

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HM 959 Cuban Adjustment Act of 1966

SPONSOR(S): State Affairs Committee; Artiles

TIED BILLS: None **IDEN./SIM. BILLS:** SM 1642

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--------------------------------------|---------------------|----------|--|
| 1) Local & Federal Affairs Committee | 13 Y, 1 N | Renner | Kiner |
| 2) State Affairs Committee | 17 Y, 0 N, As CS | Camechis | Camechis |

SUMMARY ANALYSIS

The Cuban Adjustment Act of 1966 (CAA) provides for a special procedure under which Cuban natives or citizens and their accompanying spouses and children may receive permanent residence. The CAA gives the Attorney General the discretion to grant permanent residence status if:

- They have been present in the U.S. for at least one year.
- They have been admitted or paroled (released to friends or relatives).
- They are admissible as immigrants.

No other group or nationality is afforded this opportunity.

After President Obama made the announcement in 2014 to make diplomatic and economic changes between the U.S. and Cuba, including the loosening of travel restrictions, the number of Cubans entering the U.S. has increased 78 percent from 24,278 in 2014 to 43,159 in 2015. A possible reason for the increase in the number of Cubans coming to the U.S. may be anxiety that the U.S. would soon repeal the CAA.

Since President Obama's announcement, members of Congress have been calling for either an outright repeal of the CAA or at least a revision, in part, because of the renewed diplomatic relations making travel restrictions easier, and because of Cubans allegedly abusing the food stamps and welfare they receive under the CAA.

As a result of the ease in travel restrictions and the alleged abuse of the CAA, three bills have been filed in Congress to either repeal or revise the CAA.

This memorial urges the U.S. Congress to repeal the CAA.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. congress to act on a particular subject.

This memorial does not have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Cuban Adjustment Act of 1966

Under the Cuban Adjustment Act of 1966 (CAA)¹ most of the undocumented Cubans who arrive in the U.S. are allowed to stay and adjust to permanent resident status, creating what is often referred to as the “wet foot, dry foot” policy. Generally, the CAA allows certain Cubans who have been physically present in the United States for at least one year to adjust to permanent resident status at the discretion of the Attorney General.

Specifically, the CAA provides for a special procedure under which Cuban natives or citizens and their accompanying spouses and children may get a green card (permanent residence) even if they do not meet the ordinary requirements under Section 245 of the Immigration and Nationality Act (INA). The CAA gives the Attorney General the discretion to grant permanent residence to Cuban natives or citizens applying for a green card if:

- They have been present in the U.S. for at least one year.
- They have been admitted or paroled (released to friends or relatives).
- They are admissible as immigrants.²

The numerical limitations or caps applicable to most family and employment-based immigration do not apply to adjustments under the CAA; therefore it is not necessary for the individual to be the beneficiary of an immigrant visa petition. Additionally, the following inadmissibility grounds do not apply to individuals filing for benefits under the CAA.³

- Public charge⁴
- Arriving at a place other than an open port of entry provided the U.S. Citizenship and Immigration Services (USCIS) paroled the individual into the U.S.

If the individual is inadmissible on any other ground(s), he or she is not eligible to apply for a green card under the CAA unless he or she has obtained a waiver of inadmissibility.

The CAA provides Cuban migrants with an advantage that other groups or nationalities do not have.⁵ Under the INA⁶ and other federal laws,⁷ there are various restrictions on unauthorized aliens and the laws provide limited avenues for certain unauthorized aliens to obtain legal permanent residence.⁸

¹ Pub. L. No. 89-732, H.R. 15183, 89th Cong. (November 2, 1966, as amended).

² Department of Homeland Security, *U.S. Citizenship and Immigration Services*, available at <http://www.uscis.gov/green-card/other-ways-get-green-card/green-card-cuban-native-or-citizen> (last visited December 23, 2015).

³ *Id.*

⁴ “Public charge means an individual who is likely to become primarily a dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.” See the Department of Homeland Security *U.S. Citizenship and Immigration Services* website on “Public Charge”, available at <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge> (last visited February 5, 2016).

⁵ Congressional Research Service report on *Cuban Migration to the United States: Policy and Trends*, June 2, 2009, pg. 5, available at <http://webcache.googleusercontent.com/search?q=cache:y9dKJ5kaICkJ:https://www.fas.org/sgp/crs/row/R40566.pdf+&cd=1&hl=en&ct=clnk&gl=us> (last visited January 6, 2016).

