

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1679

To amend the Immigration and Nationality Act with respect to nonrefoulement and asylum.

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IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 1993

Mr. MAZZOLI introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act with respect to nonrefoulement and asylum.

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 “Asylum Reform Act  
5 of 1993”.

6 **SEC. 2. NONREFOULEMENT AND ASYLUM.**

7 (a) IN GENERAL.—Section 208 of the Immigration  
8 and Nationality Act is amended to read as follows:

9 **“SEC. 208. NONREFOULEMENT AND ASYLUM.**

10 “(a) NONREFOULEMENT.—

1           “(1) RIGHT TO APPLY.—An alien physically  
2 present in the United States or at a land border or  
3 port of entry, irrespective of such alien’s status, may  
4 apply for nonrefoulement in accordance with this  
5 section.

6           “(2) CONDITIONS FOR GRANTING.—

7           “(A) IN GENERAL.—The Attorney General  
8 shall grant nonrefoulement to an alien if the  
9 alien applies for nonrefoulement in accordance  
10 with the requirements of this section and estab-  
11 lishes that it is more likely than not that in the  
12 country of nationality (or, in the case of a per-  
13 son having no nationality, the country in which  
14 such alien last habitually resided) such alien’s  
15 life or freedom would be threatened on account  
16 of race, religion, nationality, membership in a  
17 particular social group, or political opinion.

18           “(B) EXCEPTION.—Subparagraph (A)  
19 shall not apply to an alien if the Attorney Gen-  
20 eral determines that—

21           “(i) the alien ordered, incited, as-  
22 sisted, or otherwise participated in the per-  
23 secution of any person on account of race,  
24 religion, nationality, membership in a par-  
25 ticular social group, or political opinion;

1           “(ii) the alien, having been convicted  
2           by a final judgment of a particularly seri-  
3           ous crime, constitutes a danger to the com-  
4           munity of the United States;

5           “(iii) there are serious reasons for be-  
6           lieving that the alien has committed a seri-  
7           ous nonpolitical crime outside the United  
8           States prior to the arrival of the alien in  
9           the United States;

10          “(iv) there are reasonable grounds for  
11          regarding the alien as a danger to the se-  
12          curity of the United States; or

13          “(v) a country willing to accept the  
14          alien has been identified (other than the  
15          country described in subparagraph (A)) to  
16          which the alien can be deported or re-  
17          turned and the alien does not establish  
18          that it is more likely than not that the  
19          alien’s life or freedom would be threatened  
20          in such country on account of race, reli-  
21          gion, nationality, membership in a particu-  
22          lar social group, or political opinion.

23          For purposes of clause (ii), an alien who has been  
24          convicted of an aggravated felony shall be considered  
25          to have committed a particularly serious crime.

1           “(3) NONREFOULEMENT STATUS.—In the case  
2 of any alien granted nonrefoulement under para-  
3 graph (2), the Attorney General, in accordance with  
4 this section—

5           “(A) shall not deport or return the alien to  
6 the country described under paragraph (2)(A);

7           “(B) shall authorize the alien to engage in  
8 employment in the United States and provide  
9 the alien with an ‘employment authorized’ en-  
10 dorsement or other appropriate work permit;  
11 and

12           “(C) may allow the alien to travel abroad  
13 with the prior consent of the Attorney General.

14           “(4) TERMINATION.—Nonrefoulement status  
15 granted under paragraph (2) may be terminated if  
16 the Attorney General, pursuant to such regulations  
17 as the Attorney General may prescribe, determines  
18 that—

19           “(A) the alien no longer meets the condi-  
20 tions described in paragraph (2)(A) owing to a  
21 change in circumstances in the alien’s country  
22 of nationality or, in the case of an alien having  
23 no nationality, in the country in which the alien  
24 last habitually resided;

1           “(B) the alien meets a condition described  
2           in paragraph (2)(B); or

3           “(C) a country willing to accept the alien  
4           has been identified (other than the country de-  
5           scribed in paragraph (2)(A)) to which the alien  
6           can be deported or returned and the alien can-  
7           not establish that it is more likely than not that  
8           the alien’s life or freedom would be threatened  
9           in such country on account of race, religion, na-  
10          tionality, membership in a particular social  
11          group, or political opinion.

12          “(5) ACCEPTANCE BY ANOTHER COUNTRY.—In  
13          the case of an alien described in paragraph (2)(B)(v)  
14          or paragraph (4)(C), the alien’s deportation or re-  
15          turn shall be directed by the Attorney General in the  
16          sole discretion of the Attorney General, to any coun-  
17          try which is willing to accept the alien into its terri-  
18          tory (other than the country described in paragraph  
19          (2)(A)).”.

