

FAMILY SPONSOR IMMIGRATION ACT OF 2001

JULY 10, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 1892]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1892) to amend the Immigration and Nationality Act to provide for the acceptance of an affidavit of support from another eligible sponsor if the original sponsor has died and the Attorney General has determined for humanitarian reasons that the original sponsor’s classification petition should not be revoked, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
The Amendment	1
Purpose and Summary	2
Background and Need for the Legislation	2
Hearings	4
Committee Consideration	4
Vote of the Committee	4
Committee Oversight Findings	4
Performance Goals and Objectives	4
New Budget Authority and Tax Expenditures	4
Congressional Budget Office Cost Estimate	4
Constitutional Authority Statement	5
Section-by-Section Analysis and Discussion	6
Changes in Existing Law Made by the Bill, as Reported	7
Markup Transcript	9

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Family Sponsor Immigration Act of 2001”.

SEC. 2. SUBSTITUTION OF ALTERNATIVE SPONSOR IF ORIGINAL SPONSOR HAS DIED.

(a) **PERMITTING SUBSTITUTION OF ALTERNATIVE CLOSE FAMILY SPONSOR IN CASE OF DEATH OF PETITIONER.**—

(1) **RECOGNITION OF ALTERNATIVE SPONSOR.**—Section 213A(f)(5) of the Immigration and Nationality Act (8 U.S.C. 1183a(f)(5)) is amended to read as follows:

“(5) **NON-PETITIONING CASES.**—Such term also includes an individual who does not meet the requirement of paragraph (1)(D) but who—

“(A) accepts joint and several liability with a petitioning sponsor under paragraph (2) or relative of an employment-based immigrant under paragraph (4) and who demonstrates (as provided under paragraph (6)) the means to maintain an annual income equal to at least 125 percent of the Federal poverty line; or

“(B) is a spouse, parent, mother-in-law, father-in-law, sibling, child (if at least 18 years of age), son, daughter, son-in-law, daughter-in-law, grandparent, or grandchild of a sponsored alien or a legal guardian of a sponsored alien, meets the requirements of paragraph (1) (other than subparagraph (D)), and executes an affidavit of support with respect to such alien in a case in which—

“(i) the individual petitioning under section 204 for the classification of such alien died after the approval of such petition; and

“(ii) the Attorney General has determined for humanitarian reasons that revocation of such petition under section 205 would be inappropriate.”.

(2) **CONFORMING AMENDMENT PERMITTING SUBSTITUTION.**—Section 212(a)(4)(C)(ii) of such Act (8 U.S.C. 1182(a)(4)(C)(ii)) is amended by striking “(including any additional sponsor required under section 213A(f))” and inserting “(and any additional sponsor required under section 213A(f) or any alternative sponsor permitted under paragraph (5)(B) of such section)”.

(3) **ADDITIONAL CONFORMING AMENDMENTS.**—Section 213A(f) of such Act (8 U.S.C. 1183a(f)) is amended, in each of paragraphs (2) and (4)(B)(ii), by striking “(5).” and inserting “(5)(A).”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply with respect to deaths occurring before, on, or after the date of the enactment of this Act, except that, in the case of a death occurring before such date, such amendments shall apply only if—

(1) the sponsored alien—

(A) requests the Attorney General to reinstate the classification petition that was filed with respect to the alien by the deceased and approved under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) before such death; and

(B) demonstrates that he or she is able to satisfy the requirement of section 212(a)(4)(C)(ii) of such Act (8 U.S.C. 1182(a)(4)(C)(ii)) by reason of such amendments; and

(2) the Attorney General reinstates such petition after making the determination described in section 213A(f)(5)(B)(ii) of such Act (as amended by subsection (a)(1) of this Act).

PURPOSE AND SUMMARY

H.R. 1892 provides that in cases where a U.S. citizen or permanent resident has petitioned for permanent resident status for an alien relative and the petitioner has died before the alien has received such status, and if the Attorney General determines for humanitarian reasons that revocation of the petition would be inappropriate, a close family member other than the petitioner would be allowed to sign the necessary affidavit of support.