⁶ 8 U.S.C. §1101 et seq.

⁷ The Department of Homeland Security (DHS) oversees the administration and enforcement of the INA and the U.S. Citizenship and Immigration Services (USCIS) within the DHS is responsible for immigration and naturalization adjudications and other service functions.

Generally, unauthorized aliens who wish to come to the U.S. must obtain a visa to be admitted. Those admitted on a permanent basis are considered immigrants or legal permanent residents (LPRs), and those admitted on a temporary basis are considered nonimmigrants (e.g., tourists, foreign students, diplomats, temporary agricultural workers, exchange visitors). They must first meet a set of criteria specified in the INA that determine whether they are eligible for admission.⁹ The burden of proof is on the unauthorized alien to establish eligibility for a visa.¹⁰

Section 212(a) of the INA specifies grounds for inadmissibility including health-related grounds, security- and terrorism-related grounds, and immigration law violations.¹¹

Additionally, section 245 of the INA allows certain aliens, including certain unauthorized aliens, to adjust to LPR status. In order to qualify, an alien must be otherwise eligible for LPR status (e.g., on the basis of a family relationship or job skills), among other requirements.¹²

Castro Regime

At the time the CAA was enacted, the relationship between the U.S. and Cuba had deteriorated as a result of Fidel Castro taking control of Cuba in 1959 and consequently expropriating U.S. properties, moving towards the adoption of a one-party communist system¹³, and hiking taxes on U.S. imports.¹⁴ In response, the U.S. imposed an exports embargo on Cuba in 1960, and officially severed diplomatic relations with the Cuban government in 1961.¹⁵

Additionally, the severing of diplomatic relations between Cuba and the U.S. led to a restriction on travel for Cubans to the U.S., resulting in many migrants fleeing the persecution in Cuba and sailing to Florida to seek asylum.¹⁶

⁸ Congressional Research Service report on *Unauthorized Aliens in the United States: Policy Discussion*, May 8, 2014, pg. 2, available at

<http://webcache.googleusercontent.com/search?q=cache:ljsyZjfYVgJ:https://fas.org/sgp/crs/homsec/R41207.pdf+&cd=1&hl=en&ct=clnk&gl=us> (last visited January 11, 2016).

⁹ There are different ways to become a permanent resident. Most individuals are sponsored by a family member or employer in the U.S. Other individuals become permanent residents through refugee or asylum status. See the U.S. Department of Homeland Security website on Obtaining a Green Card. Available at <http://www.dhs.gov/how-do-i/get-green-card> (last visited January 14, 2016).

¹⁰ Congressional Research Service report on *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, March 10, 2010, pg. 2, available at <http://webcache.googleusercontent.com/search?q=cache:yp-jcxSMaIMJ:nationalaglawcenter.org/wp-content/uploads/assets/crs/R41104.pdf+&cd=6&hl=en&ct=clnk&gl=us> (last visited January 12, 2016).

¹¹ *Id.*

¹² Congressional Research Service report on *Unauthorized Aliens in the United States: Policy Discussion*, May 8, 2014, pg. 2, available at

<http://webcache.googleusercontent.com/search?q=cache:ljsyZjfYVgJ:https://fas.org/sgp/crs/homsec/R41207.pdf+&cd=1&hl=en&ct=clnk&gl=us> (last visited January 11, 2016).

¹³ *Id.*

¹⁴ Council on Foreign Relations, available at <http://www.cfr.org/cuba/us-cuba-relations/p11113> (last visited January 6, 2016).

¹⁵ U.S. Department of State Background Notes on Cuba, November, 2011, available at <http://www.state.gov/outofdate/bgn/cuba/191090.htm> (last visited January 6, 2016).

¹⁶ Congressional Research Service report on *Cuban Migration to the United States: Policy and Trends*, June 2, 2009, pg. 4, available at

<http://webcache.googleusercontent.com/search?q=cache:y9dKJ5kaICkJ:https://www.fas.org/sgp/crs/row/R40566.pdf+&cd=1&hl=en&ct=clnk&gl=us> (last visited January 5, 2016).

