

118TH CONGRESS
2D SESSION

S. _____

To amend the Immigration and Nationality Act to provide nonimmigrant visas for cooperating witnesses of certain criminal activity, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MURPHY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Immigration and Nationality Act to provide nonimmigrant visas for cooperating witnesses of certain criminal activity, 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 “Witness Assistance and
5 Criminal Accountability Act”.

6 **SEC. 2. PROTECTION FOR COOPERATING WITNESSES OF**
7 **CERTAIN CRIMINAL ACTIVITY.**

8 (a) ESTABLISHMENT OF A COOPERATING WITNESS
9 NONIMMIGRANT CLASSIFICATION.—Section 101(a)(15) of

1 the Immigration and Nationality Act (8 U.S.C.
2 1101(a)(15)) is amended—

3 (1) in subparagraph (T)(ii)(III), by striking the
4 period at the end and inserting a semicolon;

5 (2) in subparagraph (U)(iii), by striking “; or”
6 and inserting a semicolon;

7 (3) in subparagraph (V)(ii)(II), by striking the
8 period at the end and inserting “; or”; and

9 (4) by adding at the end the following:

10 “(W)(i)(I) subject to section 214(s), an
11 alien who files a petition for status under this
12 subparagraph, if the Secretary of Homeland Se-
13 curity determines that—

14 “(aa) the alien (or in the case of an
15 alien child, the parent, guardian, or next
16 friend of the alien) is in possession of crit-
17 ical reliable information concerning crimi-
18 nal activity referred to in subparagraph
19 (U)(iii), regardless of the location in which
20 such criminal activity occurred;

21 “(bb) the alien (or in the case of an
22 alien child, the parent, guardian, or next
23 friend of the alien)—

24 “(AA) is willing to provide, is
25 likely to be willing to provide, or has

1 provided such information to a rel-
2 evant authority; or

3 “(BB) cooperated with a relevant
4 authority in a manner that a relevant
5 authority determines to have been
6 critical to the detection, investigation,
7 prosecution, conviction, or sentencing
8 of such criminal activity; or

9 “(cc) the presence of the alien (or in
10 the case of an alien child, the presence of
11 the parent, guardian, or next friend of the
12 alien) in the United States is essential to
13 an authorized criminal detection, investiga-
14 tion, prosecution, conviction, sentencing, or
15 the successful prosecution of an individual
16 involved in such criminal activity; or

17 “(II) if accompanying, or following to join,
18 the alien described in subclause (I)—

19 “(aa) in the case of an alien described
20 in subclause (I) who is under 21 years of
21 age, the spouse, children, unmarried sib-
22 lings under 18 years of age on the date on
23 which such alien applied for status under
24 such subclause, and parents of such alien;
25 or

1 “(bb) in the case of an alien described
2 in subclause (I) who is 21 years of age or
3 older, the spouse and children of such
4 alien; and

5 “(ii) in this subparagraph, the term ‘rel-
6 evant authority’ means—

7 “(I) a Federal, State, or local law en-
8 forcement official;

9 “(II) a Federal, State, or local pros-
10 ecutor;

11 “(III) a Federal, State, or local judge;

12 “(IV) an employee of the Department
13 of Homeland Security; and

14 “(V) any other Federal, State, or local
15 judge or authority who has responsibility
16 for the detection, investigation, prosecu-
17 tion, conviction, or sentencing of criminal
18 activity.”.

19 (b) REQUIREMENTS APPLICABLE TO W VISAS.—Sec-
20 tion 214 of the Immigration and Nationality Act (8 U.S.C.
21 1184) is amended by adding at the end the following:

22 “(s) REQUIREMENTS APPLICABLE TO SECTION
23 101(a)(15)(W) VISAS.—

24 “(1) PETITIONING PROCEDURES FOR SECTION
25 101(a)(15)(W) VISAS.—The petition filed by an

1 alien under section 101(a)(15)(W)(i)(I) shall contain
2 a certification from a relevant authority (as defined
3 in section 101(a)(15)(W)(ii)). This certification shall
4 state that the alien ‘has been willing, is being will-
5 ing, or is likely to be willing to provide critical reli-
6 able information’ concerning the detection, investiga-
7 tion, prosecution, conviction, or sentencing of crimi-
8 nal activity described in section 101(a)(15)(U)(iii).

