

March 11, 2024

Dear Tribal Leader:

The Department of Homeland Security (DHS) remains committed to its responsibility to engage in consultation and collaboration with tribal officials, consistent with [Executive Order 13175](#), *Consultation and Coordination with Indian Tribal Governments*, reaffirmed by President Biden's "[Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#)."

DHS invites Tribal input on a legislative proposal to amend section 289 of the Immigration and Nationality Act (8 U.S.C. 1359 (INA § 289)). DHS's objectives in proposing amendments to INA § 289 are to strike the current statute's "blood quantum" requirement and replace it with more suitable eligibility requirements that can be administered more efficiently by the DHS's adjudicative components.

INA § 289 currently provides that nothing in the INA "shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race." The current language has proven problematic for several reasons, including section 289's so-called "blood quantum" provision is both extraordinarily difficult to administer, and the statute does not speak to what specific rights and benefits individuals entering under INA § 289 possess after entering the United States. Pursuant to case law relating to INA § 289, and administrative rulemaking and policy issuance by the legacy Immigration and Naturalization Service and DHS, INA § 289 has been interpreted to entitle individuals who meet the statute's eligibility requirements to live and remain permanently in the United States, to work in the United States, and to attend school in the United States. The DHS legislative proposal seeks to incorporate express references to these rights and benefits into the text of the statute, within a context that fully integrates section 289 into the structure of the INA. The intention is to update the vague and archaic language of section 289 for the needs of the 21<sup>st</sup> century in a way that fully codifies appropriate entry privileges for indigenous Canadian individuals while protecting the national security and public safety of the United States.

In addition to any comments on the enclosed draft amendments, we request your input on the following questions:

- 1. Is the current INA § 289 statutory language legally sufficient from the viewpoint of your Tribe? If so, why? If it is not, what specific language or policy changes would you like to see, and why?**
- 2. Do the DHS proposed draft legislative amendments articulate appropriate eligibility requirements?**

**3. The proposed draft legislative amendments address specific DHS enforcement authority. Are there outstanding concerns for clarity, efficacy, and efficiency that should be considered?**

**TRIBAL CONSULTATION SESSIONS:** Please register and make plans to join us for one or more of the following virtual Tribal Consultation sessions scheduled below to share your input and recommendations on the proposed draft legislative amendments to INA § 289 and whether the proposed amendments should be submitted to Congress. Session details follow:

**DATES:**

Monday, May 6, 2024, from 3:00 p.m. – 4:30 p.m., ET

Friday, May 10, 2024, from 3:00 p.m. – 4:30 p.m., ET

Wednesday, May 15, 2024, from 3:30 p.m. – 5:00 p.m., ET

Thursday, May 23, 2024, from 1:00 p.m. – 2:30 p.m., ET

**ZOOM REGISTRATION:**

Monday, May 6, 2024	<a href="https://hq-dhs.zoomgov.com/meeting/register/vJItde2trz8pGUj_c241Ewy7d37TUpX0MLo">https://hq-dhs.zoomgov.com/meeting/register/vJItde2trz8pGUj_c241Ewy7d37TUpX0MLo</a>
Friday, May 10, 2024	<a href="https://hq-dhs.zoomgov.com/meeting/register/vJIsd-ihqzgsGylUVFAuqtxTix1XsM0ePcA">https://hq-dhs.zoomgov.com/meeting/register/vJIsd-ihqzgsGylUVFAuqtxTix1XsM0ePcA</a>
Wednesday, May 15, 2024	<a href="https://hq-dhs.zoomgov.com/meeting/register/vJIsf--orjgsHa7Vn17sXcy5I1goi-U5xjo">https://hq-dhs.zoomgov.com/meeting/register/vJIsf--orjgsHa7Vn17sXcy5I1goi-U5xjo</a>
Thursday, May 23, 2024	<a href="https://hq-dhs.zoomgov.com/meeting/register/vJIsceyqrjotHJCCNOejeOYGH7OziE5bkLc">https://hq-dhs.zoomgov.com/meeting/register/vJIsceyqrjotHJCCNOejeOYGH7OziE5bkLc</a>

**WRITTEN COMMENTS and RECOMMENDATIONS:** Please send any written comments and recommendations on the proposed amendments to INA 289 by e-mail to:

[Tribal.Consultation@hq.dhs.gov](mailto:Tribal.Consultation@hq.dhs.gov) - Subject line: **INA 289 Change**. DHS will accept written comments prior to and during the consultations and afterwards through July 9, 2024.

