

[CONFIDENTIAL COMMITTEE PRINT]

[This bill has been assigned to the Subcommittee on Immigration and Naturalization]

Calendar No. _____

93d CONGRESS } SENATE { REPORT
2d Session } { No. _____

TO CLARIFY THE AUTHORITY OF THE ATTORNEY GENERAL OF THE UNITED STATES TO EXCLUDE AND DEPORT ALIENS FOR FRAUDULENT ENTRY

-----Ordered to be printed

Mr. _____, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. ³²⁴⁴~~3241~~]

The Committee on the Judiciary, to which was referred the bill (S. 3244) to clarify the authority of the Attorney General of the United States to exclude and deport aliens for fraudulent entry, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

AMENDMENT

On page 2, line 11, change the word "section" to read "subsection."

PURPOSE OF THE BILL

The purpose of the bill as amended is to amend section 241(f) of the Immigration and Nationality Act to clarify the legislative intent through more precise definition of the conditions under which a waiver of deportability would be applicable to aliens with fraudulent entries. The exercise of such authority in eligible cases would be left to the discretion of the Attorney General.

38-137-74—No. 171

STATEMENT

The purpose of the present section 241(f) of the Immigration and Nationality Act was to waive a single ground of deportation, arising out of misrepresentations in procuring entry, for aliens with a close family relative who is a U.S. citizen or an alien lawfully admitted for permanent residence.

However, some courts by their liberal readings of the statute appear to have misunderstood the legislative intent. Numerous deportable aliens have thereupon sought to expand the statute into a charter of amnesty—a vehicle for waiving all restrictions for those aliens who entered the United States through fraud. In doing so, these deportable aliens have found it useful to claim they have committed fraud, thereby establishing a basis for contending that they were entitled to benefits not available to the law-abiding. Enactment of this legislation, by clearly defining the scope of section 241(f), would curtail the distortion of the statute and would allow the Immigration and Naturalization Service to deal in a rational way with the many problems that have been created in administering this provision.

It would:

First. Limit the waiver of deportability to those who entered with immigrant visas;

Second. Waive only the deportation ground related to the misrepresentation;

Third. Define the term "otherwise admissible;"

Fourth. Allow the waiver to be granted only in the discretion of the Attorney General; and

Fifth. Regard as lawfully admitted for permanent residence an alien who has been granted such waiver.

The following letter dated December 20, 1973 to the Vice President from the Acting Attorney General with reference to the legislation reads as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., December 20, 1973.

The VICE PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. VICE PRESIDENT: There is transmitted herewith a legislative proposal to amend section 241(f) of the Immigration and Nationality Act, 8 U.S.C. 1251(f) to clarify the authority of the Attorney General to exclude and deport aliens for fraudulent entry into the United States.

In its present form, section 241(f) has produced considerable confusion and litigation and has impeded the effective administration of the immigration laws.

Section 241(f) waives deportability, on the ground that the alien was excludable at the time of entry because of fraudulent misstatements, for aliens with close relatives in the United States. The "ground" of excludability for misrepresentations, and consequent deportability, mentioned in section 241(f) is that set forth, in virtually identical language, in section 212(a) (19) of the Act (8 U.S.C. 1182(a) (19)). Moreover, the statute specifies that its benefits are available only

to aliens who were "otherwise admissible at the time of entry." The language of the statute clearly indicates that it was enacted for the limited purpose of waiving a single and relatively minor ground for deportation—arising out of misrepresentations in procuring entry—for aliens with a close family relative who is a United States citizen or an alien lawfully admitted for permanent residence.

However, the Supreme Court, in *INS v. Errico*, 385 U.S. 214 (1966), read the statute as waiving deportability where the alien had entered with an immigrant visa and had evaded quota restrictions by his misrepresentation. Encouraged by this generous reading of the statute, litigants have sought to expand section 241(f) into a charter of amnesty, waiving all restrictions for those who had entered the United States through fraud. Some courts, particularly the Court of Appeals for the Ninth Circuit, have been persuaded to adopt expansive interpretations. Hundreds of cases have been developed in the administrative and judicial processes, and deportable aliens have found it useful to assert that they have committed fraud in contending that they were therefore entitled to benefits not available to the law-abiding.