20          “(b) NONREFOULEMENT PROCEDURE.—

21                  “(1) APPLICATIONS.—

22                          “(A) IN GENERAL.—

23                                  “(i) DEADLINE.—Subject to clause  
24                                  (ii), an alien’s application for

1 nonrefoulement shall not be considered  
2 under this section unless—

3 “(I) the alien has filed, not later  
4 than 7 days after entering or coming  
5 to the United States, notice of inten-  
6 tion to file such an application, and

7 “(II) such application is actually  
8 filed not later than 30 days after the  
9 date of filing such notice of intention.

10 “(ii) EXCEPTION.—An application for  
11 nonrefoulement may be considered, not-  
12 withstanding that the requirements of  
13 clause (i) have not been met, only if the  
14 alien demonstrates by clear and convincing  
15 evidence changed circumstances in the  
16 alien’s country of nationality (or in the  
17 case of an alien with no nationality, in the  
18 country where the alien last habitually re-  
19 sided) affecting eligibility for  
20 nonrefoulement.

21 “(B) REQUIREMENTS.—An application for  
22 nonrefoulement shall not be considered unless  
23 the alien submits to the taking of fingerprints  
24 and a photograph in a manner determined by  
25 the Attorney General.

1           “(C) FEES.—The Attorney General may  
2 provide for a reasonable fee for the consider-  
3 ation of an application for nonrefoulement or  
4 for any proceeding or filing connected there-  
5 with.

6           “(D) PRIVILEGE OF COUNSEL.—

7           “(i) NOTICE.—At the time of filing a  
8 notice of intention to apply for  
9 nonrefoulement, the alien shall be advised  
10 of the privilege of being represented (at no  
11 expense to the government) by such coun-  
12 sel, authorized to practice in such proceed-  
13 ings, as the alien shall choose.

14           “(ii) PROVISION OF LIST OF COUN-  
15 SEL.—The Attorney General shall provide  
16 for lists (updated not less often than quar-  
17 terly) of persons who have indicated their  
18 availability to represent pro bono aliens in  
19 nonrefoulement proceedings. Such lists  
20 shall be provided to the alien at the time  
21 of filing of notice of intention to apply for  
22 nonrefoulement, and otherwise be made  
23 generally available.

24           “(2) CONSIDERATION OF APPLICATIONS; HEAR-  
25 INGS.—

1           “(A) NONREFOULEMENT OFFICERS.—Ap-  
2           plications for nonrefoulement shall be consid-  
3           ered by officers of the Service (referred to in  
4           this Act as ‘nonrefoulement officers’) who are  
5           specially designated by the Service as having  
6           special training and knowledge of international  
7           conditions and human rights records of foreign  
8           countries.

9           “(B) SCHEDULING OF HEARINGS.—

10           “(i) IN GENERAL.—Upon the filing of  
11           an application for nonrefoulement, a  
12           nonrefoulement officer, at the earliest  
13           practicable time and after consultation  
14           with the attorney for the Government and  
15           the attorney (if any) for the applicant,  
16           shall set the application for hearing on a  
17           day certain or list it on a weekly or other  
18           short-term calendar, so as to assure a  
19           speedy hearing.

20           “(ii) DEADLINE.—Unless the appli-  
21           cant (or an attorney for the applicant) con-  
22           sents in writing to the contrary, the hear-  
23           ing on the nonrefoulement application shall  
24           commence not later than 45 days after the  
25           date the application was filed.

1           “(C) PUBLIC HEARINGS.—A hearing on a  
2 nonrefoulement application shall be open to the  
3 public unless the applicant requests that it be  
4 closed to the public.

5           “(D) RIGHTS IN HEARINGS.—During such  
6 hearing, the applicant shall have the privilege of  
7 the assistance and participation of counsel (as  
8 provided under paragraph (1)(D)) and shall be  
9 entitled to present evidence and witnesses, to  
10 examine and object to evidence presented by the  
11 Government, and to cross-examine all witnesses  
12 presented by the Government.

13           “(E) TRANSCRIPT OF HEARINGS.—A com-  
14 plete record of the proceedings and of all testi-  
15 mony and evidence produced at the hearing  
16 shall be kept. The hearing shall be recorded  
17 verbatim. The Attorney General and the Service  
18 shall provide that a transcript of a hearing held  
19 under this section is made available not later  
20 than 10 days after the date of completion of the  
21 hearing.

22           “(F) DEADLINE FOR DETERMINATIONS ON  
23 APPLICATIONS.—The officer shall render a de-  
24 termination on the application not later than 30  
25 days after the date of completion of the hear-

1           ing. The determination of the officer shall be  
2           based only on the evidence produced at the  
3           hearing.

4           “(G) RESOURCE ALLOCATION.—The Attor-  
5           ney General shall allocate sufficient resources  
6           so as to assure that applications for  
7           nonrefoulement are heard and determined on a  
8           timely basis.