Diplomatic and Economic Changes to Cuba Sanctions

On December 17, 2014, President Obama announced diplomatic and economic changes to begin normalizing the relationship between the U.S. and Cuba. Generally, the changes include, but are not limited to:¹⁷

- Allowing travel to Cuba for authorized purposes;
- Loosening the travel restrictions on travel agents and airlines;
- Raising the limits on and authorizing certain categories of remittances to Cuba;
- Allowing U.S. financial institutions to open correspondent accounts at Cuban financial institutions to ease the processing of authorized transactions;
- Authorizing certain transactions with Cuban nationals located outside of Cuba; and
- Allowing activities related to telecommunications, financial services, trade, and shipping.

Cuban Arrivals to the United States

After President Obama made the announcement in 2014 to renew relations with Cuba, the number of Cubans who have entered the U.S. has increased dramatically. In 2014, 24,278 Cubans entered the U.S. That number increased by 78 percent to 43,159 in 2015.¹⁸ By comparison, just 7,759 Cubans came into the U.S. in 2011.¹⁹

The majority of Cubans who enter the country arrive through the U.S. Border Patrol's Laredo Sector in Texas. In 2015, 28,371 Cubans came through this sector.²⁰ However, a larger percentage increase occurred in the Miami Sector during 2015, doubling from the previous year of 4,709 to 9,999.²¹

Cuban Arrivals in Florida

The last 5 years have seen a consistent increase in Cubans coming to Florida. Between 1996 and 2011, approximately 24,000 Cubans arrived in Florida each year for a monthly average of 2,000 people. Strategies changed and many Cubans began traveling to South America or Mexico to enter through Texas where the wet foot/dry foot policy permitted their entry without risking a maritime crossing. In 2012, however, the numbers began to rise and the trend has continued each year. The average number of Cubans coming to Florida in fiscal year 2012 was almost 2,300 per month, for fiscal years 2013 and 2014, the number rose to over 2,600 per month. In fiscal year 2015, the average monthly migration increased to 3,700 each month. The rate remains high and continues to increase.²²

The population of newly arriving Cuban immigrants is concentrated in Miami-Dade County where approximately 75 percent of the new arrivals reside. The communities registering the next largest populations are Hillsborough, Palm Beach, Broward, and Orange counties.²³ While Florida received refugees from 57 countries in 2015, 94 percent were Cubans and 71 percent of them settled in Miami-Dade County.²⁴

¹⁷ U.S. Department of the Treasury Fact Sheet on the Regulatory Amendments to the Cuba Sanctions, *available at* <http://www.treasury.gov/press-center/press-releases/Pages/j19740.aspx> (last visited January 6, 2016).

¹⁸ Pew Research Center, *Cuban immigration to U.S. surges as relations warm*, (December 10, 2015), *available at* <http://www.pewresearch.org/fact-tank/2015/12/10/cuban-immigration-to-u-s-surges-as-relations-warm/> (last visited February 5, 2016).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Patti Grogan, Director, Refugee Services, Department of Children and Families, *Increasing Cuban Arrivals to Florida, Recent History and Implications* (Jan. 28, 2016) (on file with Local & Federal Affairs Committee staff).

²³ *Id.*

²⁴ Florida Department of Children and Families, *Statistics for Florida 2015*, *available at* <http://www.myflfamilies.com/service-programs/refugee-services/statistics-florida> (last visited February 5, 2016).

Effects of Normalizing Relations

One reason for the increase in the number of Cubans coming to the U.S. is the anxiety that the U.S. would soon repeal the CAA.²⁵ Since President Obama's announcement, members of Congress have been calling for either an outright repeal of the CAA or at least revising it, in part, because of the renewed diplomatic relations making travel restrictions easier, but also because of alleged abuses of the CAA by Cuban immigrants.

The *Sun Sentinel* newspaper produced a series of articles last year detailing alleged abuses of the benefits available to Cubans. One article stated that Cuban immigrants are "cashing in on U.S. welfare" and returning to Cuba, making a "mockery" of the premise that Cuban refugees are fleeing persecution when they arrive here.²⁶ Another article detailed the generous benefits that are available to Cuban immigrants, but not to other immigrants.²⁷ A three-part series reported findings that "money stolen in the United States" was streaming back to Cuba thereby allowing thieves to come and quickly make money which returned with them to Cuba.²⁸ The second installment reported alleged Cuban organized crime rings that recruited Cubans to work in their organizations in Florida. The third installment detailed the response of members of Congress to the investigative reports. The installment also raised suspicions as to whether the Cuban government is behind the criminal activities.