BACKGROUND AND NEED FOR THE LEGISLATION

Section 205 of the Immigration and Nationality Act provides that “the Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any [immigrant visa petition] approved by him under section 204.” INS regulations provides for automatic revocation of the petition when the petitioner dies, “unless the Attorney General in his or her discretion

determines that for humanitarian reasons revocation would be inappropriate.”¹

The consequences are severe for a beneficiary when his or her petitioner dies before the beneficiary has adjusted status or received an immigrant visa. If no other relative can qualify as a petitioner, then the beneficiary would lose the opportunity to become a permanent resident. For instance, if a petition is revoked because a widowed citizen father dies after petitioning for an adult unmarried daughter, the daughter would have no living mother to file a new petition. If another relative can file an immigrant visa petition for the beneficiary, the beneficiary would still go to the end of the line if the visa category was numerically limited. For instance, if the daughter’s mother was alive she could file a new first family preference petition. However, the daughter would lose her priority date based on the time her father’s petition had been filed with the INS and would receive a later priority date based on the filing date of her mother’s petition. Given that first family preference visas are now available to beneficiaries from Mexico with priority dates in April 1994, and are available to those from the Philippines with priority dates in May 1988, this can result in a significant additional delay before a visa is available.

As stated, the INS’s regulations do allow the Attorney General to forego revoking the petition in such a case if revocation would be inappropriate for “humanitarian reasons”. However, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 requires that when a family member petitions for a relative to receive an immigrant visa, the visa can only be granted if the petitioner signs (alone or with a co-sponsor) a legally binding affidavit of support promising to provide for the support of the immigrant.² If the petitioner has died, he or she can obviously not sign an affidavit. Thus, even in cases where the Attorney General feels a humanitarian waiver of the revocation of the visa petition is warranted, under current law a permanent resident visa cannot be granted because the affidavit requirement is unfulfilled.

H.R. 1892 simply provides that in cases where the petitioner has died and the Attorney General has determined for humanitarian reasons that revocation of the petition would be inappropriate, a close family member other than the petitioner would be allowed to sign the necessary affidavit of support. Eligible family members of beneficiaries would include spouses, parents, grandparents, mother and fathers in law, siblings, adult sons and daughters, adult son and daughters in law and grandchildren. In order to sign an affidavit of support, the family member would need to meet the general eligibility requirements needed to be an immigrant’s sponsor. He or she would need to:

- be a citizen or national of the United States or an alien who is lawfully admitted to the United States for permanent residence;
- be at least 18 years of age;
- be domiciled in a State, the District of Columbia, or any territory or possession of the United States; and

¹ 8 C.F.R. § 205.1(a)(3)(i)(C).

² Pub. L. No. 104–208, § 531, 110 Stat. 3546 (1996) (codified at INA § 212(a)(4)(C)(ii).

- demonstrate the means to maintain an annual income equal to at least 125% of the Federal poverty line.³

HEARINGS

No hearings were held on H.R. 1892.

COMMITTEE CONSIDERATION

On June 6, 2001, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported the bill H.R. 1892, as amended, by a voice vote, a quorum being present. On June 26, 2001, the Committee met in open session and ordered favorably reported the bill H.R. 1892 with amendment by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes. An amendment offered by Mr. Issa passed by a voice vote. The amendment expanded the list of family members who could serve as substitute sponsors to include grandparents and grandchildren. The bill was ordered favorably reported by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 1892 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House of Representatives is inapplicable.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1892, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

³ INA § 213A(f)(1).

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 5, 2001.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1892, the Family Sponsor Immigration Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Member

H.R. 1892—Family Sponsor Immigration Act of 2001.

CBO estimates that enacting H.R. 1892 would result in no significant cost to the Federal Government. The bill could affect direct spending and receipts, so pay-as-you-go procedures would apply, but we estimate that any such effects would be insignificant. H.R. 1892 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Current law requires that applicants for family-based immigrant visas be sponsored by an immediate relative who will provide financial support if necessary. If the sponsor dies while the application is pending, then a new application must be filed. In this situation, H.R. 1892 would permit the Immigration and Naturalization Service (INS) to allow certain other relatives to replace a deceased sponsor and to proceed with the approval process without filing a new application.

