

**AMENDMENT TO H.R. 418**  
**OFFERED BY MR. SENSENBRENNER OF**  
**WISCONSIN**

Amend section 101 to read as follows:

1 **SECTION 101. PREVENTING TERRORISTS FROM OBTAINING**  
2 **RELIEF FROM REMOVAL.**

3 (a) **CONDITIONS FOR GRANTING ASYLUM.**—Section  
4 208(b)(1) of the Immigration and Nationality Act (8  
5 U.S.C. 1158(b)(1)) is amended—

6 (1) by striking “The Attorney General” the  
7 first place such term appears and inserting the fol-  
8 lowing:

9 “(A) **ELIGIBILITY.**—The Secretary of  
10 Homeland Security or the Attorney General”;

11 (2) by striking “the Attorney General” the sec-  
12 ond and third places such term appears and insert-  
13 ing “the Secretary of Homeland Security or the At-  
14 torney General”; and

15 (3) by adding at the end the following:

16 “(B) **BURDEN OF PROOF.**—

17 “(i) **IN GENERAL.**—The burden of  
18 proof is on the applicant to establish that  
19 the applicant is a refugee, within the



1 meaning of section 101(a)(42)(A). To es-  
2 tablish that the applicant is a refugee with-  
3 in the meaning of such section, the appli-  
4 cant must establish that race, religion, na-  
5 tionality, membership in a particular social  
6 group, or political opinion was or will be a  
7 central reason for persecuting the appli-  
8 cant.

9 “(ii) SUSTAINING BURDEN.—The tes-  
10 timony of the applicant may be sufficient  
11 to sustain the applicant’s burden without  
12 corroboration, but only if the applicant sat-  
13 isfies the trier of fact that the applicant’s  
14 testimony is credible, is persuasive, and re-  
15 fers to specific facts sufficient to dem-  
16 onstrate that the applicant is a refugee. In  
17 determining whether the applicant has met  
18 the applicant’s burden, the trier of fact  
19 may weigh the credible testimony along  
20 with other evidence of record. Where the  
21 trier of fact determines, in the trier of  
22 fact’s discretion, that the applicant should  
23 provide evidence which corroborates other-  
24 wise credible testimony, such evidence  
25 must be provided unless the applicant does



1 not have the evidence and cannot reason-  
2 ably obtain the evidence without departing  
3 the United States. The inability to obtain  
4 corroborating evidence does not excuse the  
5 applicant from meeting the applicant's  
6 burden of proof.

7 “(iii) CREDIBILITY DETERMINA-  
8 TION.—The trier of fact should consider all  
9 relevant factors and may, in the trier of  
10 fact's discretion, base the trier of fact's  
11 credibility determination on any such fac-  
12 tor, including the demeanor, candor, or re-  
13 sponsiveness of the applicant or witness,  
14 the inherent plausibility of the applicant's  
15 or witness's account, the consistency be-  
16 tween the applicant's or witness's written  
17 and oral statements (whenever made and  
18 whether or not made under oath), the in-  
19 ternal consistency of each such statement,  
20 the consistency of such statements with  
21 other evidence of record (including the re-  
22 ports of the Department of State on coun-  
23 try conditions), and any inaccuracies or  
24 falsehoods in such statements, without re-  
25 gard to whether an inconsistency, inaccu-



1 racy, or falsehood goes to the heart of the  
2 applicant's claim. There is no presumption  
3 of credibility.”.

4 (b) WITHHOLDING OF REMOVAL.—Section 241(b)(3)  
5 of the Immigration and Nationality Act (8 U.S.C.  
6 1231(b)(3)) is amended by adding at the end the fol-  
7 lowing:

8 “(C) SUSTAINING BURDEN OF PROOF;  
9 CREDIBILITY DETERMINATIONS.—In deter-  
10 mining whether an alien has demonstrated that  
11 the alien's life or freedom would be threatened  
12 for a reason described in subparagraph (A), the  
13 trier of fact shall determine whether the alien  
14 has sustained the alien's burden of proof, and  
15 shall make credibility determinations, in the  
16 manner described in clauses (ii) and (iii) of sec-  
17 tion 208(b)(1)(B).”.