Proposed Federal Legislation

As a result of the ease in travel restrictions and the alleged abuse of the CAA, the following bills have been filed in Congress to either repeal or revise the CAA:

H.R. 4247

The "Cuban Immigrant Work Opportunity Act of 2015" (H.R. 4247) by Representative Carlos Curbelo²⁹ was introduced on December 15, 2015.³⁰ While the bill does not specifically address the CAA, it proposes to revoke benefits under the Refugee Education Assistance Act of 1980. Specifically, it would bar recent Cuban immigrants from applying for welfare benefits for five years beginning on the date the individual was granted lawful temporary resident status.³¹ The bill has been referred to committees; however, it has yet to receive a hearing.

S. 2441

The "Cuban Immigrant Work Opportunity Act of 2016" (S. 2441) by Senator Marco Rubio was introduced on January 12, 2016.³² The bill is similar to H.R. 4247, which would bar recent Cuban

²⁵ New York Times, *Cubans, Fearing Loss of Favored Status in U.S., Rush to Make an Arduous Journey* (January 9, 2016), available at http://www.nytimes.com/2016/01/10/world/americas/cubans-fearing-loss-of-favored-status-in-us-rush-to-make-an-arduous-journey.html?_r=0 (last visited February 5, 2016).

²⁶ Sally Kestin, Megan O'Matz, John Maines, with Tracey Eaton, U.S. Welfare Flows to Cuba, SUN SENTINEL, (Oct. 1, 2015), available at <http://www.sun-sentinel.com/us-cuba-welfare-benefits/sfl-us-cuba-welfare-benefits-part-1-htmlstory.html> (last visited February 4, 2016)

²⁷ Sally Kestin and Megan O'Matz, *Aid favors Cuban immigrants*, SUN SENTINEL (Sept. 30, 2015), available at <http://www.sun-sentinel.com/sfl-aid-favors-cuban-immigrants-20150930-htmlstory.html> (last visited February 4, 2016)

²⁸ Sally Kestin, Megan O'Matz, John Maines and Tracey Eaton, *Part I: Exploiting U.S. Laws Part II: Organized and Spreading; and Part III: Congress Reacts*, SUN SENTINEL, (Jan. 8, 2015) available at <http://interactive.sun-sentinel.com/plundering-america/> (last visited February 4, 2016)

²⁹ Representatives Mario Diaz-Balart and Ileana Ros-Lehtinen of Miami and Debbie Wasserman Schultz of Weston have signed on as co-sponsors to H.R. 4247.

³⁰ H.R. 4247-Cuban Immigrant Work Opportunity Act of 2015, CONGRESS.GOV, available at <http://www.congress.gov/bill/114th-congress/house-bill/4247/text> (last visited January 4, 2016).

³¹ 8 U.S.C. §1522

³² S 2441 – A bill to provide that certain Cuban entrants are ineligible to receive refugee assistance, and for other purposes, CONGRESS.GOV, available at <https://www.congress.gov/bill/114th-congress/senate-bill/2441?q=%7B%22search%22%3A%5B%22%5C%22s2441%5C%22%22%5D%7D&resultIndex=1> (last visited January 14, 2016).

immigrants from applying for welfare benefits for five years beginning on the date the individual was granted lawful temporary resident status. The bill has been referred to committees; however, it has yet to receive a hearing.

H.R. 3818

The “Ending Special National Origin-Based Immigration Programs for Cubans Act of 2015” (H.R. 3818) by Representative Paul A. Gosar was introduced on October 23, 2015.³³ This bill would repeal the CAA in its entirety. The bill has been referred to committees; however, it has yet to receive a hearing.

Effect of Proposed Changes

This memorial urges the U.S. Congress to repeal the Cuban Adjustment Act of 1966.

Copies of the memorial will be sent to the President, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and each member of the Florida delegation to the U.S. Congress.

Legislative memorials are not subject to the Governor’s veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

B. SECTION DIRECTORY: Not applicable

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.
2. Other: None.

³³ H.R. 3818-Ending Special National Origin-Based Immigration Programs for Cubans Act of 2015, CONGRESS.GOV, *available at* <https://www.congress.gov/bill/114th-congress/house-bill/3818?q=%7B%22search%22%3A%5B%22%5C%22hr3818%5C%22%22%5D%7D&resultIndex=1> (last visited January 4, 2016).

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2016, the State Affairs Committee removed the following language from the bill:
“WHEREAS, the Cold War has ended, the United States has recognized the Cuban government, and both countries now maintain diplomatic relations, and”.