Based on information from the INS, CBO expects that the bill's provisions would aid no more than several hundred applicants each year. Thus, any effects on fees collected by INS or the Department of State would be insignificant. INS fees are classified as offsetting receipts (a credit against direct spending); and the State Department fees are classified as governmental receipts (i.e., revenues).

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 4 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

SEC. 1. SHORT TITLE

Section 1 of the bill provides that the bill may be cited as the “Family Sponsor Immigration Act of 2001.”

SECTION 2. SUBSTITUTION OF ALTERNATIVE SPONSOR IF ORIGINAL SPONSOR HAS DIED

Section 2(a)(1) of the bill amends section 213A(f)(5) of the Immigration and Nationality Act to provide that a sponsor of an alien does not have to meet the requirement of section 213A(f)(1)(D) (that the sponsor be the petitioner for admission of the alien) of the INA if:

- 1) the sponsor is a spouse, parent, mother-in-law, father-in-law, sibling, child (if at least 18 years of age), son, daughter, son-in-law, daughter-in-law, grandparent or grandchild of a sponsored alien or a legal guardian of a sponsored alien;
- 2) the sponsor meets the requirements of section 213A(f)(1)(A)-(C) and (E) of the INA;
- 3) the sponsor executes an affidavit of support with respect to the sponsored alien;
- 4) the petitioner (under section 204 of the INA) of the sponsored alien died after the approval of the petition; and
- 5) the Attorney General has determined for humanitarian reasons that revocation of the petition (under section 205 of the INA) would be inappropriate.

The terms child, son, daughter, son-in-law, daughter-in-law and grandchild are meant to include a stepchild (provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred).⁴ The terms parent, mother-in-law, father-in-law, and grandparent are meant to include a step-parent.⁵ Siblings are meant to include half brothers and half sisters.⁶

The Committee does not intend this bill to restrict the Attorney General’s ability to revoke any petition, whether as a result of the death of the petitioner or otherwise, for good sufficient cause, and the bill does not alter in any way section 205 of the INA or its current regulations at 8 C.F.R. § 205.

Section 2(a)(2)–(3) of the bill are conforming amendments to section 212(a)(4)(C)(ii) and 213A(f) of the INA.

Section 2(b) of the bill provides that the amendments made by section 2(a) shall apply with respect to deaths occurring before, on, or after the date of the enactment of the bill, except that, in the case of a death occurring before such date, such amendments shall apply only if:

- 1) the sponsored alien requests the Attorney General to reinstate the classification petition that was filed with respect to the alien by the deceased and approved (under section 204 of the INA) before such death;

⁴ See INA § 101(b)(1)(B).

⁵ See INA § 101(b)(2).

⁶ See 3 Gordon, Mailman & Yale-Loehr, *Immigration Law and Procedure* § 38.05 citing *Matter of Mahal*, 12 I. & N. Dec. 409 (BIA 1967).

- 2) the sponsored alien demonstrates that he or she is able to satisfy the requirement of section 212(a)(4)(C)(ii) of the INA (relating to the affidavit of support requirement) by reason of the amendments made by this bill; and
- 3) the Attorney General reinstates such petition after making the determination that revocation would be inappropriate for humanitarian reasons pursuant to section 205 of the INA.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

* * * * *

TITLE II—IMMIGRATION

* * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) * * *

* * * * *

(4) PUBLIC CHARGE.—

(A) * * *

* * * * *

(C) FAMILY-SPONSORED IMMIGRANTS.—Any alien who seeks admission or adjustment of status under a visa number issued under section 201(b)(2) or 203(a) is inadmissible under this paragraph unless—

(i) * * *

(ii) the person petitioning for the alien's admission **[(including any additional sponsor required under section 213A(f))]** *(and any additional sponsor required under section 213A(f) or any alternative sponsor permitted under paragraph (5)(B) of such section)* has executed an affidavit of support described in section 213A with respect to such alien.