After the comment period closes, DHS will review all feedback and internally deliberate on the proposed amendments to INA § 289 that should be proposed to Congress.

If you have questions regarding this effort, or need any accommodations for the sessions, please directly contact the Tribal Affairs mailbox at [Tribal.Affairs@hq.dhs.gov](mailto:Tribal.Affairs@hq.dhs.gov).

Sincerely,

FAYROUZ F  
SAAD

Digitally signed by  
FAYROUZ F SAAD  
Date: 2024.03.17  
23:03:29 -04'00'

Fayrouz Saad  
Assistant Secretary,  
Office of Partnership and Engagement  
U.S. Department of Homeland Security

Enclosures (2)

Current Language	DHS Legislative Proposal
<p><b>APPLICATION TO AMERICAN INDIANS BORN IN CANADA</b>  Section 289 of the Immigration and Nationality Act (<a href="#">8 U.S.C. 1359</a>) reads as such –  Nothing in this subchapter shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race.</p>	<p><b>SECTION 1. CANADIAN INDIAN ENTRANTS.</b></p> <p>(a) CANADIAN INDIAN ENTRANTS.—Section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) is amended to read as follows:</p> <p style="text-align: center;">“CANADIAN INDIAN ENTRANTS</p> <p>“SEC. 289. (a) IN GENERAL.—An alien described in section 101(a)(15)(W) of this Act shall be admitted to, or granted nonimmigrant status in, the United States as a Canadian Indian Entrant, if the alien applies for Canadian Indian Entrant status according to procedures prescribed by regulation by the Secretary of Homeland Security.</p> <p>“(b) LIMITATION ON ADMISSION.—The Secretary of Homeland Security shall determine whether a ground of inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(W) of this Act. The Secretary, in the Secretary’s discretion, may waive the application of section 212(a) of this Act (other than section 212(a)(3)(E)) in the case of such a nonimmigrant, if the Secretary considers it to be in the public or national interest to do so.</p> <p>“(c) RIGHTS OF CANADIAN INDIAN ENTRANTS.—Subject to section 214(a) of this section, an alien admitted to, or granted nonimmigrant status in, the United States as a Canadian Indian Entrant—</p> <p>“(1) may reside, study and work in the United States;</p> <p>“(2) shall be issued documentation by the Secretary that shall—</p> <p>“(A) be valid travel documentation for travel by land or sea directly from Canada to the United States, and</p> <p>“(B) be evidence of work authorization in the United States;</p> <p>“(3) shall be considered to have been admitted to the United States; and</p> <p>“(4) shall not be removable from the United States except as provided in section 237(a)(2) or (4) of this Act, or by section 237(a)(1) with respect to a Canadian Indian Entrant who obtained such nonimmigrant status by material misrepresentation or fraud, including but not limited to, obtaining evidence that the alien is an alien described in section 101(a)(15)(W) of this Act by material misrepresentation, fraud or other illegal act.”.</p>
	<p>(b) ESTABLISHMENT OF A CANADIAN INDIAN ENTRANT NONIMMIGRANT CLASSIFICATION.—Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—</p> <p>(1) in subparagraph (U), by striking “or” at the end;</p> <p>(2) in subparagraph (V), by striking the period at the end and inserting “; or”;</p> <p>and</p> <p>(3) by adding at the end the following new subparagraph:</p>