A brief review of some of the typical issues that have arisen follows:

A common contention has been that an alien who entered as a non-immigrant, and is charged with being deportable for having overstayed his authorized admission, can escape deportability by contending that he had an undisclosed intention to commit fraud and that he can insist on being charged with such fraud so that he can invoke the benefits of section 241(f). This contention was successful in *Vitales v. INS*, 443 F.2d 343 (9th Cir. 1971); certiorari granted but thereafter dismissed, apparently on ground of mootness, the alien having left the United States, 405 U.S. 983. However, after dismissal of the *Vitales* case the Government persuaded the Ninth Circuit to reverse itself and to uphold a deportation order against an overstayed nonimmigrant, in *Cabrero-Flores and Mangabat v. INS*, (9th Cir., April 13, 1973). Miss Mangabat has filed a petition for certiorari to review that decision, which is now pending before the Supreme Court.

Another contention relates to aliens who have entered without inspection, and who contend that they are nevertheless entitled to a waiver of deportability under section 241(f). This contention is particularly significant in connection with surreptitious entries across the Mexican border. In *Monarrez-Monarrez v. Rosenberg*, 472 F.2d 119 (9th Cir. 1972) the court rejected a contention that section 241(f) could be extended to include such surreptitious entrants. The court observed:

"If petitioners' reading of section 241(f) were adopted, no alien who illegally entered this country and who was not otherwise inadmissible could be deported by reason of his illegal entry after he acquired the requisite family ties. Congress had no such alien bonanza in mind."

A petition for certiorari challenging that decision was filed in *Castellon-Duarte v. INS*, and was denied by the Supreme Court on June 11, 1972. Supreme Court No. 72-6312. On the other hand, the Ninth Circuit has held that a person who enters without proper inspection, on a false claim to U.S. citizenship, can invoke the benefits of section 241(f). *Chuey v. INS*, 439 F.2d 244 (9th Cir. 1971); *U.S. v. Osumá-Picos*, 443 F.2d 907 (9th Cir. 1971). *Chuey* overruled the Attorney General's decision in *Matter of Lee*, 13 I&N Dec. (1969).

Osuna-Picos dismissed a criminal prosecution for illegal reentry following a deportation, which the court found invalid because of section 241(f).

The government's position is that an alien who enters without an immigrant visa is not "otherwise admissible" within the contemplation of section 241(f), and it is urging the same issue in regard to aliens who allege that they entered across the Mexican border on the basis of a false claim to United States citizenship, who have acquired close relatives in this country, and who contend that they are therefore exempt from deportation under section 241(f).

These and other issues involving section 241(f) have entailed a distortion of the statute and have raised serious enforcement problems. Therefore, an amendment to section 241(f) which would clearly define its scope in the following respects is being proposed:

1. the waiver of deportability would be limited to those who entered with immigrant visas;
2. only the deportation ground related to the misrepresentations would be waived;
3. the waiver would not be automatic and would be granted only in the discretion of the Attorney General;
4. upon grant of the waiver the alien would be regarded as lawfully admitted for permanent residence, eliminating an uncertainty in his status under the present statute.

In order to clarify the Congressional purpose and to eliminate existing confusion, I respectfully urge that this proposal be enacted without unnecessary delay.

The Office of Management and Budget has advised that enactment of this legislation would be in accord with the program of the President.

Sincerely,

Acting Attorney General.

RECOMMENDATION

The committee, after consideration of all the facts, is of the opinion that the bill (S. 3244) as amended should be enacted.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, matter proposed to be omitted is printed in black brackets, existing law in which no change is proposed is printed in roman):

SEC. 241(f). *In the discretion of the Attorney General*, the provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of *any entry or admission* as aliens who have sought to procure, or have procured visas or other documentation, or entry *or admission* into the United States by fraud or misrepresentation [shall not apply to an alien] *may be waived for an alien who was admitted or was granted adjustment of status as an immigrant or who reentered following a*

Jul. 171

temporary absence after such admission or adjustment, who was otherwise admissible at the time of the fraudulent entry or adjustment, and who is the spouse, parent or child of a United States citizen or of an alien lawfully admitted for permanent residence. An alien granted a waiver under this subsection with regard to an initial entry or adjustment of status as an immigrant shall be regarded as lawfully admitted for permanent residence as of the date of waiver. For the purpose of this subsection, an alien shall be deemed to have been "otherwise admissible" where no other grounds of inadmissibility existed at the time of the fraudulent entry or adjustment except:

- (1) ineligibility for the special immigrant, immediate relative, or preference immigrant status accorded him,*
- (2) improper chargeability to a foreign state or dependent area for the purposes of numerical limitation set forth in section 202,*
- (3) lack of a certification under section 212(a)(14), or*
- (4) lack of a valid passport.*

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