LEGAL momentum
Advancing Women's Rights

NICARAGUAN ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT WITH VIOLENCE AGAINST WOMEN ACT 2000 AND 2005 AMENDMENTS[1]

VAWA 2000 changes are *underlined and italics;* ~~with deletions.~~
VAWA 2005 amendments are **underlined and bold,** ~~with deletions~~

SEC. 201. SHORT TITLE- This title may be cited as the `Nicaraguan Adjustment and Central American Relief Act'.

SEC. 202. ADJUSTMENT OF STATUS OF CERTAIN NICARAGUANS AND CUBANS. (a) ADJUSTMENT OF STATUS-

(1) IN GENERAL- Notwithstanding section 245(c) of the Immigration and Nationality Act, the status of any alien described in subsection (b) shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if the alien--

(A) applies for such adjustment before April 1, 2000; and

(B) is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), and (7)(A) of section 212(a) of the Immigration and Nationality Act shall not apply.

(2) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS- An alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1). Such an alien may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate such order. If the Attorney General grants the application, the Attorney General shall cancel the order. If the Attorney General renders a final administrative decision to deny the application, the order shall be effective and enforceable to the same extent as if the application had not been made.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS-

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(1) IN GENERAL- The benefits provided by subsection (a) shall apply to any alien who is a national of
Nicaragua or Cuba and who has been physically present in the United States for a continuous period, beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment under such subsection is filed, except an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence, or absences, from the United States for any periods in the aggregate not exceeding 180 days.

(2) PROOF OF COMMENCEMENT OF CONTINUOUS PRESENCE- For purposes of establishing that the period of continuous physical presence referred to in paragraph (1) commenced not later than December 1, 1995,

an alien--

(A) shall demonstrate that the alien, prior to December 1, 1995--

(i) applied to the Attorney General for asylum;

(ii) was issued an order to show cause under section 242 or 242B of the Immigration and Nationality Act (as in effect prior to April 1, 1997);

(iii) was placed in exclusion proceedings under section 236 of such Act (as so in effect);

(iv) applied for adjustment of status under section 245 of such Act;

(v) applied to the Attorney General for employment authorization;

(vi) performed service, or engaged in a trade or business, within the United States which is
evidenced by records maintained by the Commissioner of Social Security; or

(vii) applied for any other benefit under the Immigration and Nationality Act by means of an application establishing the alien's presence in the United States prior to December 1, 1995; or

(B) shall make such other demonstration of physical presence as the Attorney General may provide for by regulation.

(c) STAY OF REMOVAL; WORK AUTHORIZATION-

(1) IN GENERAL- The Attorney General shall provide by regulation for an alien subject to a final order of deportation or removal to seek a stay of such order based on the filing of an application under subsection (a).

(2) DURING CERTAIN PROCEEDINGS- Notwithstanding any provision of the Immigration and Nationality Act, the Attorney General shall not order any alien to be removed from the United States, if the alien is in exclusion, deportation, or removal proceedings under any provision of such Act and has applied for adjustment of status

under subsection (a), except where the Attorney General has rendered a final administrative determination to deny the application.

(3) WORK AUTHORIZATION- The Attorney General may authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application and may provide the alien with an `employment authorized' endorsement or other appropriate document signifying authorization of employment, except that if such application is pending for a period exceeding 180 days, and has not been denied, the Attorney General shall authorize such employment.

(d) ADJUSTMENT OF STATUS FOR SPOUSES AND CHILDREN-

(1) IN GENERAL- Notwithstanding section 245(c) of the Immigration and Nationality Act, the status of an alien shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if--

(A) the alien is a national of Nicaragua or Cuba;

(B) *the alien –*

(i) is the spouse, child, or unmarried son or daughter of an alien whose status is adjusted **or was eligible for adjustment** to that of an alien lawfully admitted for permanent residence under subsection (a)*,* except that in the case of such an unmarried son or daughter, the son or daughter shall be required to establish that ~~they have~~ *the son or daughter has* been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date on which the application for adjustment under this subsection is filed*; or*

(ii) was, at the time at which an alien filed for adjustment under subsection (a), the spouse or child of an alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under subsection (a), and the spouse, child, or child of the spouse has been battered or subjected to extreme cruelty by the alien that filed for adjustment under subsection (a);

(C) the alien applies for such adjustment and is physically present in the United States on the date the application is filed;

(D) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for exclusion specified in paragraphs (4), (5), (6)(A), and (7)(A) of section 212(a) of the Immigration and Nationality Act shall not apply; and

(E) applies for such adjustment before April 1, 2000, **or, in the case of an alien who qualifies under subparagraph (B)(ii), applies for such adjustment during the 18-**

month period beginning on the date of enactment of the Violence Against Women and Department of Justice Reauthorization Act of 2005.