Current Language	DHS Legislative Proposal
	<p>“(W) subject to section 289 of this Act, an alien who—</p> <p>“(i) was born in Canada; and</p> <p>“(ii)(I) is a member of a federally recognized Indian tribe located in the United States or an Alaska Native entity located in the United States,</p> <p>“(II) is registered as an Indian by the Government of Canada;</p> <p>“(III) is a member of a First Nation or Indian band that has entered into a self-government agreement with the Government of Canada; or</p> <p>“(IV) is a member of another indigenous people of Canada recognized by the Secretary of Homeland Security, in his discretion and in consultation with the Secretary of the Interior and the Secretary of State, as eligible for the benefit of this subparagraph.”.</p>
	<p>(c) ADJUSTMENT OF STATUS.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following new subsection:</p> <p>“(o) ADJUSTMENT OF STATUS OF CANADIAN INDIAN ENTRANTS.—</p> <p>“(1) ELIGIBILITY FOR ADJUSTMENT.—The Secretary of Homeland Security may in his discretion adjust the status of an alien admitted to, or granted nonimmigrant status in, the United States as a Canadian Indian Entrant under section 289 and (101)(a)(15)(W) of this Act, to that of an alien lawfully admitted for permanent residence, if the alien—</p> <p>“(A) applies to the Secretary for adjustment of status;</p> <p>“(B) has been continuously physically present in the United States in Canadian Indian Entrant nonimmigrant status for a period of at least one year, but an applicant shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States; and</p> <p>“(C) is admissible to the United States as an immigrant, excluding the grounds of inadmissibility specified in section 212(a)(4), (5), and (7)(A) of this Act.</p> <p>“(2) WAIVER.—The Secretary, in the Secretary’s discretion, may waive the application of section 212(a) of this Act (other than section 212(a)(3)(E)) in the case of an applicant for adjustment under this subsection, if the Secretary considers it to be in the public or national interest to do so.</p> <p>“(3) REMOVABILITY.—An alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under this subsection, or who is an alien who was lawfully admitted for permanent residence pursuant to regulations implementing section 289 of this Act before the date of enactment of this Act, shall not be removable from the United States except as provided in section 237(a)(1), (a)(2), or (a)(4) of this Act. ”.</p>
	<p>(d) EXEMPTION FROM NUMERICAL LIMITATION.—Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following new subparagraph:</p> <p>“(F) Aliens whose status is adjusted to lawful permanent resident under section 245(o) of this Act.”.</p>

Current Language	DHS Legislative Proposal
	<p>SEC. 2. ADMINISTRATION.</p> <p>(a) EFFECTIVE DATE.—The amendments made by this Act shall take effect on the earlier of—</p> <p>(1) the date that is eighteen months after the date of enactment of this Act; or</p> <p>(2) the effective date of an interim final rule implementing such amendments.</p> <p>(b) PROCEDURE.—The Secretary of Homeland Security shall issue the interim rule described in subsection (e)(2) of this section notwithstanding the requirements of section 553 of title 5, United States Code, and chapter 35 of title 44, United States Code (commonly known as the “Paperwork Reduction Act”) with respect to any collections of information needed to implement the amendments made by this section.</p> <p>(c) CONSTRUCTION AND TRANSITION.—</p> <p>(1) Any alien who lawfully entered the United States under section 289 of the Immigration and Nationality Act (8 U.S.C. 1359), as in effect before the effective date of the amendments made by this section, before such effective date, is authorized to reside, study and work in the United States until the date that is one year after the effective date of the amendments made by this section.</p> <p>(2) Any alien described in paragraph (1) must apply for nonimmigrant status as a Canadian Indian Entrant on or before the date that is one year after the effective date of the amendments made by this section. An alien who timely applies for such nonimmigrant status may continue to reside, study and work in the United States until the application is adjudicated.</p> <p>(3) Any entry of any alien into the United States on or after the effective date of the amendments made by this section shall be subject to the amendments made by this section.</p> <p>(4) Nothing in the amendments made by this section shall be construed to remove the lawful permanent resident status of any alien who has been documented by the Secretary of Homeland Security in such status before the date of enactment of this section pursuant to regulations implementing section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) as in effect before the effective date of the amendments made by this section, but no alien may be documented as having lawful permanent resident status on or after the date of enactment of this section pursuant to such regulations. An alien may be granted lawful permanent resident status pursuant to section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) on or after the date of enactment of this section only pursuant to section 245(o) of the Immigration and Nationality Act (8 U.S.C. 1255(o)), as added by this section, when section 245(o) is in effect.</p>
	<p>SEC. 3. SENSE OF CONGRESS.</p> <p>It is the sense of Congress that the United States Government should urge the Government of Canada to provide for the entry of an individual, who is a member of a federally recognized Indian tribe or an Alaska Native entity and who is born in the United States, into Canada on terms equivalent to those</p>

Current Language	DHS Legislative Proposal
	provided to a Canadian Indian Entrant to be admitted to the United States under this section.

*Current Legislative Text:*

**APPLICATION TO AMERICAN INDIANS BORN IN CANADA**

Section 289 of the Immigration and Nationality Act ([8 U.S.C. 1359](#)) reads as such –

Nothing in this subchapter shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race.