* * * * *

REQUIREMENTS FOR SPONSOR'S AFFIDAVIT OF SUPPORT

SEC. 213A. (a) * * *

* * * * *

(f) SPONSOR DEFINED.—

(1) * * *

(2) INCOME REQUIREMENT CASE.—Such term also includes an individual who does not meet the requirement of paragraph (1)(E) but accepts joint and several liability together with an individual under paragraph (5)(A).

* * * * *

(4) CERTAIN EMPLOYMENT-BASED IMMIGRANTS CASE.—Such term also includes an individual—

(A) * * *

(B)(i) * * *

(ii) does not meet the requirement of paragraph (1)(E) but accepts joint and several liability together with an individual under paragraph (5)(A).

[(5) NON-PETITIONING CASE.—Such term also includes an individual who does not meet the requirement of paragraph (1)(D) but who accepts joint and several liability with a petitioning sponsor under paragraph (2) or relative of an employment-based immigrant under paragraph (4) and who demonstrates (as provided under paragraph (6)) the means to maintain an annual income equal to at least 125 percent of the Federal poverty line.]

(5) NON-PETITIONING CASES.—Such term also includes an individual who does not meet the requirement of paragraph (1)(D) but who—

(A) accepts joint and several liability with a petitioning sponsor under paragraph (2) or relative of an employment-based immigrant under paragraph (4) and who demonstrates (as provided under paragraph (6)) the means to maintain an annual income equal to at least 125 percent of the Federal poverty line; or

(B) is a spouse, parent, mother-in-law, father-in-law, sibling, child (if at least 18 years of age), son, daughter, son-in-law, daughter-in-law, grandparent, or grandchild of a sponsored alien or a legal guardian of a sponsored alien, meets the requirements of paragraph (1) (other than subparagraph (D)), and executes an affidavit of support with respect to such alien in a case in which—

(i) the individual petitioning under section 204 for the classification of such alien died after the approval of such petition; and

(ii) the Attorney General has determined for humanitarian reasons that revocation of such petition under section 205 would be inappropriate.

* * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

TUESDAY, JUNE 26, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:35 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

The next item on the agenda is the adoption of H.R. 1892, the “Family Sponsor Immigration Act of 2001.”

[The bill, H.R. 1892, follows:]

107TH CONGRESS
1ST SESSION

H. R. 1892

To amend the Immigration and Nationality Act to provide for the acceptance of an affidavit of support from another eligible sponsor if the original sponsor has died and the Attorney General has determined for humanitarian reasons that the original sponsor's classification petition should not be revoked.

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2001

Mr. CALVERT (for himself, Mr. ISSA, Ms. WOOLSEY, Ms. LOFGREN, Mr. FRANK, Mr. SMITH of New Jersey, Mr. TERRY, Mr. KUCINICH, Mr. CANNON, Ms. ROYBAL-ALLARD, Mrs. CLAYTON, Mr. LEWIS of California, and Mr. CRANE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide for the acceptance of an affidavit of support from another eligible sponsor if the original sponsor has died and the Attorney General has determined for humanitarian reasons that the original sponsor's classification petition should not be revoked.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Family Sponsor Immi-
3 gration Act of 2001”.

4 **SEC. 2. SUBSTITUTION OF ALTERNATIVE SPONSOR IF**
5 **ORIGINAL SPONSOR HAS DIED BUT PETITION**
6 **IS NOT REVOKED.**

7 (a) PERMITTING SUBSTITUTION OF ALTERNATIVE
8 CLOSE FAMILY SPONSOR IN CASE OF DEATH OF PETI-
9 TIONER.—

10 (1) RECOGNITION OF ALTERNATIVE SPON-
11 SOR.—Section 213A(f)(5) of the Immigration and
12 Nationality Act (8 U.S.C. 1183a(f)(5)) is amended
13 to read as follows:

14 “(5) NON-PETITIONING CASES.—Such term also
15 includes an individual who does not meet the re-
16 quirement of paragraph (1)(D) but who—

17 “(A) accepts joint and several liability with
18 a petitioning sponsor under paragraph (2) or
19 relative of an employment-based immigrant
20 under paragraph (4) and who demonstrates (as
21 provided under paragraph (6)) the means to
22 maintain an annual income equal to at least
23 125 percent of the Federal poverty line; or