9           “(H) SANCTIONS FOR FAILURE TO AP-  
10          PEAR.—

11           “(i) Subject to clause (ii), the applica-  
12          tion for nonrefoulement of an alien who  
13          does not appear for a hearing on such ap-  
14          plication shall be summarily dismissed un-  
15          less the alien can show exceptional cir-  
16          cumstances (as defined in section  
17          242B(f)(2)) as determined by the  
18          nonrefoulement officer.

19           “(ii) Clause (i) shall not apply if writ-  
20          ten and oral notice were not provided as  
21          required by section 242B(e)(4)(B).

22          “(I) FINALITY OF DETERMINATIONS.—

23           “(i) IN GENERAL.—The decision of  
24          the nonrefoulement officer shall be the

1 final administrative determination of a  
2 claim for nonrefoulement.

3 “(ii) TREATMENT OF CASES IN EX-  
4 CLUSION OR DEPORTATION.—If proceed-  
5 ings are instituted against an alien under  
6 section 235 or 242 of this Act and the  
7 alien files an application for  
8 nonrefoulement based on circumstances de-  
9 scribed in subsection (b)(1)(A)(ii), the  
10 nonrefoulement officer shall render, on an  
11 expedited basis, a decision on the applica-  
12 tion. The decision of the nonrefoulement  
13 officer shall be the final administrative de-  
14 termination of a claim for nonrefoulement.

15 “(3) TREATMENT OF CLASSES OF ALIENS.—

16 “(A) DESIGNATION.—In the sole discretion  
17 of the Attorney General, the Attorney General  
18 may designate—

19 “(i) any class of aliens who are na-  
20 tionals or residents of a foreign state for  
21 which the Attorney General determines  
22 that a high percentage of that class of  
23 aliens have been granted nonrefoulement  
24 under subsection (a)(2)(A) in the 6-month

1 period prior to the designation of such  
2 class; or

3 “(ii) any class of aliens who are na-  
4 tionals or residents of a foreign state for  
5 which the Attorney General determines  
6 that a high percentage of that class of na-  
7 tionals or residents would be granted  
8 nonrefoulement status under subsection  
9 (a)(2)(A) in the 6-month period after des-  
10 ignation.

11 “(B) ALIENS IN DESIGNATED CLASSES.—

12 An alien who is within one of the designated  
13 classes under subparagraph (A) shall be pre-  
14 sumed to have fulfilled the requirement under  
15 subsection (a)(2)(A) of establishing that such  
16 alien’s life or freedom would be threatened on  
17 account of race, religion, nationality, member-  
18 ship in a particular social group, or political  
19 opinion.

20 “(C) PERIODIC REVIEW.—The Attorney  
21 General shall periodically review the status of  
22 any class of aliens designated under subpara-  
23 graph (A) to determine whether conditions con-  
24 tinue to warrant such designation. The Attor-  
25 ney General shall have the authority to termi-

1           nate, without notice or review, any designation  
2           under subparagraph (A).

3           “(c) ASYLUM.—

4           “(1) ADJUSTMENT OF STATUS.—Under such  
5           regulations as the Attorney General may prescribe,  
6           the Attorney General shall adjust to the status of an  
7           alien granted asylum the status of any alien granted  
8           nonrefoulement under subsection (a)(2)(A) who—

9                   “(A) applies for such adjustment;

10                   “(B) has been physically present in the  
11           United States for at least 1 year after being  
12           granted nonrefoulement;

13                   “(C) continues to be eligible for  
14           nonrefoulement under this section;

15                   “(D) is not firmly resettled in any foreign  
16           country; and

17                   “(E) is admissible under this Act at the  
18           time of examination for adjustment of status  
19           under this subsection.

20           “(2) TREATMENT OF SPOUSE AND CHIL-  
21           DREN.—A spouse or child (as defined in section  
22           101(b)(A), (B), (C), (D), or (E)) of an alien whose  
23           status is adjusted to that of an alien granted asylum  
24           under paragraph (a)(2) may be granted the same

1 status as the alien if accompanying, or following to  
2 join, such alien.

3 “(3) APPLICATION FEES.—The Attorney Gen-  
4 eral may impose a reasonable fee for the filing of an  
5 application for adjustment of status under this sub-  
6 section.”.

7 (b) CLERICAL AMENDMENT.—The item in the table  
8 of contents of such Act relating to section 208 is amended  
9 to read as follows:

“Sec. 208. Nonrefoulement and asylum.”.