18 (c) OTHER REQUESTS FOR RELIEF FROM RE-  
19 MOVAL.—Section 240(c) of the Immigration and Nation-  
20 ality Act (8 U.S.C. 1230(c)) is amended—

21 (1) by redesignating paragraphs (4), (5), and  
22 (6) as paragraphs (5), (6), and (7), respectively; and

23 (2) by inserting after paragraph (3) the fol-  
24 lowing:



1           “(4) APPLICATIONS FOR RELIEF FROM RE-  
2           MOVAL.—

3           “(A) IN GENERAL.—An alien applying for  
4           relief or protection from removal has the bur-  
5           den of proof to establish that the alien—

6                   “(i) satisfies the applicable eligibility  
7                   requirements; and

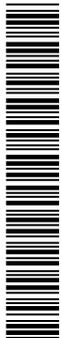
8                   “(ii) with respect to any form of relief  
9                   that is granted in the exercise of discre-  
10                  tion, that the alien merits a favorable exer-  
11                  cise of discretion.

12           “(B) SUSTAINING BURDEN.—The appli-  
13           cant must comply with the applicable require-  
14           ments to submit information or documentation  
15           in support of the applicant’s application for re-  
16           lief or protection as provided by law or by regu-  
17           lation or in the instructions for the application  
18           form. In evaluating the testimony of the appli-  
19           cant or other witness in support of the applica-  
20           tion, the immigration judge will determine  
21           whether or not the testimony is credible, is per-  
22           suasive, and refers to specific facts sufficient to  
23           demonstrate that the applicant has satisfied the  
24           applicant’s burden of proof. In determining  
25           whether the applicant has met such burden, the



1 immigration judge shall weigh the credible testi-  
2 mony along with other evidence of record.  
3 Where the immigration judge determines in the  
4 judge's discretion that the applicant should pro-  
5 vide evidence which corroborates otherwise cred-  
6 ible testimony, such evidence must be provided  
7 unless the applicant demonstrates that the ap-  
8 plicant does not have the evidence and cannot  
9 reasonably obtain the evidence without depart-  
10 ing from the United States. The inability to ob-  
11 tain corroborating evidence does not excuse the  
12 applicant from meeting the burden of proof.

13 “(C) CREDIBILITY DETERMINATION.—The  
14 immigration judge should consider all relevant  
15 factors and may, in the judge's discretion, base  
16 the judge's credibility determination on any  
17 such factor, including the demeanor, candor, or  
18 responsiveness of the applicant or witness, the  
19 inherent plausibility of the applicant's or  
20 witness's account, the consistency between the  
21 applicant's or witness's written and oral state-  
22 ments (whenever made and whether or not  
23 made under oath), the internal consistency of  
24 each such statement, the consistency of such  
25 statements with other evidence of record (in-



1 including the reports of the Department of State  
2 on country conditions), and any inaccuracies or  
3 falsehoods in such statements, without regard  
4 to whether an inconsistency, inaccuracy, or  
5 falsehood goes to the heart of the applicant's  
6 claim. There is no presumption of credibility.”.

7 (d) STANDARD OF REVIEW FOR ORDERS OF RE-  
8 MOVAL.—Section 242(b)(4) of the Immigration and Na-  
9 tionality Act (8 U.S.C. 1252(b)(4)) is amended by adding  
10 at the end, after subparagraph (D), the following: “No  
11 court shall reverse a determination made by a trier of fact  
12 with respect to the availability of corroborating evidence,  
13 as described in section 208(b)(1)(B), 240(c)(4)(B), or  
14 241(b)(3)(C), unless the court finds that a reasonable  
15 trier of fact is compelled to conclude that such corrobo-  
16 rating evidence is unavailable.”.

17 (e) CLARIFICATION OF DISCRETION.—Section  
18 242(a)(2)(B) of the Immigration and Nationality Act (8  
19 U.S.C. 1252(a)(2)(B)) is amended—

20 (1) by inserting “or the Secretary of Homeland  
21 Security” after “Attorney General” each place such  
22 term appears; and

23 (2) in the matter preceding clause (i), by insert-  
24 ing “and regardless of whether the judgment, deci-



1 sion, or action is made in removal proceedings,”  
2 after “other provision of law,”.