24 “(B) is a spouse, parent, mother-in-law,
25 father-in-law, sibling, son, daughter, son-in-law,
26 or daughter-in-law of the applicant or a legal

1 guardian of the applicant, meets the require-
2 ments of paragraph (1) (other than subpara-
3 graph (D)), and executes an affidavit of sup-
4 port with respect to a sponsored alien in a case
5 in which—

6 “(i) the individual petitioning for the
7 admission of the alien under section 204
8 has died; and

9 “(ii) the Attorney General has deter-
10 mined for humanitarian reasons that rev-
11 ocation of such petition under section 205
12 would be inappropriate.”.

13 (2) CONFORMING AMENDMENT PERMITTING
14 SUBSTITUTION.—Section 212(a)(4)(C)(ii) of such
15 Act (8 U.S.C. 1182(a)(4)(C)(ii)) is amended by
16 striking “(including any additional sponsor required
17 under section 213A(f))” and inserting “(and any ad-
18 ditional sponsor required under section 213A(f) or
19 any alternative sponsor permitted under paragraph
20 (5)(B) of such section)”.

21 (3) ADDITIONAL CONFORMING AMENDMENTS.—
22 Section 213A(f) of such Act (8 U.S.C. 1183a(f)) is
23 amended, in each of paragraphs (2) and (4)(B)(ii),
24 by striking “(5).” and inserting “(5)(A).”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) apply as if included in the enactment of
3 the Illegal Immigration Reform and Immigrant Responsi-
4 bility Act of 1996 (division C of Public Law 104–208) and
5 shall apply with respect to deaths occurring before, on,
6 or after the date of the enactment of such Act.

○

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Pennsylvania, Mr. Gekas, the Chairman of the Subcommittee on Immigration and Claims, for purposes of making a motion.

Mr. GEKAS. Mr. Chairman, the Subcommittee on Immigration and Claims reports favorably the bill H.R. 1892 with a single amendment in the nature of a substitute and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point. And the amendment in the nature of a substitute reported by the Subcommittee will be considered as the original text for purposes of amendment, considered as read, and open for amendment at any point.

[The amendment in the nature of a substitute to H.R. 1892 offered by the Subcommittee on Immigration and Claims follows:]

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1892
AS REPORTED BY THE SUBCOMMITTEE
ON IMMIGRATION AND CLAIMS**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Family Sponsor Immi-
3 gration Act of 2001”.

**4 SEC. 2. SUBSTITUTION OF ALTERNATIVE SPONSOR IF
5 ORIGINAL SPONSOR HAS DIED.**

6 (a) PERMITTING SUBSTITUTION OF ALTERNATIVE
7 CLOSE FAMILY SPONSOR IN CASE OF DEATH OF PETI-
8 TIONER.—

9 (1) RECOGNITION OF ALTERNATIVE SPON-
10 SOR.—Section 213A(f)(5) of the Immigration and
11 Nationality Act (8 U.S.C. 1183a(f)(5)) is amended
12 to read as follows:

13 “(5) NON-PETITIONING CASES.—Such term also
14 includes an individual who does not meet the re-
15 quirement of paragraph (1)(D) but who—

16 “(A) accepts joint and several liability with
17 a petitioning sponsor under paragraph (2) or
18 relative of an employment-based immigrant

1 under paragraph (4) and who demonstrates (as
2 provided under paragraph (6)) the means to
3 maintain an annual income equal to at least
4 125 percent of the Federal poverty line; or

5 “(B) is a spouse, parent, mother-in-law,
6 father-in-law, sibling, child (if at least 18 years
7 of age), son, daughter, son-in-law, or daughter-
8 in-law of a sponsored alien or a legal guardian
9 of a sponsored alien, meets the requirements of
10 paragraph (1) (other than subparagraph (D)),
11 and executes an affidavit of support with re-
12 spect to such alien in a case in which—

13 “(i) the individual petitioning under
14 section 204 for the classification of such
15 alien died after the approval of such peti-
16 tion; and

17 “(ii) the Attorney General has deter-
18 mined for humanitarian reasons that rev-
19 ocation of such petition under section 205
20 would be inappropriate.”.

