

110TH CONGRESS  
2D SESSION

# S. 3514

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

SEPTEMBER 18 (legislative day, SEPTEMBER 17), 2008

Mr. MENENDEZ 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 “Reuniting Families  
5 Act”.

6 **SEC. 2. RECAPTURE OF IMMIGRANT VISAS LOST TO BU-**  
7 **REAUCRATIC DELAY.**

8 (a) **WORLDWIDE LEVEL OF EMPLOYMENT-BASED**  
9 **IMMIGRANTS.**—Subsection (d) of section 201 of the Immi-

1 gration and Nationality Act (8 U.S.C. 1151) is amended  
2 to read as follows:

3 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED  
4 IMMIGRANTS.—

5 “(1) IN GENERAL.—The worldwide level of em-  
6 ployment-based immigrants under this subsection for  
7 a fiscal year is equal to the sum of—

8 “(A) 140,000; plus

9 “(B) the number computed under para-  
10 graph (2); plus

11 “(C) the number computed under para-  
12 graph (3).

13 “(2) UNUSED VISA NUMBERS FROM PREVIOUS  
14 FISCAL YEAR.—The number computed under this  
15 paragraph for a fiscal year is the difference, if any,  
16 between—

17 “(A) the worldwide level of employment-  
18 based immigrant visas established for the pre-  
19 vious fiscal year; and

20 “(B) the number of visas actually issued  
21 under section 203(b), subject to this subsection,  
22 during the previous fiscal year.

23 “(3) UNUSED VISA NUMBERS FROM FISCAL  
24 YEARS 1992 THROUGH 2007.—The number computed

1 under this paragraph is the difference, if any, be-  
 2 tween—

3 “(A) the difference, if any, between—

4 “(i) the sum of the worldwide levels of  
 5 employment-based immigrant visas estab-  
 6 lished for each of fiscal years 1992  
 7 through 2007; and

8 “(ii) the number of visas actually  
 9 issued under section 203(b), subject to this  
 10 subsection, during such fiscal years; and

11 “(B) the number of unused visas from fis-  
 12 cal years 1992 through 2007 that were issued  
 13 after fiscal year 2007 under section 203(b),  
 14 subject to this subsection.”.

15 (b) WORLDWIDE LEVEL OF FAMILY-SPONSORED IM-  
 16 MIGRANTS.—Subsection (c) of section 201 of the Immigra-  
 17 tion and Nationality Act (8 U.S.C. 1151) is amended to  
 18 read as follows:

19 “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED  
 20 IMMIGRANTS.—

21 “(1) IN GENERAL.—Subject to subparagraph  
 22 (B), the worldwide level of family-sponsored immi-  
 23 grants under this subsection for a fiscal year is  
 24 equal to—

25 “(A) 480,000; plus

1 “(B) the sum of—

2 “(i) the number computed under  
3 paragraph (2); plus

4 “(ii) the number computed under  
5 paragraph (3).

6 “(2) UNUSED VISA NUMBERS FROM PREVIOUS  
7 FISCAL YEAR.—The number computed under this  
8 paragraph for a fiscal year is the difference, if any,  
9 between—

10 “(A) the worldwide level of family-spon-  
11 sored immigrant visas established for the pre-  
12 vious fiscal year; and

13 “(B) the number of visas actually issued  
14 under section 203(a), subject to this subsection,  
15 during the previous fiscal year.

16 “(3) UNUSED VISA NUMBERS FROM FISCAL  
17 YEARS 1992 THROUGH 2007.—The number computed  
18 under this paragraph is the difference, if any, be-  
19 tween—

20 “(A) the difference, if any, between—

21 “(i) the sum of the worldwide levels of  
22 family-sponsored immigrant visas estab-  
23 lished for fiscal years 1992 through 2007;  
24 and

1           “(ii) the number of visas actually  
2           issued under section 203(a), subject to this  
3           subsection, during such fiscal years; and

4           “(B) the number of unused visas from fis-  
5           cal years 1992 through 2007 that were issued  
6           after fiscal year 2007 under section 203(a),  
7           subject to this subsection.”.

