



JUSTICE FOR
IMMIGRANTS

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DREAM ACT OVERVIEW

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BACKGROUND

On December 8, 2010, the House of Representatives passed by a vote of 216-198 the Amendments to H.R. 5281, which embodied the newest House version of the Development, Relief, and Education for Alien Minors Act of 2010 (DREAM Act of 2010), H.R. 6497.

This House version of the Act may come before the Senate in the coming week or two. This development follows on the heels of a series of dramatic procedural events in the Senate, in which Senate Majority Leader Harry Reid (D-NV) first filed on December 7, 2010 a motion for cloture on the Senate version of the DREAM Act, S.3992, only to then file on December 9, 2010 a motion to table consideration of S.3992, following the House passage of the Act and in the face of Senate Republicans' opposition to any legislative action until the Senate has cleared a tax bill. Moving forward, if Act supporters in the Senate were to achieve a 60-Senator affirmative vote on a motion for cloture on the House version of the bill, thus shutting down further debate, they could hold a vote on the substance of the bill thereafter. If the House bill passes the Senate without amendment, it would be sent directly to the President for his signature.

The newly-passed House Amendments to H.R. 5281 authorize the cancellation of removal and adjustment of status of certain alien students who are long-term U.S. residents who entered the U.S. as children and meet the criteria set forth in the Act and which are analyzed below.

In a December 8, 2010 analysis of the House bill, which can be found at <http://www.cbo.gov/ftpdocs/120xx/doc12015/hr6497.pdf>, the Congressional Budget Office (CBO) and Joint Committee on Taxation (JCT) estimated that enacting the bill would increase revenues by \$1.7 billion over ten years and reduce deficits by about \$2.2 billion over the 2011-2020 period.

ANALYSIS

Cancellation of Removal and Grant of Conditional Nonimmigrant Status

The Act authorizes DHS to cancel the removal of and grant conditional nonimmigrant status to a qualified alien if the alien demonstrates by a preponderance of the evidence that s/he: (1) has been physically present in the U.S. for a continuous period of not less than 5 years immediately preceding the date of the Act's enactment ; (2) was younger than 16 at the time of initial entry into the U.S.; (3) has been a person of good moral character since the time of entry into the U.S.; (4) is not otherwise subject to select Immigration and Nationality Act (INA) section



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212(a) grounds of inadmissibility or section 237(a) grounds of deportability; (5) has not participated in the persecution of others; (6) has not been convicted of one felony offense or three misdemeanors; (7) has been admitted to a U.S. institution of higher education or has earned a high school diploma or GED in the U.S.; (8) has never been under a final administrative or judicial order of exclusion, deportation, or removal, unless the alien has been allowed under law to remain in the U.S. after such order was issued or received the order before turning 16; and (9) was younger than 30 years of age on the date of the enactment of this Act.

- **Period of Conditional Nonimmigrant Status:** The Act creates two five-year periods of conditional non-immigrant status, requiring aliens to apply for an extension of their conditional nonimmigrant status after the first five-year period has elapsed.
- **Extension of Initial 5-Year Nonimmigrant Status:** DHS may extend for an additional five years the initial five year period of conditional nonimmigrant status provided that the alien has: (1) met the education or military service requirements of the Act by the end of the initial five-year period of nonimmigrant conditional status ; has demonstrated good moral character during the entire initial five year period of conditional nonimmigrant status; is not otherwise subject to select INA section 212(a) grounds of inadmissibility or section 237(a) grounds of deportability; and has not abandoned residence in the U.S.
- **Eligibility for Work Authorization and Foreign Travel during Conditional Status:** The Act provides that aliens granted conditional nonimmigrant status be eligible for work authorization. The Act further provides that aliens granted conditional nonimmigrant status be permitted to travel outside the U.S. without a visa if carrying evidence of status as a conditional nonimmigrant and if not absent for more than 180 days.
- **Procedure for Application:** The Act authorizes DHS to create a procedure so that eligible aliens may apply affirmatively for relief without having to first be placed in removal proceedings. The Act sets no numerical limitations to the number of eligible aliens who may seek relief.
- **Surcharges Levied against Applicants:** In addition to the regular application processing and adjudication fees, H.R. 6497 adds two surcharges: 1) a \$525 surcharge to the initial conditional non immigrant status application; 2) a second surcharge of \$2000 when the individual applies for the extension of their conditional nonimmigrant status for the second five-year period.
- **Deadline for Application:** Per the Act, eligible aliens must apply for cancellation of removal and conditional nonimmigrant status no later than one (1) year after the later of the date of the alien's admission to an institution of higher education, the date the alien earned a high school diploma or obtained a GED OR within one (1) year after the effective date of the interim regulations.
- **Background and Medical Examination Checks:** The Act requires all applicants to submit biometric data to DHS and to submit to background checks and medical observation and examinations to determine eligibility.



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applicable.