21 (2) CONFORMING AMENDMENT PERMITTING
22 SUBSTITUTION.—Section 212(a)(4)(C)(ii) of such
23 Act (8 U.S.C. 1182(a)(4)(C)(ii)) is amended by
24 striking “(including any additional sponsor required
25 under section 213A(f))” and inserting “(and any ad-

1 ditional sponsor required under section 213A(f) or
2 any alternative sponsor permitted under paragraph
3 (5)(B) of such section)".

4 (3) ADDITIONAL CONFORMING AMENDMENTS.—
5 Section 213A(f) of such Act (8 U.S.C. 1183a(f)) is
6 amended, in each of paragraphs (2) and (4)(B)(ii),
7 by striking "(5)." and inserting "(5)(A).".

8 (b) EFFECTIVE DATE.—The amendments made by
9 subsection (a) shall apply with respect to deaths occurring
10 before, on, or after the date of the enactment of this Act,
11 except that, in the case of a death occurring before such
12 date, such amendments shall apply only if—

13 (1) the sponsored alien—

14 (A) requests the Attorney General to rein-
15 state the classification petition that was filed
16 with respect to the alien by the deceased and
17 approved under section 204 of the Immigration
18 and Nationality Act (8 U.S.C. 1154) before
19 such death; and

20 (B) demonstrates that he or she is able to
21 satisfy the requirement of section
22 212(a)(4)(C)(ii) of such Act (8 U.S.C.
23 1182(a)(4)(C)(ii)) by reason of such amend-
24 ments; and

1 (2) the Attorney General reinstates such peti-
 2 tion after making the determination described in
 3 section 213A(f)(5)(B)(ii) of such Act (as amended
 4 by such subsection).

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Pennsylvania, Mr. Gekas, to strike the last word.

Mr. GEKAS. I thank the Chair.

Mr. Chairman, the title of the bill actually tells the whole story, the Family Sponsor Immigration Act of 2001.

Congressman Calvert and our colleague on the Judiciary Committee, Mr. Issa, thought it wise to try to close a big loophole in the current law, and that is what this bill is all about.

As everyone knows, a petitioner for an immigrant, for establishing the status of an immigrant, has to sign an affidavit of support, so that during the pendency of the person's status as a resident in our country, the taxpayers would not have to tow the bill for the purposes of sustenance of this individual.

What happens, though, if a petitioner dies in the course of the immigration process? Does the source dry up and, therefore, the immigrant then becomes a ward of the State, as it were? This is what Congressmen Calvert and Issa want to cure.

They allow, through this bill, a substitution of certain people in the line of consanguinity, as we call it, who can substitute for the petitioner. And that then fills that gap and allows the petition to continue with the new substitute, shall we say, for the petitioner's affidavit of support.

That's what this bill does, and we're asking for the support of the Committee for the passage of this bill.

Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Mr. Chairman, I rise merely to introduce into the record a statement from the ranking Subcommittee chairwoman, Sheila Jackson Lee of Texas, who is otherwise engaged on the floor at this moment.

Chairman SENSENBRENNER. Without objection, the statement will be entered in the record.

[The statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE
 IN CONGRESS FROM THE STATE OF TEXAS

Thank you Mr. Chairman.

I support H.R. 1892, the "Family Sponsor Immigration Act of 2001." With bipartisan support, we are correcting a "glitch" in current immigration law.

As the law currently stands, the consequences of the law toward a beneficiary when his or her petitioner dies before the beneficiary has a chance to adjust status or receive an immigrant visa are too harsh.

H.R. 1892 will amend the Immigration and Nationality Act to allow an alternative sponsor—a close family member other than the petitioner—as a substitute if the original sponsor of the affidavit of support has died, assuming all requirements are met.

Thank you Mr. Chairman.