(2) PROOF OF CONTINUOUS PRESENCE- For purposes of establishing the period of continuous physical presence referred to in paragraph (1)(B), an alien--

(A) shall demonstrate that such period commenced not later than December 1, 1995, in a manner consistent with subsection (b)(2); and

(B) shall not be considered to have failed to maintain continuous physical presence by reason of an absence, or absences, from the United States for any period in the aggregate not exceeding 180 days.

(*3) PROCEDURE* – *In acting on an application under this section with respect to a spouse or child who has been battered or subjected to extreme cruelty, the Attorney General shall apply section ~~204(a)(1)(H).~~* 204(a)(1)(J). [2]

(e) AVAILABILITY OF ADMINISTRATIVE REVIEW- The Attorney General shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to--

(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act; or

(2) aliens subject to removal proceedings under section 240 of such Act.

(f) LIMITATION ON JUDICIAL REVIEW- A determination by the Attorney General as to whether the status of any alien should be adjusted under this section is final and shall not be subject to review by any court.

(g) NO OFFSET IN NUMBER OF VISAS AVAILABLE- When an alien is granted the status of having been lawfully

[2] Of the INA, saying that "In acting on petitions filed under clause (iii)-(if the alien entered or intended to enter into marriage in good faith with a citizen and during the relationship the alien or child of alien has been battered or the subject of extreme cruelty perpetrated by the spouse or intended spouse) or (iv)-(the alien child who lives with the citizen or former citizen parent who lost status due to domestic violence and is the subject of battery or extreme cruelty) of subparagraph (A) or clause (ii)- (if the alien entered or wanted to enter into marriage in good faith with a Legal Permanent Resident and during the relationship the alien or child of alien has been battered or the subject of extreme cruelty perpetrated by the spouse or intended spouse) or clause (iii)-)-(the alien child who lives with the LPR or former LPR parent who lost status due to domestic violence and is the subject of battery or extreme cruelty) of subparagraph (B) "the Attorney General shall consider any credible evidence relevant to the petition. 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."

admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under any provision of the Immigration and Nationality Act.

(h) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS- Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. Nothing contained in this section shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

SEC. 203. MODIFICATION OF CERTAIN TRANSITION RULES.

(a) TRANSITIONAL RULES WITH REGARD TO SUSPENSION OF DEPORTATION-

(1) IN GENERAL- Section 309(c)(5) of the Illegal Immigration Reform and Immigrant Responsibility Act of
1996 (Public Law 104-208; division C; 110 Stat. 3009-627) is amended to read as follows:

`(5) TRANSITIONAL RULES WITH REGARD TO SUSPENSION OF DEPORTATION-

`(A) IN GENERAL- Subject to subparagraphs (B) and (C), paragraphs (1) and (2) of section 240A(d) of the Immigration and Nationality Act (relating to continuous residence or physical presence) shall apply to orders to show cause (including those referred to in section 242B(a)(1) of the Immigration and Nationality Act, as in effect before the title III-A effective date), issued before, on, or after the date of the enactment of this Act.

`(B) EXCEPTION FOR CERTAIN ORDERS- In any case in which the Attorney General elects to terminate and reinitiate proceedings in accordance with paragraph (3) of this subsection, paragraphs (1) and (2) of section 240A(d) of the Immigration and Nationality Act shall not apply to an order to show cause issued before April 1, 1997.