9 “(2) NUMERICAL LIMITATIONS.—

10 “(A) IN GENERAL.—The number of aliens
11 who may be issued visas or otherwise provided
12 status as nonimmigrants under section
13 101(a)(15)(W) in any fiscal year shall not ex-
14 ceed 10,000.

15 “(B) EXEMPTION.—The numerical limita-
16 tions in subparagraph (A) shall not apply to
17 spouses, children, or, in the case of alien chil-
18 dren, the alien parents of such children.

19 “(3) DUTIES OF THE SECRETARY OF HOME-
20 LAND SECURITY WITH RESPECT TO ‘W’ VISA NON-
21 IMMIGRANTS.—With respect to a nonimmigrant alien
22 described in section 101(a)(15)(W), the Secretary of
23 Homeland Security and other government officials
24 shall—

1 “(A) as appropriate, provide the alien with
2 referrals to nongovernmental organizations to
3 advise the alien regarding their options while in
4 the United States and the resources available to
5 them; and

6 “(B) provide the alien with employment
7 authorization during the period the alien is in
8 lawful temporary resident status under that
9 section.

10 “(4) CREDIBLE EVIDENCE CONSIDERED.—In
11 acting on any petition filed under this subsection,
12 the consular officer, the Secretary of Homeland Se-
13 curity shall consider any credible evidence relevant
14 to the petition.

15 “(5) NONEXCLUSIVE RELIEF.—Nothing in this
16 subsection may be construed to limit the ability of
17 an alien who is eligible or qualifies for status as a
18 nonimmigrant described in section 101(a)(15)(W) to
19 seek any other immigration benefit or status for
20 which the alien may be eligible.

21 “(6) DURATION OF STATUS.—The authorized
22 period of status of an alien as a nonimmigrant de-
23 scribed in section 101(a)(15)(W) shall be for a pe-
24 riod of not more than 4 years, but shall be extended
25 upon certification from a relevant authority (as de-

1 fined in section 101(a)(15)(W)(ii)) that the alien's
2 presence in the United States is required to assist
3 in the detection, investigation, prosecution, conviction,
4 or sentencing of criminal activity described in
5 section 101(a)(15)(U)(iii). The Secretary of Homeland
6 Security is authorized to extend the status of
7 such an alien beyond the 4-year period authorized
8 under this paragraph if the Secretary determines
9 that an extension of such period is warranted. Such
10 an alien's nonimmigrant status shall be extended if
11 the alien has properly filed an application or petition
12 for an immigration benefit or has been granted such
13 a benefit but a visa is not immediately available. The
14 Secretary of Homeland Security may authorize for
15 employment in the United States any alien who has
16 a pending, bona fide application for nonimmigrant
17 status under section 101(a)(15)(W).

18 “(7) AGE DETERMINATIONS.—

19 “(A) CHILDREN.—An unmarried alien who
20 seeks to accompany, or follow to join, a parent
21 granted status as a nonimmigrant described in
22 section 101(a)(15)(W)(i)(I), and who was under
23 21 years of age on the date on which such parent
24 petitioned for such status, shall continue to
25 be classified as a child for purposes of section

1 101(a)(15)(W)(i)(II), if the alien attains 21
2 years of age after such parent's petition was
3 filed but while it was pending.

4 “(B) PRINCIPAL ALIEN.—An alien de-
5 scribed in subclause (I) of section
6 101(a)(15)(W)(i) shall continue to be treated as
7 an alien described in subclause (II)(aa) of such
8 section if the alien attains 21 years of age after
9 the alien's application for status under such
10 clause is filed but while it is pending.”.