Chairman SENSENBRENNER. And without objection, all Members' statements on this bill will be entered into the record at this point. [The statement of Mr. Issa follows:]

PREPARED STATEMENT OF THE HONORABLE DARRELL ISSA, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I want to thank you for bringing forward H.R. 1892, the "Family Sponsor Immigration Act of 2001," to the full Judiciary Committee in an expeditious manner. I also want to commend Congressman Ken Calvert, author of this bill, and the Immigration Subcommittee staff for assisting in crafting this legislation. This bill will correct the Immigration and Nationality Act to allow another family member to become a sponsor of an applicant by signing an affidavit of support if the original sponsor has died.

Current INS regulations set up by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 allows sponsors to sign an affidavit of support to transfer sponsorship of an applicant. Unfortunately, if a sponsor dies without signing an affidavit of support, the applicant must start the long process over again. Due to the immense number of applicants filing for permanent residency, the application process for the INS can take more than a decade.

In my district, I have a constituent, Myrna Gabiola, who wanted to become the sponsor of her two brothers, who were applying to become permanent citizens after their father passed away. Ben and Renan Patao had their father petition for visas in 1984 but their father, a naturalized American citizen who emigrated from the Philippines, died of stomach cancer in 1994 without the INS having processed the petition. The family was so focused on the health of the father that they did not realize that the father had to sign an affidavit of support allowing another family member to take over the application while he was still live. There was no indication of a problem until Renan and Ben Patao had interviews and did not have the required affidavit of support. They were subsequently denied. This family waited over sixteen years to be granted an interview for permanent residency and were then sent to the back of the line to begin the process over again because there was no other recourse.

This family tried to immigrate legally and waited patiently for years and were punished for having their father, the original sponsor, die in the process. These two brothers are fortunate enough to have a sister that is willing and financially able to sponsor them. This bill is intended to keep families together and to avoid two tragedies that stem from one unfortunate event.

Again, I thank the Chairman for holding this markup and for his leadership on this well intended immigration bill.

Are there amendments?

The gentleman from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman.

There's an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the Subcommittee amendment—

Chairman SENSENBRENNER. Could the clerk please move the mike closer?

The CLERK. Amendment to the Subcommittee amendment in the nature of a substitute to H.R. 1892 offered by Mr. Issa and Mr. Cannon. Page and line numbers refer to H1892SUB.RPT.

Page 2—

Chairman SENSENBRENNER. Without objection the amendment is considered as read.

[The amendment to the Subcommittee amendment in the nature of a substitute to H.R. 1892 offered by Mr. Issa and Mr. Cannon follows:]

**Amendment To the Subcommittee
Amendment in the Nature of a Substitute
to H.R. 1892
Offered by Mr. Issa and Mr. Cannon
(Page and line nos. refer to H1892SUB.RPT)**

Page 2, line 7, strike "or".

Page, line 8, after "in-law" insert ", grandparent or grandchild."

Chairman SENSENBRENNER. And the gentleman from California, Mr. Issa, is recognized for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman.

And this is fairly simple substitution, and I won't use my whole 5 minutes.

In reviewing our original language and in consultation with Members on both sides and Mr. Calvert, we discovered that there are a large number of times in which private bills are brought forward specifically because a grandparent or grandchild is able to be an alternate sponsor but is not presently allowed.

We believe that the original language deals with most other situations that occur and believe we are going to have plenty of opportunity to look at a broader immigration document at some further time.

I also would like to take the chance to thank Mr. Calvert again, who worked diligently sort of outside the Committee to bring consensus on this bill.

The—as you know, under current law, if the sponsor dies without signing an affidavit of support to another family member, the applicant goes to the back of the line, even though there is another family member willing to be a sponsor.

We believe that this bill as amended will take care of that problem in the vast majority of cases, and look forward to working with Members on the Committee, the Subcommittee, in the future to deal with other issues that are broader than this one. But I think this, for today, takes care of it very well.

And I yield back the balance of my time.

Mr. CANNON. Will the gentleman yield?

Ms. LOFGREN. Mr. Chairman?

Mr. ISSA. Yes?

The gentleman will yield.

Mr. CANNON. Thank you, Mr. Issa.

I just wanted to add that this is a good bill. The amendment is one we agreed to consider in the Subcommittee, and I think we've come to a consensus on the issue.

I would urge my colleagues to support the amendment.