8           (c) EFFECTIVE DATE.—The amendments made by  
9           this section shall take effect 60 days after the date of the  
10          enactment of this Act.

11       **SEC. 3. RECLASSIFICATION OF SPOUSES AND MINOR CHIL-**  
12                               **DREN OF LEGAL PERMANENT RESIDENTS AS**  
13                               **IMMEDIATE RELATIVES.**

14          (a) IN GENERAL.—Paragraph (2) of section 201(b)  
15          of the Immigration and Nationality Act (8 U.S.C.  
16          1151(b)) is amended to read as follows:

17               “(2) IMMEDIATE RELATIVE.—

18                       “(A) IN GENERAL.—

19                               “(i) IMMEDIATE RELATIVE DE-  
20                               FINED.—In this subparagraph, the term  
21                               ‘immediate relative’ means a child, spouse,  
22                               or parent of a citizen of the United States  
23                               or a child or spouse of a lawful permanent  
24                               resident (and for each family member of a  
25                               citizen or lawful permanent resident speci-

1           fied under this subparagraph, such individ-  
2           ual's spouse or child who is accompanying  
3           or following to join the individual), except  
4           that, in the case of parents, such citizens  
5           shall be at least 21 years of age.

6           “(ii) PREVIOUSLY ISSUED VISA.—  
7           Aliens admitted under section 211(a) on  
8           the basis of a prior issuance of a visa  
9           under section 203(a) to their accom-  
10          panying parent who is an immediate rel-  
11          ative.

12          “(iii) SPOUSE.—An alien who was the  
13          spouse of a citizen of the United States or  
14          lawful permanent resident for not less than  
15          2 years at the time of the citizen's or resi-  
16          dent's death or, if married for less than 2  
17          years at the time of the citizen's or resi-  
18          dent's death, proves by a preponderance of  
19          the evidence that the marriage was entered  
20          into in good faith and not solely for the  
21          purpose of obtaining an immigration ben-  
22          efit and was not legally separated from the  
23          citizen or resident at the time of the citi-  
24          zen's or resident's death, and each child of  
25          such alien, shall be considered, for pur-

1 poses of this subsection, an immediate rel-  
2 ative after the date of the citizen's or resi-  
3 dent's death if the spouse files a petition  
4 under section 204(a)(1)(A)(ii) before the  
5 earlier of—

6 “(I) 2 years after such date; or

7 “(II) the date on which the  
8 spouse remarries.

9 “(iv) PARENTS AND CHILDREN.—An  
10 alien who was the child or parent of a cit-  
11 izen of the United States or a child of a  
12 lawful permanent resident at the time of  
13 the citizen's or resident's death if the alien  
14 files a petition under 204(a)(1)(A)(ii) with-  
15 in 2 years after such date or prior to  
16 reaching 21 years of age.

17 “(v) SPECIAL RULE.—For purposes of  
18 this subparagraph, an alien who has filed  
19 a petition under clause (iii) or (iv) of sec-  
20 tion 204(a)(1)(A) remains an immediate  
21 relative if the United States citizen or law-  
22 ful permanent resident spouse or parent  
23 loses United States citizenship or residence  
24 on account of the abuse.

1           “(B) BIRTH DURING TEMPORARY VISIT  
2           ABROAD.—Aliens born to an alien lawfully ad-  
3           mitted for permanent residence during a tem-  
4           porary visit abroad.”.

5           (b) ALLOCATION OF IMMIGRANT VISAS.—Subsection  
6 (a) of section 203 of the Immigration and Nationality Act  
7 (8 U.S.C. 1153) is amended—

8           (1) in paragraph (1), by striking “23,400” and  
9           inserting “38,000”;

10          (2) by striking paragraph (2) and inserting the  
11          following:

12           “(2) UNMARRIED SONS AND UNMARRIED  
13          DAUGHTERS OF PERMANENT RESIDENT ALIENS.—  
14          Qualified immigrants who are the unmarried sons or  
15          unmarried daughters (but are not the children) of  
16          an alien lawfully admitted for permanent residence  
17          shall be allocated visas in a number not to exceed  
18          60,000, plus any visas not required for the class  
19          specified in paragraph (1).”;

20          (3) in paragraph (3), by striking “23,400” and  
21          inserting “38,000”; and

22          (4) in paragraph (4), by striking “65,000” and  
23          inserting “90,000”.