`(C) SPECIAL RULE FOR CERTAIN ALIENS GRANTED TEMPORARY PROTECTION FROM DEPORTATION *AND FOR BATTERED SPOUSES AND CHILDREN. – -*

`(i) IN GENERAL- For purposes of calculating the period of continuous physical presence under section 244(a) of the Immigration and Nationality Act (as in effect before the title III-A effective date) or section 240A of such Act (as in effect after the title III-A effective date), subparagraph (A) and paragraphs (1) and (2) of section 240A(d) of the Immigration and Nationality Act shall not
apply in the case of an alien, regardless of whether the alien is in exclusion or

deportation proceedings before the title III-A effective date, who has not been convicted at any time of an aggravated felony (as defined in section 101(a) of the Immigration and Nationality Act) and--

`(I) was not apprehended after December 19, 1990, at the time of entry, and is--

`(aa) a Salvadoran national who first entered the United States on or before September 19, 1990, and who registered for benefits pursuant to the settlement agreement in American Baptist Churches, et al. v. Thornburgh (ABC), 760 F. Supp. 796 (N.D. Cal. 1991) on or before October 31, 1991, or applied for temporary protected status on or before October 31, 1991;
or

`(bb) a Guatemalan national who first entered the United States on or before October 1, 1990, and who registered for benefits
pursuant to such settlement agreement on or before December 31, 1991;

`(II) is a Guatemalan or Salvadoran national who filed an application for asylum with the Immigration and Naturalization Service on or before April 1, 1990;

`(III) is the spouse or child (as defined in section 101(b)(1) of the Immigration and Nationality Act) of an individual, at the time a decision is rendered to suspend the deportation, or cancel the removal, of such individual, if the individual has been determined to be described in this clause (excluding this subclause and subclause (IV));

`(IV) is the unmarried son or daughter of an alien parent, at the time a decision is rendered to suspend the deportation, or cancel the removal, of such alien parent, if--

`(aa) the alien parent has been determined to be described in this clause (excluding this subclause and subclause (III)); and

`(bb) in the case of a son or daughter who is 21 years of age or older at the time such decision is rendered, the son or daughter
entered the United States on or before October 1, 1990; ~~or~~

`(V) is an alien who entered the United States on or before December 31, 1990, who filed an application for asylum on or before December 31, 1991, and who, at the time of filing such application, was a national of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia~~.~~ *; or*

(VI) is an alien who was issued an order to show cause or was in deportation proceedings before April 1, 1997, and who applied for suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act (as in effect before the date of the enactment of this Act)~~.~~'

(VII)(aa) was the spouse or child of an alien described in subclause (I), (II), or (V) –

(AA) at the time at which a decision is rendered to suspend the deportation or cancel the removal of the alien;

(BB) at the time at which the alien filed an application for suspension of deportation or cancellation of removal; ***~~or~~***

(CC) at the time at which the alien registered for benefits under the settlement agreement in American Baptist Churches, etc. al. v. Thornburgh (ABC), applied for temporary protected status, or applied for asylum; ***~~and~~***

(DD) at the time at which the spouse or child files an application for suspension of deportation or cancellation of removal; and''

(bb) the spouse, child, or child of the spouse has been battered or subjected to extreme cruelty by the alien described in subclause (I), (II), or (V).

`(ii) LIMITATION ON JUDICIAL REVIEW- A determination by the Attorney General as to whether an alien satisfies the requirements of this clause (i) is final and shall not be subject to review by any court. Nothing in the preceding sentence shall be construed as limiting the application of section 242(a)(2)(B) of the Immigration and Nationality Act (as in effect after the title III-A effective
date) to other eligibility determinations pertaining to discretionary relief under this Act.'.

(iii) CONSIDERATION OF PETITIONS. – In acting on a petition filed under subclause (VII) of clause (i) the provisions set forth in section 204(a)(1)(H) shall apply.

(iv) RESIDENCE WITH SPOUSE OR PARENT NOT REQUIRED.– For purposes of the application of clause (I)(VII), a spouse or child shall not be required to demonstrate that he or she is residing with the spouse or parent in the United States.

(2) CONFORMING AMENDMENT- Subsection (c) of section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; division C; 110 Stat. 3009-625) is amended by striking the subsection designation and the subsection heading and inserting the following:

`(c) TRANSITION FOR CERTAIN ALIENS- '.