*Proposed Legislative Text:*

A BILL

To amend section 289 of the Immigration and Nationality Act, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. CANADIAN INDIAN ENTRANTS.**

(a) CANADIAN INDIAN ENTRANTS.—Section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) is amended to read as follows:

“CANADIAN INDIAN ENTRANTS

“SEC. 289. (a) IN GENERAL.—An alien described in section 101(a)(15)(W) of this Act shall be admitted to, or granted nonimmigrant status in, the United States as a Canadian Indian Entrant, if the alien applies for Canadian Indian Entrant status according to procedures prescribed by regulation by the Secretary of Homeland Security.

“(b) LIMITATION ON ADMISSION.—The Secretary of Homeland Security shall determine whether a ground of inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(W) of this Act. The Secretary, in the Secretary’s discretion, may waive the application of section 212(a) of this Act (other than section 212(a)(3)(E)) in the case of such a nonimmigrant, if the Secretary considers it to be in the public or national interest to do so.

“(c) RIGHTS OF CANADIAN INDIAN ENTRANTS.—Subject to section 214(a) of this section, an alien admitted to, or granted nonimmigrant status in, the United States as a Canadian Indian Entrant—

“(1) may reside, study and work in the United States;

“(2) shall be issued documentation by the Secretary that shall—

“(A) be valid travel documentation for travel by land or sea directly from Canada to the United States, and

“(B) be evidence of work authorization in the United States;

“(3) shall be considered to have been admitted to the United States; and

“(4) shall not be removable from the United States except as provided in section 237(a)(2) or (4) of this Act, or by section 237(a)(1) with respect to a Canadian Indian Entrant who obtained such nonimmigrant status by material misrepresentation or fraud, including but not



limited to, obtaining evidence that the alien is an alien described in section 101(a)(15)(W) of this Act by material misrepresentation, fraud or other illegal act.”.

(b) ESTABLISHMENT OF A CANADIAN INDIAN ENTRANT NONIMMIGRANT

CLASSIFICATION.—Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

(1) in subparagraph (U), by striking “or” at the end;

(2) in subparagraph (V), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following new subparagraph:

“(W) subject to section 289 of this Act, an alien who—

“(i) was born in Canada; and

“(ii)(I) is a member of a federally recognized Indian tribe located in the United States or an Alaska Native entity located in the United States,

“(II) is registered as an Indian by the Government of Canada;

“(III) is a member of a First Nation or Indian band that has entered into a self-government agreement with the Government of Canada; or

“(IV) is a member of another indigenous people of Canada recognized by the Secretary of Homeland Security, in his discretion and in consultation with the Secretary of the Interior and the Secretary of State, as eligible for the benefit of this subparagraph.”.

(c) ADJUSTMENT OF STATUS.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following new subsection:

“(o) ADJUSTMENT OF STATUS OF CANADIAN INDIAN ENTRANTS.—

“(1) ELIGIBILITY FOR ADJUSTMENT.—The Secretary of Homeland Security may in his discretion adjust the status of an alien admitted to, or granted nonimmigrant status in, the United States as a Canadian Indian Entrant under section 289 and (101)(a)(15)(W) of this Act, to that of an alien lawfully admitted for permanent residence, if the alien—

“(A) applies to the Secretary for adjustment of status;

“(B) has been continuously physically present in the United States in Canadian Indian Entrant nonimmigrant status for a period of at least one year, but an applicant shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States; and

“(C) is admissible to the United States as an immigrant, excluding the grounds of

inadmissibility specified in section 212(a)(4), (5), and (7)(A) of this Act.

“(2) WAIVER.—The Secretary, in the Secretary’s discretion, may waive the application of section 212(a) of this Act (other than section 212(a)(3)(E)) in the case of an applicant for adjustment under this subsection, if the Secretary considers it to be in the public or national interest to do so.

“(3) REMOVABILITY.—An alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under this subsection, or who is an alien who was lawfully admitted for permanent residence pursuant to regulations implementing section 289 of this Act before the date of enactment of this Act, shall not be removable from the United States except as provided in section 237(a)(1), (a)(2), or (a)(4) of this Act. ”.

(d) EXEMPTION FROM NUMERICAL LIMITATION.—Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following new subparagraph:

“(F) Aliens whose status is adjusted to lawful permanent resident under section 245(o) of this Act.”.

(e) REAL ID ACT.—Section 202(c)(2)(B) of the REAL ID Act of 2005 (Public Law 109-13; 49 U.S.C. 30301 note) is amended—

(1) in clause (ix), by striking “or” at the end;

(2) in clause (x), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(xi) is a Canadian Indian Entrant who has been admitted to or granted status in the United States as a nonimmigrant under section 289(a) of the Immigration and Nationality Act (8 U.S.C. 1359(a)).”.

