the Secretary's authority under the second sentence of subsection (d)(3).

[(g)] (h) **DEFINITIONS.**—In this section:

(1) * * *

* * * * *