24          (c) TECHNICAL AND CONFORMING AMENDMENTS.—



1           (1) RULES FOR DETERMINING WHETHER CER-  
2 TAIN ALIENS ARE IMMEDIATE RELATIVES.—Sub-  
3 section (f) of section 201 of the Immigration and  
4 Nationality Act (8 U.S.C. 1151) is amended—

5           (A) in paragraph (1), by striking “para-  
6 graphs (2) and (3),” and inserting “paragraph  
7 (2),”;

8           (B) by striking paragraph (2);

9           (C) by redesignating paragraphs (3) and  
10 (4) as paragraphs (2) and (3), respectively; and

11           (D) in paragraph (3), as redesignated by  
12 subparagraph (C), by striking “through (3)”  
13 and inserting “and (2)”.

14           (2) NUMERICAL LIMITATION TO ANY SINGLE  
15 FOREIGN STATE.—Section 202 of the Immigration  
16 and Nationality Act (8 U.S.C. 1152) is amended—

17           (A) in paragraph (4) of subsection (a)—

18           (i) by striking subparagraphs (A) and

19           (B);

20           (ii) by redesignating subparagraphs  
21 (C) and (D) as subparagraphs (A) and  
22 (B), respectively; and

23           (iii) in subparagraph (A), as redesign-  
24 nated by clause (ii), by striking “section

1           203(a)(2)(B)” and inserting “section  
2           203(a)(2)”;

3           (B) in subsection (e), in the flush matter  
4 following paragraph (3), by striking “, or as  
5 limiting the number of visas that may be issued  
6 under section 203(a)(2)(A) pursuant to sub-  
7 section (a)(4)(A)”.

8           (3) ALLOCATION OF IMMIGRATION VISAS.—Sub-  
9 section (h) of section 203 of the Immigration and  
10 Nationality Act (8 U.S.C. 1153) is amended—

11           (A) in paragraph (1)—

12           (i) in the matter preceding subpara-  
13 graph (A), by striking “subsections  
14 (a)(2)(A) and (d)” and inserting “sub-  
15 section (d)”;

16           (ii) in subparagraph (A), by striking  
17 “becomes available for such alien (or, in  
18 the case of subsection (d), the date on  
19 which an immigrant visa number became  
20 available for the alien’s parent),” and in-  
21 serting “became available for the alien’s  
22 parent,”; and

23           (iii) in subparagraph (B), by striking  
24 “applicable”;

1 (B) in paragraph (2), by striking “The pe-  
2 tition” and all that follows through the end and  
3 inserting “The petition described in this para-  
4 graph is a petition filed under section 204 for  
5 classification of the alien’s parent under sub-  
6 section (a), (b), or (c).”; and

7 (C) in paragraph (3), by striking “sub-  
8 sections (a)(2)(A) and (d)” and inserting “sub-  
9 section (d)”.

10 (4) PROCEDURE FOR GRANTING IMMIGRANT  
11 STATUS.—Section 204 of the Immigration and Na-  
12 tionality Act (8 U.S.C. 1154) is amended—

13 (A) in subsection (a)(1)—

14 (i) in subparagraph (A)—

15 (I) in clause (i), by inserting “or  
16 lawful permanent resident” after  
17 “United States”;

18 (II) in clause (ii), by striking  
19 “described in the second sentence of  
20 section 201(b)(2)(A)(i) also” and in-  
21 serting “or an alien child or alien par-  
22 ent described in section  
23 201(b)(2)(A)”;

24 (III) in clause (iii)—

1 (aa) in item (aa) of sub-  
 2 clause (I), by inserting “or legal  
 3 permanent resident” after “cit-  
 4 izen”; and