11 **SEC. 3. ADJUSTMENT OF STATUS FOR COOPERATING WIT-**
12 **NESSES.**

13 Section 245 of the Immigration and Nationality Act
14 (8 U.S.C. 1255) is amended by adding at the end the fol-
15 lowing:

16 “(o) WITNESSES TO CRIMES.—

17 “(1) AUTHORITY TO ADJUST STATUS.—The
18 Secretary of Homeland Security or the Attorney
19 General may adjust the status of an alien admitted
20 into the United States (or otherwise provided non-
21 immigrant status) under section 101(a)(15)(W) to
22 that of an alien lawfully admitted for permanent res-
23 idence if the alien is not described in section
24 212(a)(3)(E), unless the Secretary or Attorney Gen-
25 eral, as applicable, determines based on affirmative

1 evidence that the alien unreasonably refused to pro-
2 vide assistance in a criminal investigation or pros-
3 ecution, if—

4 “(A) the alien has been physically present
5 in the United States for a continuous period of
6 at least 3 years since the date of admission as
7 a nonimmigrant under section 101(a)(15)(W);
8 and

9 “(B) in the opinion of the Secretary or the
10 Attorney General, as applicable, the alien’s con-
11 tinued presence in the United States is justified
12 for law enforcement purposes, on humanitarian
13 grounds, or to ensure family unity, or is other-
14 wise in the public interest.

15 “(2) CONTINUOUS PHYSICAL PRESENCE.—An
16 alien shall be considered to have failed to maintain
17 continuous physical presence in the United States
18 under paragraph (1)(A) if the alien has departed
19 from the United States for any period in excess of
20 90 days or for any periods in the aggregate exceed-
21 ing 180 days unless—

22 “(A) the absence is in order to assist in
23 the detection, investigation, prosecution, convic-
24 tion, or sentencing of criminal activity described
25 in section 101(a)(15)(U)(iii); or

1 “(B) an official involved in the investiga-
2 tion or prosecution certifies that the absence
3 was otherwise justified.

4 “(3) SPOUSES, CHILDREN, AND PARENTS.—On
5 approval of adjustment of status under paragraph
6 (1) of an alien described in section
7 101(a)(15)(W)(i), the Secretary of Homeland Secu-
8 rity may adjust the status of or issue an immigrant
9 visa to (and, as applicable, the Attorney General
10 may adjust the status of) a spouse, a child, or, in
11 the case of an alien child, a parent who did not re-
12 ceive a nonimmigrant visa under section
13 101(a)(15)(W)(i)(II), if the Secretary of Homeland
14 Security (or Attorney General) considers the grant
15 of such status or visa necessary to avoid extreme
16 hardship.

17 “(4) RECORD OF ADMISSION.—On the approval
18 of adjustment of status under paragraph (1) or (3),
19 the Secretary of Homeland Security or the Attorney
20 General, as applicable, shall record the alien’s lawful
21 admission for permanent residence as of the date of
22 such approval.

23 “(5) CONSULTATION.—

24 “(A) IN GENERAL.—The Secretary of
25 Homeland Security shall consult with the Attor-

1 ney General, as appropriate, in making a deter-
2 mination under paragraph (1) whether affirma-
3 tive evidence demonstrates that the alien unrea-
4 sonably refused to provide assistance to a Fed-
5 eral law enforcement official, Federal pros-
6 ecutor, Federal judge, or other Federal author-
7 ity investigating or prosecuting criminal activity
8 described in section 101(a)(15)(U)(iii).

9 “(6) RULE OF CONSTRUCTION.—Nothing in
10 paragraph (1)(B) may be construed to prevent the
11 Secretary of Homeland Security from consulting
12 with the Attorney General in making a determina-
13 tion whether affirmative evidence demonstrates that
14 the alien unreasonably refused to provide assistance
15 to a State or local law enforcement official, State or
16 local prosecutor, State or local judge, or other State
17 or local authority investigating or prosecuting crimi-
18 nal activity described in section 101(a)(15)(U)(iii).”.