- **Preclusion of Removal of Conditional Nonimmigrant:** Per the Act, DHS may not remove any alien who (1) has a pending application for conditional nonimmigrant status under the Act and (2) can establish prima facie eligibility for cancellation of removal and conditional nonimmigrant status.
- **Conditional Nonimmigrant Status is Just That- Conditional:** Should the alien at any time during their conditional nonimmigrant status become ineligible for conditional nonimmigrant status, receive a dishonorable or other than honorable discharge from the Armed Forces, or become a public charge, DHS may cancel the alien's status and return that alien to their prior (undocumented) status.
- **Treatment of Conditional Nonimmigrants as Lawfully Present Except for Purposes of Eligibility for Health Care:** Conditional Nonimmigrants must be treated as lawfully present except for the purposes of (1) section 36B of the Internal Revenue Code of 1986 (concerning premium tax credits), as added by section 1401 of the Patient Protection and Affordable Care Act (Public Law 111-148); and (2) section 1402 of the Patient Protection and Affordable Care Act (concerning reduced cost sharing; 42 U.S.C. 18071). For purposes of the 5 year eligibility waiting period under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 181613), an individual who has met the requirements for adjustment from conditional nonimmigrant status to lawful permanent resident status shall be considered, as of the date of adjustment, to have completed the 5-year period.

Stay of Removal for Certain Aliens Enrolled in Primary or Secondary School

- The Act also requires that the Attorney General stay the removal of certain aliens enrolled in primary or secondary school and are otherwise eligible for Cancellation of Removal under the Act.

Under the Act, the Attorney General must stay the removal of certain aliens provided that they are: (1) able to meet the requirements under the Act for Cancellation of Removal; (2) at least 12 years of age; and (3) enrolled full time in a primary or secondary school. Such aliens may be eligible for work authorization in compliance with Federal, state and local laws governing minimum age for employment. The Attorney General must lift this stay of removal if the alien is no longer enrolled in school or becomes ineligible for Cancellation of Removal. For children who meet these requirements but are not in removal proceedings, the Act directs DHS not to commence removal proceedings against them.

Adjustment of Status to Lawful Permanent Resident those Aliens who have been in Conditional Nonimmigrant Status for 10 Years

- The Act authorizes DHS to adjust the status of eligible conditional nonimmigrants under the Act. An applicant for adjustment of status under the Act must provide evidence of that s/he: (1) is of good moral character during the entire 10 year period as a conditional nonimmigrant; (2) is not otherwise



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subject to select Immigration and Nationality Act (INA) section 212(a) grounds of inadmissibility or section 237(a)

- Selective Service Registration: The Act requires applicants to register for selective service if grounds of deportability; (3) has not abandoned residence in the U.S. (residence is abandoned if out of the country for an aggregate of 730 days during the 10 year period of conditional nonimmigrant status); (4) has earned a degree from a U.S. institution of higher education or has Adjustment of Status to Lawful Permanent Resident those Aliens who have been in Conditional Nonimmigrant Status for 10 Years
- The Act authorizes DHS to adjust the status of eligible conditional nonimmigrants under the Act.

An applicant for adjustment of status under the Act must provide evidence of that s/he: (1) is of good moral character during the entire 10 year period as a conditional nonimmigrant; (2) is not otherwise subject to select Immigration and Nationality Act (INA) section 212(a) grounds of inadmissibility or section 237(a) grounds of deportability; (3) has not abandoned residence in the U.S. (residence is abandoned if out of the country for an aggregate of 730 days during the 10 year period of conditional nonimmigrant status); (4) has earned a degree from a U.S. institution of higher education or has completed at least 2 years, in good standing, in a program for a bachelor's degree or higher degree in the U.S. OR has served in the Armed Forces for at least 2 years; (5) demonstrates ability to satisfy English language and civics requirements for U.S. citizenship as articulated in INA section 312(a), including ability to read, write, and speak English and knowledge of U.S. history and government; and (6) has paid any back due Federal taxes by the date of the application for adjustment of status.

- Application Deadline: The Act provides that aliens must file their application for adjustment of status during the period beginning one (1) year before and ending on either the date that is 10 years after the date of the initial grant of conditional nonimmigrant status or any other expiration date of the conditional status. The Act sets no numerical limitations to the number of eligible aliens who may adjust status.
- Background Checks: Applicants must submit biometric and biographic data and undergo background checks.

Eligibility to Apply for Naturalization after 10 Years as Conditional Nonimmigrant and 3 Years as Lawful Permanent Resident

- The Act authorizes naturalization of eligible LPRs.

Aliens whose status is adjusted to Lawful Permanent Residents (LPR) may apply for naturalization after three (3) years as an LPR provided that the applicant has resided continuously in the U.S. for at least three (3) years as an LPR and has been physically present in the U.S. for periods totaling at least half of that time



and has resided in the State or district of USCIS in which the applicant filed the application for at least three (3) months. Thus, an alien who is granted cancellation of removal and conditional nonimmigrant status and is then granted adjustment of status to LPR must wait a total of 13 years prior to applying for naturalization.

Retroactive Nature of Act

The Act provides that applicants who have met the educational or military requirements as of the date of the bill's enactment are eligible to apply for conditional nonimmigrant status and adjustment of status.

Higher Education Assistance Provision

The Act provides that aliens granted conditional nonimmigrant status and/or adjustment of status under the Act are eligible only for select student loan and work study opportunities. They are ineligible for Federal Stafford loans.