## SEC. 2. ADMINISTRATION.

(a) EFFECTIVE DATE.—The amendments made by this Act shall take effect on the earlier of—

(1) the date that is eighteen months after the date of enactment of this Act; or

(2) the effective date of an interim final rule implementing such amendments.

(b) PROCEDURE.—The Secretary of Homeland Security shall issue the interim rule described in subsection (e)(2) of this section notwithstanding the requirements of section 553 of title 5, United States Code, and chapter 35 of title 44, United States Code (commonly known as

the “Paperwork Reduction Act”) with respect to any collections of information needed to implement the amendments made by this section.

(c) CONSTRUCTION AND TRANSITION.—

(1) Any alien who lawfully entered the United States under section 289 of the Immigration and Nationality Act (8 U.S.C. 1359), as in effect before the effective date of the amendments made by this section, before such effective date, is authorized to reside, study and work in the United States until the date that is one year after the effective date of the amendments made by this section.

(2) Any alien described in paragraph (1) must apply for nonimmigrant status as a Canadian Indian Entrant on or before the date that is one year after the effective date of the amendments made by this section. An alien who timely applies for such nonimmigrant status may continue to reside, study and work in the United States until the application is adjudicated.

(3) Any entry of any alien into the United States on or after the effective date of the amendments made by this section shall be subject to the amendments made by this section.

(4) Nothing in the amendments made by this section shall be construed to remove the lawful permanent resident status of any alien who has been documented by the Secretary of Homeland Security in such status before the date of enactment of this section pursuant to regulations implementing section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) as in effect before the effective date of the amendments made by this section, but no alien may be documented as having lawful permanent resident status on or after the date of enactment of this section pursuant to such regulations. An alien may be granted lawful permanent resident status pursuant to section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) on or after the date of enactment of this section only pursuant to section 245(o) of the Immigration and Nationality Act (8 U.S.C. 1255(o)), as added by this section, when section 245(o) is in effect.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that the United States Government should urge the Government of Canada to provide for the entry of an individual, who is a member of a federally recognized Indian tribe or an Alaska Native entity and who is born in the United States, into Canada on terms equivalent to those provided to a Canadian Indian Entrant to be admitted to the United States under this section.

*Change in current law:*

IMMIGRATION AND NATIONALITY ACT

\* \* \* \* \*

TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—

\* \* \* \* \*

(15) The term “immigrant” means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

\* \* \* \* \*

(U)(i) \* \* \* \* \*

(ii) \* \* \* \* \*

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18, United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes; **[or]**

(V) subject to section 214(q), an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 203(d)) of a petition to accord a status under section 203(a)(2)(A) that was filed with the Attorney General under section 204 on or before the date of the enactment of the Legal Immigration Family Equity Act, if—

(i) such petition has been pending for 3 years or more; or  
(ii) such petition has been approved, 3 years or more have elapsed since such filing date, and—

(I) an immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 203(a)(2)(A); or

(II) the alien’s application for an immigrant visa, or the alien’s application for adjustment of status under section 245, pursuant to the approval of such petition, remains pending[.]; **and**

**(W) subject to section 289 of this Act, an alien who—**

**(i) was born in Canada; and**

**(ii)(I) is a member of a federally recognized Indian tribe located in the United States or an Alaska Native entity located in the United States,**

**(II) is registered as an Indian by the Government of Canada;**

(III) is a member of a First Nation or Indian band that has entered into a self-government agreement with the Government of Canada; or  
(IV) is a member of another indigenous people of Canada recognized by the Secretary of Homeland Security, in his discretion and in consultation with the Secretary of the Interior and the Secretary of State, as eligible for the benefit of this subparagraph.

\* \* \* \* \*

## TITLE II—IMMIGRATION

### CHAPTER 1—SELECTION SYSTEM

#### WORLDWIDE LEVEL OF IMMIGRATION

SEC. 201. (a) \* \* \* \* \*

(b) ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.—Aliens described in this subsection, who are not subject to the worldwide levels or numerical limitations of subsection

(a), are as follows:

(1)(A) \* \* \* \* \*

(B) \* \* \* \* \*

(C) \* \* \* \* \*

(D) \* \* \* \* \*

(E) \* \* \* \* \*

(F) Aliens whose status is adjusted to lawful permanent resident under section 245(o) of this Act.

