

FOR THE RELIEF OF ALLAN BOLOR KELLEY

JULY 24, 2012.—Referred to the Private Calendar and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 794]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 794) for the relief of Allan Bolor Kelley, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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Purpose and Summary

The bill grants permanent resident status to Allan Bolor Kelley.

Background and Need for the Legislation

Allan Kelley was born in the Philippines in 1978. In 1990, at age 11, Allan was brought to the U.S. with a tourist visa by David and Marta Kelley. The Kelleys had gone to the Philippines in 1988 in order to find a child to adopt. Mr. Kelley's brother-in-law's mother "was taking care of many children whose parents were not able to

take care of them themselves, so they sort of dumped them on her.”¹ Mr. Kelley sought to adopt two children in her care, Allan and a young girl,² in the Philippines: “I met with an immigration lawyer and attempted to get the paperwork done in the Philippines. During the next year, the law changed within the Philippines. I was no longer able to adopt in the Philippines . . . And so that’s why we pursued the route of adopting [the children] in the U.S.”³

Soon after Mr. Kelley brought Allan and the girl to the U.S., Marta left him and they later divorced. Mr. Kelley decided to keep the children himself. However, he did not pursue adoption proceedings for many years because of advice from his attorney (“Well, at that point in time there was a scandal going on with Woody Allen, who apparently had adopted some children and was having sex with one of them. . . . And my lawyer told me that it was difficult for a single man to adopt a pubescent girl, in light of the Woody Allen situation.”⁴). The lawyer advised him to wait until Allan could apply for suspension of deportation, then available to illegal immigrants who had been in the U.S. for 7 years and who would suffer extreme hardship if removed. Mr. Kelley eventually did adopt Allan, but not before Allan’s 16th birthday and thus too late for the adoption to be recognized under U.S. immigration law.

Mr. Kelley also sought cancellation of removal (the successor provision after the elimination of suspension of deportation by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) for Allan—but the 9th Circuit ruled that they could not meet the statutory requirements (exceptional and extremely unusual hardship to the U.S. citizen parent of an illegal immigrant).

Allan, now 33 years old, has been ordered deported.

H.R. 794 grants Mr. Kelley permanent residence.

The two most clear precedents for private bills in adoption circumstances do not apply here. One is that the birth parents have died or abandoned their children. Another is that the adoption proceedings were initiated before the child turned 16, even if they were not completed by that time.

There is other relevant precedent. In the 97th Congress, a private bill was enacted for Andre Eubanks.⁵ Andre was born in 1975 in Brazil. In 1980, when Andre was five, he was adopted in Brazil under Brazilian law by a U.S. couple because his birth parents (still alive) found him “an unwanted, unplanned child and [had] neither the financial ability nor the resources to raise and educate” him. The U.S. permanent resident mother was Andre’s birth aunt, who had been asked by her sister (Andre’s birth mother) “to take care of Andre because she could no longer handle the responsibility.” The adoptive parents brought Andre to the U.S with a tourist visa in 1981. They were unable to meet the adoption requirements of U.S. immigration law because Andre was not an orphan

¹ *Matter of Maria Lejani Abada Kelley, Alan Bolar Kelley*, transcript of Executive Office for Immigration Review removal hearing at 82 (March 8, 2004).

² The girl later married a U.S. citizen and thus is not a beneficiary of this private bill.

³ *Matter of Maria Lejani Abada Kelley, Alan Bolar Kelley*, transcript of removal hearing at 83.

⁴ *Id.* at 88–89.

⁵ Priv. L. No. 97–17. See H.R. Rep. No. 97–129 (1981) & S. Rep. No. 97–358 (1981).

and “the adoptive mother . . . was unable to establish the 2-year residence period required by law due to an illness.”

There are great similarities between Andre’s case and that of the present private bill for Allan—in both cases, an American adoptive parent decided to bring a child to the U.S. improperly with a tourist visa, the child was taken from relatives of the adoptive parent, and the adoptive parents could not meet the requirements for adoption under U.S. immigration law. The largest difference between the cases of Andre and Allan is the type of hardship involved. On the one hand, Andre was 6 years old at the time his private bill was considered—he was totally dependent on others for his sustenance. Allan, however, is in his 30’s, and, as the immigration judge commented, could take care of himself in the Philippines. On the other hand, Andre was much younger than Allan and had not spent many of his formative years in the U.S., as had Allan. Therefore, Allan would suffer a much larger culture shock if sent back to the Philippines than Andre would have suffered had he been sent back to Brazil.

In the 111th Congress, the Immigration Subcommittee requested an ICE report on Mr. Kelley and ICE provided the Subcommittee with a report which contained no derogatory information. On March 10, 2011, the Subcommittee again voted to request a report. On May 3, 2011, ICE provided the report. It revealed no derogatory information.

Hearings

The Committee on the Judiciary held no hearings on H.R. 794.

Committee Consideration

On June 28, 2012, the Committee met in open session and ordered the bill H.R. 794 favorably reported without amendment, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee’s consideration of H.R. 794.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises 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.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives 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. 794, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 5, 2012.

Hon. LAMAR SMITH, CHAIRMAN,
*Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the following legislation ordered reported by the House Committee on the Judiciary on June 28, 2012:

- H.R. 823, a bill for the relief of Maria Carmen Castro Ramirez and J. Refugio Carreno Rojas;
- H.R. 824, a bill for the relief of Daniel Wachira;
- H.R. 316, a bill for the relief of Esther Karinge;
- H.R. 794, a bill for the relief of Allan Bolor Kelley;
- H.R. 357, a bill for the relief of Corina de Chalup Turcinovic; and
- H.R. 1857, a bill for the relief of Bartosz Kumor.

Those bills would make certain individuals eligible for permanent U.S. residence and could have a very small effect on fees collected by the Department of Homeland Security and thus would affect direct spending. Therefore, pay-as-you-go procedures apply. CBO estimates, however, that enacting those pieces of legislation would not have a significant impact on the federal budget.

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,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 794 grants permanent resident status to Allan Bolor Kelley.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 794 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. Permanent Resident Status for Allan Bolor Kelley.

Subsection (a) provides that Allan Bolor Kelley shall be eligible for issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of the Immigration and Nationality Act (INA) or for adjustment of status to lawful permanent resident.

Subsection (b) provides that if Mr. Kelley enters the United States before the filing deadline specified in subsection (c), he shall be considered to have entered and remained lawfully and shall, if otherwise eligible, be eligible for adjustment of status under section 245 of the INA.

Subsection (c) provides that subsections (a) and (b) shall apply only if the application for issuance of an immigrant visa or the application for adjustment of status is filed with appropriate fees within 2 years after the date of the enactment of this Act.

Subsection (d) provides that upon the granting of an immigrant visa or permanent residence to Mr. Kelley, the Secretary of State shall instruct the proper officer to reduce by 1, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of his birth under section 203(a) of the INA or, if applicable, the total number of immigrant visas that are made available to natives of the country of his birth under section 202(e) of the INA.

Subsection (e) provides that the natural parents, brothers, and sisters of Mr. Kelley shall not, by virtue of such relationship, be accorded any right, privilege, or status under the INA.