5 (bb) in subclause (II)—

6 (AA) in item (aa)(AA)  
 7 and item (aa)(BB), by in-  
 8 serting “or legal permanent  
 9 resident;” after “States”  
 10 each place that term ap-  
 11 pears;

12 (BB) in item (aa)(CC),  
 13 by inserting “or legal per-  
 14 manent resident” after “cit-  
 15 izen”;

16 (CC) in item  
 17 (aa)(CC)(bbb), by inserting  
 18 “or legal permanent resi-  
 19 dent” after “citizenship”;  
 20 and

21 (DD) in item  
 22 (aa)(CC)(ccc), by inserting  
 23 “or legal permanent resi-  
 24 dent” after “citizen”;

25 (IV) in clause (iv)—

1 (aa) by striking “States,”  
2 and inserting “States or legal  
3 permanent resident,”;

4 (bb) by inserting “or legal  
5 permanent resident” after  
6 “United States citizen”;

7 (cc) by inserting “or resi-  
8 dent” after “the citizen”; and

9 (dd) by inserting “or resi-  
10 dent” after the “alien’s citizen”;

11 (V) in subclause (I) of clause (v),  
12 by inserting “or legal permanent resi-  
13 dent” after “citizen”; and

14 (VI) in clause (vi)—

15 (aa) by inserting “or legal  
16 permanent resident status” after  
17 “renunciation of citizenship”;  
18 and

19 (bb) by inserting “or legal  
20 permanent resident” after “abus-  
21 er’s citizenship”;

22 (ii) by striking subparagraph (B);

23 (iii) in subparagraph (C), by striking  
24 “subparagraph (A)(iii), (A)(iv), (B)(ii), or

1 (B)(iii)” and inserting “clause (iii) or (iv)  
2 of subparagraph (A)”;

3 (iv) in subparagraph (J), by striking  
4 “or clause (ii) or (iii) of subparagraph  
5 (B)”;

6 (B) by striking paragraph (2) of sub-  
7 section (a);

8 (C) in paragraph (1) of subsection (e), by  
9 striking “or preference status”; and

10 (D) in subsection (h), by striking “or a pe-  
11 tition filed under subsection (a)(1)(B)(ii)”.

12 **SEC. 4. COUNTRY LIMITS.**

13 Paragraph (2) of section 202(a) of the Immigration  
14 and Nationality Act (8 U.S.C. 1152(a)) is amended by  
15 striking “7 percent (in the case of a single foreign state)  
16 or 2 percent” and inserting “10 percent (in the case of  
17 a single foreign state) or 5 percent”.

18 **SEC. 5. FAMILY UNITY.**

19 (a) EXCEPTION TO PROHIBITION ON UNLAWFUL  
20 PRESENCE FOR MINORS.—Clause (iii) of section  
21 212(a)(9)(B) of the Immigration and Nationality Act (8  
22 U.S.C. 1182(a)(9)(B)) is amended—

23 (1) in subclause (I), by striking “18” and in-  
24 serting “21”;

1           (2) by indenting subclause (V) 8 ems from the  
2 left margin; and

3           (3) by adding at the end the following:

4                           “(VI) Clause (i) shall not apply  
5 to an alien for whom an immigrant  
6 visa is available or was available on or  
7 prior to the date of enactment of the  
8 Reuniting Families Act, and is other-  
9 wise admissible to the United States  
10 for permanent residence.”.

11           (b) WAIVER OF PROHIBITION ON UNLAWFUL PRES-  
12 ENCE FOR CHILDREN OF CITIZENS AND RESIDENTS.—  
13 Clause (v) of section 212(a)(9)(B) of the Immigration and  
14 Nationality Act (8 U.S.C. 1182(a)(9)(B)) is amended—

15                   (1) by striking “spouse or son or daughter” and  
16 inserting “spouse, son, daughter, or parent”;

17                   (2) by striking “extreme”;

18                   (3) by inserting “, son, daughter, or” after  
19 “lawfully resident spouse”; and

20                   (4) by striking “alien.” and inserting “alien or,  
21 if the Attorney General determines that a waiver is  
22 necessary for humanitarian purposes, to ensure fam-  
23 ily unity or is otherwise in the public interest.”.