10 **SEC. 3. FAILURE TO APPEAR FOR NONREFOULEMENT**  
11 **HEARING; JUDICIAL REVIEW.**

12 (a) FAILURE TO APPEAR FOR NONREFOULEMENT  
13 HEARING.—Section 242B(e)(4) of the Immigration and  
14 Nationality Act (8 U.S.C. 1252b(e)(4)) is amended—

15 (1) in the heading, by striking “ASYLUM” and  
16 inserting “NONREFOULEMENT”;

17 (2) by striking “asylum” each place it appears  
18 and inserting “nonrefoulement”; and

19 (3) in subparagraph (A), by striking all after  
20 clause (iii) and inserting “shall not be eligible for  
21 any benefits under this Act.”.

22 (b) JUDICIAL REVIEW.—Section 106 of such Act (8  
23 U.S.C. 1105a) is amended by adding at the end the follow-  
24 ing subsection:

1 “(d) The procedure prescribed by, and all the provi-  
2 sions of chapter 158 of title 28, United States Code, shall  
3 apply to, and shall be the sole and exclusive procedure for,  
4 the judicial review of all final orders granting or denying  
5 nonrefoulement, except that—

6 “(1) a petition for review may be filed not later  
7 than 90 days after the date of the issuance of the  
8 final order granting or denying nonrefoulement;

9 “(2) the venue of any petition for review under  
10 this subsection shall be in the judicial circuit in  
11 which the administrative proceedings before a  
12 nonrefoulement officer were conducted in whole or in  
13 part, or in the judicial circuit wherein is the resi-  
14 dence, as defined in this Act, of the petitioner, but  
15 not in more than one circuit; and

16 “(3) notwithstanding any other provision of  
17 law, a determination granting or denying  
18 nonrefoulement based on changed circumstances  
19 pursuant to section 208(b)(1)(A)(ii) shall be in the  
20 sole discretion of the Attorney General.”.

21 **SEC. 4. CONFORMING AMENDMENTS.**

22 (a) LIMITATION ON DEPORTATION.—Section 243 of  
23 the Immigration and Nationality Act (8 U.S.C. 1253) is  
24 amended by striking subsection (h).

1 (b) ADJUSTMENT OF STATUS.—Section 209(b) of  
2 such Act (8 U.S.C. 1159(b)) is amended—

3 (1) in paragraph (2) by striking “one year” and  
4 inserting “2 years”; and

5 (2) by amending paragraph (3) to read as  
6 follows:

7 “(3) continues to be eligible for nonrefoulement  
8 under section 208.”.

9 (c) ALIENS INELIGIBLE FOR TEMPORARY PRO-  
10 TECTED STATUS.—Section 244A(c)(2)(B)(ii) of the Immi-  
11 gration and Nationality Act (8 U.S.C. 1254a(c)(2)(B)(ii))  
12 is amended by striking “section 243(h)(2)” and inserting  
13 “clauses (i), (ii), (iii), or (iv) of section 208(a)(2)(B)”.

14 (d) ELIGIBILITY FOR NATURALIZATION.—Section  
15 316(f)(1) of the Immigration and Nationality Act (8  
16 U.S.C. 1427(f)(1)) is amended by striking “subpara-  
17 graphs (A) through (D) of paragraph 243(h)(2)” and in-  
18 serting “clauses (i), (ii), (iii), or (iv) of section  
19 208(a)(2)(B).”.

20 (e) FAMILY UNITY.—Section 301(e) of the Immigra-  
21 tion Act of 1990 (P.L. 101–649) is amended by striking  
22 “section 243(h)(2)” and inserting “clauses (i), (ii), (iii),  
23 or (iv) of section 208(a)(2)(B).”.

1 **SEC. 5. EFFECTIVE DATES.**

2 (a) IN GENERAL.—Except as otherwise provided, the  
3 amendments made by this Act shall take effect on the date  
4 of the enactment of this Act.

5 (b) EXCEPTIONS.—

6 (1) The amendments made by this Act shall not  
7 apply to applications for asylum or withholding of  
8 deportation made before the first day of the first  
9 month that begins more than 180 days after the  
10 date of the enactment of this Act and no application  
11 for nonrefoulement under section 208 of the Immi-  
12 gration and Nationality Act (as amended by section  
13 2 of this Act) shall be considered before such first  
14 day.

15 (2) In applying section 208(b)(1)(A) of the Im-  
16 migration and Nationality Act (as amended by this  
17 Act) in the case of an alien who has entered or came  
18 to the United States before the first day described  
19 in paragraph (1), notwithstanding the deadlines  
20 specified in such section—

21 (A) the deadline for the filing of a notice  
22 of intention to file an application for  
23 nonrefoulement is 30 days after such first day,  
24 and

1           (B) the deadline for the filing of the appli-  
2           cation for nonrefoulement is 30 days after the  
3           date of filing such notice.

4           (3) The amendments made by section 4(b) (re-  
5           lating to adjustment of status) shall not apply to  
6           aliens granted asylum under section 208 of the Im-  
7           migration and Nationality Act, as in effect before  
8           the date of the enactment of this Act.

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HR 1679 IH—2