I might also note that in our discussions it has become clear that the—there is some concern about half-brothers, half-sisters, adopted children. And my understanding is that the staff will include language in the report that will clarify that.

And so I would urge my colleagues to support this amendment, and yield back, or—

Mr. GEKAS. Will the gentleman yield—

Mr. ISSA. And reclaiming my time, I would yield to Mr. Gekas.

Mr. GEKAS. Yes, I thank the gentleman.

And I want to announce to the assembled Members that we're ready to accept the amendment. And so I yield back—I thank the gentleman—

Mr. ISSA. And I would recognize Ms. Lofgren.

Ms. LOFGREN. Yes, I support the amendment, and I support the bill.

As I mentioned at Subcommittee, I don't believe there is a very good reason for the current rules that prohibit nonpetitioning family members for being the sponsors. And I had hoped that we might be able to remedy that situation.

The example I gave is actually one I—it's a true life story in my own district where you have the biological mother who is petitioning for her child and her husband is the stepfather. Or you might have a grandparent who would want to be the sponsor, but they cannot because they are not the petitioner. There is no real good reason for that.

But I do note that that amendment, a broader amendment, would, number one, not be germane to this bill; number two, in talking with my colleagues across the aisle, as well as Mr. Calvert, there is a great passion to get this bill passed and to deal with other issues later.

So I did want to note that that issue has not been overlooked. It's just achievable today. And I look forward to working further with those—on those issues with Members of the Committee on both sides of the aisle, and do support this amendment.

And I yield back and thank the gentleman for yielding.

Mr. ISSA. Thank you, and reclaiming my time, in closing, this is just a first step, but I think it's a big one and it's going to go a long way.

And I look forward, on a bipartisan basis, to working on broader immigration reform. And I think our Chairman has started us off down that road. Knowing that that is a longer road, it will—that would exceed the scope of today.

And I yield back the balance of my time.

Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The question is on the amendment to the Subcommittee amendment in the nature of a substitute offered by the gentleman from California, Mr. Issa.

Those in favor will signify by saying aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. Are there further amendments?

The gentleman from Massachusetts.

Mr. FRANK. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. Mr. Chairman, I just wanted to raise an issue, and I am glad that we are doing this. I think this is a significant advance.

Another issue involving family rights, though, I think has now become important for us to deal with.

The Supreme Court recently upheld the distinction in our law between mothers and fathers who are not married with regard to children. And we have had in our law a provision protecting the right of the mother to adopt her child, for immigration purposes, but not the father with similar rights in certain circumstances.

And I assume that was based on the age-old sense that you could be much more certain of the identity of the mother than the father. DNA has clearly made that no longer a valid distinction.

The Supreme Court just decided very narrowly that we had a right to maintain that distinction. And without arguing with that constitutional decision, it does seem to me that we ought to be acting legislatively to abolish it.

Now that it can be ascertained to a certainty who the father is, not giving the father adoptive rights equal to the mother seems to me to be an unfortunate example of discrimination in our law and contrary to the family values that we all agree to.

What we are talking about is someone who fathered a child in circumstances in which he shouldn't have but who subsequently has decided to exercise some responsibility and show some responsibility. And we make it harder than it should be. We make it automatic for the mother and not the father.

So I would hope that this is something, now that the Supreme Court has refused to remedy it, that we would approach.

And I yield back, Mr. Chairman.

Chairman SENSENBRENNER. Are there further amendments?

The question is on adoption of the amendment in the nature of a substitute to H.R. 1892 as reported by the Subcommittee on Immigration and Claims.

Those in favor will signify by saying aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment in the nature of a substitute is agreed to.

The Chair notes the presence of a reporting quorum.

The question occurs on the motion to report the bill H.R. 1892 favorably as amended.

All in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the motion to report favorably is adopted.

Without objection, the bill will be reported favorably to the House in the form of single amendment in the nature of a substitute, incorporating the amendments adopted here today.

Without objection, the Chair is authorized to move to go to conference pursuant to House rules.

Without objection, the staff is directed to make any technical and conforming changes.

And all Members will be given 2 days, as provided by House rules, in which to submit additional dissenting, supplemental, or minority views.