24           (c) EXCEPTIONS TO PROHIBITION ON UNLAWFUL  
25 PRESENCE AFTER PREVIOUS IMMIGRATION VIOLA-

1 TION.—Clause (ii) of section 212(a)(9)(C) of the Immigra-  
 2 tion and Nationality Act (8 U.S.C. 212(a)(9)(C)) is  
 3 amended to read as follows:

4 “(ii) EXCEPTIONS.—Clause (i) shall  
 5 not apply to an alien—

6 “(I) seeking admission more than  
 7 10 years after the date of the alien’s  
 8 last departure from the United States  
 9 if, prior to the alien’s reembarkation  
 10 at a place outside the United States  
 11 or attempt to be readmitted from a  
 12 foreign contiguous territory, the Sec-  
 13 retary of Homeland Security has con-  
 14 sented to the alien’s reapplying for  
 15 admission; or

16 “(II) for whom an immigrant  
 17 visa is available or was available on or  
 18 prior to the date of enactment of the  
 19 Reuniting Families Act, and is other-  
 20 wise admissible to the United States  
 21 for permanent residence.”.

22 **SEC. 6. RELIEF FOR ORPHANS AND SPOUSES.**

23 (a) IN GENERAL.—

24 (1) SPECIAL RULE FOR ORPHANS AND  
 25 SPOUSES.—In applying clauses (iii) and (iv) of sec-



1 tion 201(b)(2)(A) of the Immigration and Nation-  
2 ality Act, as added by section 3(a), to an alien whose  
3 citizen or lawful permanent resident relative died be-  
4 fore the date of the enactment of this Act, the alien  
5 relative may (notwithstanding the deadlines specified  
6 in either such clause) file the classification petition  
7 under clause (ii) of section 204(a)(1)(A) of such Act,  
8 as amended by section 3(c)(4)(A)(i)(II), not later  
9 than 2 years after the date of the enactment of this  
10 Act.

11 (2) ELIGIBILITY FOR PAROLE.—If an alien was  
12 excluded, deported, removed, or departed voluntarily  
13 before the date of the enactment of this Act based  
14 solely upon the alien’s lack of classification as an  
15 immediate relative (as defined in clause (ii) of sec-  
16 tion 201(b)(2)(A) of the Immigration and Nation-  
17 ality Act, as amended by section 3(a)) due to the  
18 death of such citizen or resident—

19 (A) such alien shall be eligible for parole  
20 into the United States pursuant to the Attorney  
21 General’s discretionary authority under section  
22 212(d)(5) of such Act (8 U.S.C. 1182(d)(5));  
23 and

24 (B) such alien’s application for adjustment  
25 of status shall be considered notwithstanding

1 section 212(a)(9) of such Act (8 U.S.C.  
2 1182(a)(9)).

3 (b) ADJUSTMENT OF STATUS.—Section 245 of the  
4 Immigration and Nationality Act (8 U.S.C. 1255) is  
5 amended by adding at the end the following:

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

8 “(1) IN GENERAL.—Any alien described in  
9 paragraph (2) who applies for adjustment of status  
10 before the death of the qualifying relative, may have  
11 such application adjudicated as if such death had  
12 not occurred.

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

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

17 “(B) is a family-sponsored immigrant (as  
18 described in subsection (a) or (d) of section  
19 203); or

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

23 (c) TRANSITION PERIOD.—

24 (1) IN GENERAL.—Notwithstanding a denial of  
25 an application for adjustment of status for an alien

1 whose qualifying relative died before the date of the  
2 enactment of this Act, such application may be re-  
3 newed by the alien through a motion to reopen,  
4 without fee, if such motion is filed not later than 2  
5 years after such date of enactment.