(b) SPECIAL RULE FOR CANCELLATION OF REMOVAL- Section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-625) is amended by adding at the end the following:

`(f) SPECIAL RULE FOR CANCELLATION OF REMOVAL-

`(1) IN GENERAL- Subject to the provisions of the Immigration and Nationality Act (as in effect after the title III-A effective date), other than subsections (b)(1), (d)(1), and (e) of section 240A

of such Act (but including
section 242(a)(2)(B) of such Act), the Attorney General may, under section 240A of such Act, cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States, if the alien applies for such relief, the alien is described in subsection (c)(5)(C)(i) of this section including subsections (VI) and (VII), and--

`(A) the alien--

`(i) is not inadmissible or deportable under paragraph (2) or (3) of section 212(a) or paragraph (2), (3), or (4) of section 237(a) of the Immigration and Nationality Act and is not an alien described in
section 241(b)(3)(B)(i) of such Act;

`(ii) has been physically present in the United States for a continuous period of not less than 7 years immediately preceding the date of such application;

`(iii) has been a person of good moral character during such period; and

`(iv) establishes that removal would result in extreme hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence; or

`(B) the alien--

`(i) is inadmissible or deportable under section 212(a)(2), 237(a)(2) (other than 237(a)(2)(A)(iii)), or 237(a)(3) of the Immigration and Nationality Act;

`(ii) is not an alien described in section 241(b)(3)(B)(i) or 101(a)(43) of such Act;

`(iii) has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a
ground for removal;

`(iv) has been a person of good moral character during such period; and

`(v) establishes that removal would result in exceptional and extremely unusual hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

`(2) TREATMENT OF CERTAIN BREAKS IN PRESENCE- Section 240A(d)(2) shall apply for purposes of calculating any period of continuous physical presence under this subsection, except that the reference to subsection (b)(1) in such section shall be considered to be a reference to paragraph (1) of this section.'.

(c) MOTIONS TO REOPEN DEPORTATION OR REMOVAL PROCEEDINGS- Section 309 of the Illegal
Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law

104-208; 110 Stat. 3009-625), as amended by subsection (b), is further amended by adding at the end the following:

`(g) MOTIONS TO REOPEN DEPORTATION OR REMOVAL PROCEEDINGS-

(1)Notwithstanding any limitation imposed by law on motions to reopen removal or deportation proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined in section 101(a) of the Immigration and Nationality Act)) subject to paragraph (2), any alien who has become eligible for cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of the Nicaraguan Adjustment and Central American Relief Act may file one motion to reopen removal or deportation proceedings to apply for cancellation of removal or suspension of deportation. The Attorney General shall designate a specific time period in which all such motions to reopen are required to be filed. The period shall begin not later than 60 days after the date of the enactment of the Nicaraguan Adjustment and Central American Relief Act and
shall extend for a period not to exceed 240 days.'.

(2) There shall be no limitation on a motion to reopen removal or deportation proceedings in the case of an alien who is described in subclause (VI) or (VII) of subsection (c)(5)(C)(i). Motions to reopen removal or deportation proceedings in the case of such an alien shall be handled under the procedures that apply to aliens seeking relief under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act.''.

(d) Temporary Reduction in Diversity Visas-

(1) Beginning in fiscal year 1999, subject to paragraph (2), the number of visas available for a fiscal year under section 201(e) of the Immigration and Nationality Act shall be reduced by 5,000 from the number of visas
available under that section for such fiscal year.

(2) In no case shall the reduction under paragraph (1) for a fiscal year exceed the amount by which--

(A) one-half of the total number of individuals described in subclauses (I), (II), (III), and (IV) of section 309(c)(5)(C) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 who have
adjusted their status to that of aliens lawfully admitted for permanent residence under the Nicaraguan
Adjustment and Central American Relief Act as of the end of the previous fiscal year exceeds--

(B) the total of the reductions in available visas under this subsection for all previous fiscal years.

(e) Temporary Reduction in Other Workers' Visas-

(1) Beginning in the fiscal year following the fiscal year in which a visa has been made available under section 203(b)(3)(A)(iii) of the Immigration and Nationality Act for all aliens who are the beneficiary of a petition approved under section 204 of such Act as of the date of the enactment of this Act for classification under section 203(b)(3)(A)(iii) of such Act, subject to paragraph (2), visas available under section 203(b)(3)(A)(iii) of that Act shall be reduced by 5,000 from the number of visas otherwise available under that section for such fiscal year.

(2) In no case shall the reduction under paragraph (1) for a fiscal year exceed the amount by which--

(A) the number computed under subsection (d)(2)(A), exceeds--

(B) the total of the reductions in available visas under this subsection for all previous fiscal years.

(f) EFFECTIVE DATE- The amendments made by this section to the Illegal Immigration Reform and Immigrant
Responsibility Act of 1996 shall take effect as if included in the enactment of such Act.