AMENDMENT TO RULES COMMITTEE PRINT 118-10

OFFERED BY MS. ROSS OF NORTH CAROLINA

Add at the end of title XVIII the following:

SEC. 111. AGE-OUT PROTECTIONS AND PRIORITY DATE RETENTION.

(a) Age-out Protections.—

(1) In general.—The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(A) in section 101(b) (8 U.S.C. 1101(b)), by adding at the end the following:

“(6) Determination of child status.—A determination as to whether an alien is a child shall be made as follows:

“(A) In general.—For purposes of a petition under section 204 and any subsequent application for an immigrant visa or adjustment of status, such determination shall be made using the age of the alien on the earlier of—

“(i) the date on which the petition is filed with the Secretary of Homeland Secu-

rity; or
(ii) the date on which an application for a labor certification under section 212(a)(5)(A)(i) is filed with the Secretary of Labor.

“(B) CERTAIN DEPENDENTS OF NON-IMMIGRANTS.—With respect to an alien who, for an aggregate period of 8 years before attaining the age of 21, was in the status of a dependent child of a nonimmigrant pursuant to a lawful admission as an alien eligible to be employed in the United States (other than a non-immigrant described in subparagraph (A), (G), (N), or (S) of section 101(a)(15)), notwithstanding clause (i), the determination of the alien’s age shall be based on the date on which such initial nonimmigrant employment-based petition or application was filed by the alien’s nonimmigrant parent.

“(C) FAILURE TO ACQUIRE STATUS AS ALIEN LAWFULLY ADMITTED FOR PERMANENT RESIDENCE.—With respect to an alien who has not sought to acquire status as an alien lawfully admitted for permanent residence during the 2 years beginning on the date on which an immigrant visa becomes available to such alien, the
alien’s age shall be determined based on the alien’s biological age, unless the failure to seek to acquire such status was due to extraordinary circumstances.’’; and

(B) in section 201(f) (8 U.S.C. 1151)—

(i) by striking the subsection heading and all that follows through ‘‘TERMINATION DATE.—’’ in paragraph (3) and inserting ‘‘RULE FOR DETERMINING WHETHER CERTAIN ALIENS ARE IMMEDIATE RELATIVES.—’’; and

(ii) by striking paragraph (4).

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by this subsection shall be effective as if included in the Child Status Protection Act (Public Law 107–208; 116 Stat. 927).

(B) MOTION TO REOPEN OR RECONSIDER.—

(i) IN GENERAL.—A motion to reopen or reconsider the denial of a petition or application described in the amendment made by paragraph (1)(A) may be granted if—

(I) such petition or application would have been approved if the
amendment described in such paragraph had been in effect at the time of adjudication of the petition or application;

(II) the individual seeking relief pursuant to such motion was in the United States at the time the underlying petition or application was filed; and

(III) such motion is filed with the Secretary of Homeland Security or the Attorney General not later than the date that is 2 years after the date of the enactment of this Act.

(ii) EXEMPTION FROM NUMERICAL LIMITATIONS.—Notwithstanding any other provision of law, an alien shall be exempt from the numerical limitations in sections 201, 202, and 203 of the Immigration and Nationality Act (8 U.S.C. 1151, 1152, and 1153) if—

(I) the alien was granted relief pursuant to a motion to reopen or reconsider under clause (i); or

(II) in lieu of such relief—
(aa) the alien has an approved immigrant petition;

(bb) the alien qualifies as a child under section 101(b)(6)(B); and

(cc) the parent of the alien has been lawfully admitted for permanent residence.

(b) Nonimmigrant Dependent Children.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following:

“(s) DERIVATIVE BENEFICIARIES.—

“(1) IN GENERAL.—Except as described in paragraph (2), the determination as to whether an alien who is the derivative beneficiary of a properly filed pending or approved immigrant petition under section 204 is eligible to be a dependent child shall be based on whether the alien is determined to be a child under section 101(b)(6).

“(2) LONG-TERM DEPENDENTS.—If otherwise eligible, an alien who is determined to be a child pursuant to section 101(b)(6)(B) may change status to, or extend status as, a dependent child of a non-immigrant with an approved employment-based petition under this section or an approved application
under section 101(a)(15)(E), notwithstanding such alien’s marital status.

“(3) EMPLOYMENT AUTHORIZATION.—An alien admitted to the United States as a dependent child of a nonimmigrant who is described in this section is authorized to engage in employment in the United States incident to status.”.

(c) PRIORITY DATE RETENTION.—Section 203(h) of the Immigration and Nationality Act (8 U.S.C. 1153(h)) is amended—

(1) by striking the subsection heading and inserting “RETENTION OF PRIORITY DATES”;

(2) by striking paragraphs (1) through (4);

(3) by redesignating paragraph (5) as paragraph (3); and

(4) by inserting before paragraph (3) the following:

“(1) IN GENERAL.—The priority date for an individual shall be the date on which a petition under section 204 is filed with the Secretary of Homeland Security or the Secretary of State, as applicable, unless such petition was preceded by the filing of a labor certification with the Secretary of Labor, in which case the date on which the labor certification is filed shall be the priority date.
“(2) APPLICABILITY.—The principal beneficiary and all derivative beneficiaries shall retain the priority date associated with the earliest of any approved petition or labor certification, and such priority date shall be applicable to any subsequently approved petition.”.