6 (2) ELIGIBILITY FOR PAROLE.—If an alien de-  
7 scribed in section 245(n)(2), as amended by sub-  
8 section (b), was excluded, deported, removed or de-  
9 parted voluntarily before the date of the enactment  
10 of this Act—

11 (A) such alien shall be eligible for parole  
12 into the United States pursuant to the Attorney  
13 General’s discretionary authority under section  
14 212(d)(5) of the Immigration and Nationality  
15 Act (8 U.S.C. 1182(d)(5)); and

16 (B) such alien’s application for adjustment  
17 of status shall be considered notwithstanding  
18 section 212(a)(9) of such Act (8 U.S.C.  
19 1182(a)(9)).

20 (d) PROCESSING OF IMMIGRANT VISAS AND DERIVA-  
21 TIVE PETITIONS.—

22 (1) IN GENERAL.—Subsection (b) of section  
23 204 of the Immigration and Nationality Act (8  
24 U.S.C. 1154) is amended—

1 (A) by striking “After an investigation”  
2 and inserting the following:

3 “(1) IN GENERAL.—After an investigation”;

4 and

5 (B) by adding at the end the following:

6 “(2) DEATH OF QUALIFYING RELATIVE.—

7 “(A) IN GENERAL.—Any alien described in  
8 paragraph (2) whose qualifying relative died be-  
9 fore the completion of immigrant visa proc-  
10 essing may have an immigrant visa application  
11 adjudicated as if such death had not occurred.  
12 An immigrant visa issued before the death of  
13 the qualifying relative shall remain valid after  
14 such death.

15 “(B) ALIEN DESCRIBED.—An alien de-  
16 scribed in this paragraph is an alien who—

17 “(i) is an immediate relative, as de-  
18 scribed in section 201(b)(2)(A);

19 “(ii) is a family-sponsored immigrant,  
20 as described in subsection (a) or (d) of sec-  
21 tion 203;

22 “(iii) is a derivative beneficiary of an  
23 employment-based immigrant under section  
24 203(b), as described in section 203(d); or

1                   “(iv) is the spouse or child of a ref-  
2                   ugee, as described in section 207(c)(2) or  
3                   an asylee, as described in section  
4                   208(b)(3).”.

5                   (2) TRANSITION PERIOD.—

6                   (A) IN GENERAL.—Notwithstanding a de-  
7                   nial or revocation of an application for an immi-  
8                   grant visa for an alien whose qualifying relative  
9                   died before the date of the enactment of this  
10                  Act, such application may be renewed by the  
11                  alien through a motion to reopen, without fee,  
12                  if such motion is filed not later than 2 years  
13                  after such date of enactment.

14                  (B) INAPPLICABILITY OF BARS TO  
15                  ENTRY.—In the case of an alien who was ex-  
16                  cluded, deported, removed, or departed volun-  
17                  tarily before the date of the enactment of this  
18                  Act, such alien’s application for an immigrant  
19                  visa shall be considered notwithstanding section  
20                  212(a)(9) of the Immigration and Nationality  
21                  Act (8 U.S.C. 1182(a)(9)).

22                  (e) NATURALIZATION.—Subsection (a) of section 319  
23                  of the Immigration and Nationality Act (8 U.S.C. 1430)  
24                  is amended by inserting “(or, if the spouse is deceased,

1 the spouse was a citizen of the United States)” after “cit-  
2 izen of the United States”.

3 **SEC. 7. EXEMPTION FROM IMMIGRANT VISA LIMIT FOR**  
4 **CERTAIN VETERANS WHO ARE NATIVES OF**  
5 **PHILIPPINES.**

6 Paragraph (1) of section 201(b) of the Immigration  
7 and Nationality Act (8 U.S.C. 1151(b)) is amended by  
8 adding at the end the following:

9 “(F) Aliens who are eligible for an immigrant  
10 visa under paragraph (1) or (3) of section 203(a)  
11 and who have a parent who was naturalized pursu-  
12 ant to section 405 of the Immigration Act of 1990  
13 (8 U.S.C. 1440 note).”.

○