\* \* \* \* \*

### CHAPTER 5—ADJUSTMENT AND CHANGE OF STATUS

#### ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF A PERSON ADMITTED FOR PERMANENT RESIDENCE

SEC. 245. (a) – (n) \* \* \* \* \*

(o) ADJUSTMENT OF STATUS OF CANADIAN INDIAN ENTRANTS.—

(1) ELIGIBILITY FOR ADJUSTMENT.—The Secretary of Homeland Security may in his discretion adjust the status of an alien admitted to, or granted nonimmigrant status in, the United States as a Canadian Indian Entrant under section 289 and (101)(a)(15)(W) of this Act, to that of an alien lawfully admitted for permanent residence, if the alien—

(A) applies to the Secretary for adjustment of status;

(B) has been continuously physically present in the United States in Canadian Indian Entrant nonimmigrant status for a period of at least one year, but an applicant shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States; and

(C) is admissible to the United States as an immigrant, excluding the grounds of inadmissibility specified in section 212(a)(4), (5), and (7)(A) of this Act.

(2) WAIVER.—The Secretary, in the Secretary's discretion, may waive the

application of section 212(a) of this Act (other than section 212(a)(3)(E)) in the case of an applicant for adjustment under this subsection, if the Secretary considers it to be in the public or national interest to do so.

(3) REMOVABILITY.—An alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under this subsection, or who is an alien who was lawfully admitted for permanent residence pursuant to regulations implementing section 289 of this Act before the date of enactment of this Act, shall not be removable from the United States except as provided in section 237(a)(1), (a)(2), or (a)(4) of this Act.

\* \* \* \* \*

## TITLE II—IMMIGRATION

\* \* \* \* \*

### CHAPTER 9—MISCELLANEOUS

\* \* \* \* \*

#### [AMERICAN INDIANS BORN IN CANADA

[SEC. 289. Nothing in this title shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race.]

#### CANADIAN INDIAN ENTRANTS

SEC. 289. (a) IN GENERAL.—An alien described in section 101(a)(15)(W) of this Act shall be admitted to, or granted nonimmigrant status in, the United States as a Canadian Indian Entrant, if the alien applies for Canadian Indian Entrant status according to procedures prescribed by regulation by the Secretary of Homeland Security.

(b) LIMITATION ON ADMISSION.—The Secretary of Homeland Security shall determine whether a ground of inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(W) of this Act. The Secretary, in the Secretary's discretion, may waive the application of section 212(a) of this Act (other than section 212(a)(3)(E)) in the case of such a nonimmigrant, if the Secretary considers it to be in the public or national interest to do so.

(c) RIGHTS OF CANADIAN INDIAN ENTRANTS.—Subject to section 214(a) of this section, an alien admitted to, or granted nonimmigrant status in, the United States as a Canadian Indian Entrant—

- (1) may reside, study and work in the United States;
- (2) shall be issued documentation by the Secretary that shall—
  - (A) be valid travel documentation for travel by land or sea directly from Canada to the United States, and
  - (B) be evidence of work authorization in the United States;
- (3) shall be considered to have been admitted to the United States; and
- (4) shall not be removable from the United States except as provided in section

**237(a)(2) or (4) of this Act, or by section 237(a)(1) with respect to a Canadian Indian Entrant who obtained such nonimmigrant status by material misrepresentation or fraud, including but not limited to, obtaining evidence that the alien is an alien described in section 101(a)(15)(W) of this Act by material misrepresentation, fraud or other illegal act.**

\* \* \* \* \*

REAL ID ACT

\* \* \* \* \*

**SEC. 202. MINIMUM REQUIREMENTS AND ISSUANCE STANDARDS FOR  
FEDERAL RECOGNITION.**

**(a) – (b) \* \* \* \* \***

**(c) MINIMUM ISSUANCE STANDARDS.—**

**(1) \* \* \* \* \***

**(2) SPECIAL REQUIREMENTS.—**

**(A) \* \* \* \* \***

**(B) EVIDENCE OF LAWFUL STATUS.—**A State shall require, before issuing a driver's license or identification card to a person, valid documentary evidence that the person--

**(i) - (viii) \* \* \* \* \***

**(ix)** has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States; **[or]**

**(x)** is a citizen of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau who has been admitted to the United States as a nonimmigrant pursuant to a Compact of Free Association between the United States and the Republic or Federated States[.]; **or**

**(xi) is a Canadian Indian Entrant who has been admitted to or granted status in the United States as a nonimmigrant under section 289(a) of the Immigration and Nationality Act (8 U.S.C. 1359(a)).**