3 (f) REMOVAL OF CAPS.—Section 209 of the Immigra-  
4 tion and Nationality Act (8 U.S.C. 1159) is amended—

5 (1) in subsection (a)(1)—

6 (A) by striking “Service” and inserting  
7 “Department of Homeland Security”; and

8 (B) by striking “Attorney General” each  
9 place such term appears and inserting “Sec-  
10 retary of Homeland Security or the Attorney  
11 General”;

12 (2) in subsection (b)—

13 (A) by striking “Not more” and all that  
14 follows through “asylum who—” and inserting  
15 “The Secretary of Homeland Security or the  
16 Attorney General, in the Secretary’s or the At-  
17 torney General’s discretion and under such reg-  
18 ulations as the Secretary or the Attorney Gen-  
19 eral may prescribe, may adjust to the status of  
20 an alien lawfully admitted for permanent resi-  
21 dence the status of any alien granted asylum  
22 who—”; and

23 (B) in the matter following paragraph (5),  
24 by striking “Attorney General” and inserting



1 “Secretary of Homeland Security or the Attor-  
2 ney General”; and

3 (3) in subsection (c), by striking “Attorney  
4 General” and inserting “Secretary of Homeland Se-  
5 curity or the Attorney General”.

6 (g) EFFECTIVE DATES.—

7 (1) The amendments made by paragraphs (1)  
8 and (2) of subsection (a) shall take effect as if en-  
9 acted on March 1, 2003.

10 (2) The amendments made by subsections  
11 (a)(3), (b), and (c) shall take effect on the date of  
12 the enactment of this Act and shall apply to applica-  
13 tions for asylum, withholding, or other removal made  
14 on or after such date.

15 (3) The amendment made by subsection (d)  
16 shall take effect on the date of the enactment of this  
17 Act and shall apply to all cases in which the final  
18 administrative removal order is or was issued before,  
19 on, or after such date.

20 (4) The amendments made by subsection (e)  
21 shall take effect on the date of the enactment of this  
22 Act and shall apply to all cases pending before any  
23 court on or after such date.



1           (5) The amendments made by subsection (f)  
2           shall take effect on the date of the enactment of this  
3           Act.

4           (h) REPEAL.—Section 5403 of the Intelligence Re-  
5 form and Terrorism Prevention Act of 2004 (Public Law  
6 108–458) is repealed.

          In section 102(c)(2) of the Illegal Immigration Re-  
form and Immigrant Responsibility Act of 1996, as pro-  
posed to be added by section 102 of the bill, strike  
“court” and insert “court, administrative agency, or  
other entity”.

          In section 103(a) of the bill, strike “Section” and all  
that follows through “is amended” and insert the fol-  
lowing: “So much of section 212(a)(3)(B)(i) of the Immi-  
gration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i))  
as precedes the final sentence is amended”.

          In section 212(a)(3)(B)(i)(IV)(aa) of the Immigra-  
tion and Nationality Act, as proposed to be amended by  
section 103(a) of the bill, after “organization” insert “(as  
defined in clause (vi))”.

          In section 212(a)(3)(B)(i)(VIII) of the Immigration  
and Nationality Act, as proposed to be added by section  
103(a) of the bill, after “terrorist organization” insert  
“(as defined in clause (vi))”.



In section 212(a)(3)(B)(i) of the Immigration and Nationality Act, as proposed to be amended by section 103(a) of the bill, strike the final sentence.

In section 212(a)(3)(B)(iv) of the Immigration and Nationality Act, as proposed to be amended by section 103(b) of the bill, strike “subparagraph” and insert “Act”.

In section 212(a)(3)(B)(iv)(V)(aa) of the Immigration and Nationality Act, as proposed to be amended by section 103(b) of the bill, strike “clause” and insert “subsection”.

In section 212(a)(3)(B)(iv)(VI)(cc) of the Immigration and Nationality Act, as proposed to be amended by section 103(b) of the bill, after “clause (vi)” insert “or to any member of such an organization,”

In section 212(a)(3)(B)(iv)(VI)(dd) of the Immigration and Nationality Act, as proposed to be amended by section 103(b) of the bill, after “(vi)(III),” insert “or to any member of such an organization,”.

At the end of section 212(a)(3)(B)(iv) of the Immigration and Nationality Act, as proposed to be amended by section 103(b) of the bill, add the following:



1           This clause shall not apply to any material  
2           support the alien afforded to an organiza-  
3           tion or individual that has committed ter-  
4           rorist activity, if the Secretary of State,  
5           after consultation with the Attorney Gen-  
6           eral and the Secretary of Homeland Secu-  
7           rity, or the Attorney General, after con-  
8           sultation with the Secretary of State and  
9           the Secretary of Homeland Security, con-  
10          cludes in his sole unreviewable discretion,  
11          that this clause should not apply.

Amend section 103(d) of the bill to read as follows:

12          (d) EFFECTIVE DATE.—The amendments made by  
13 this section shall take effect on the date of the enactment  
14 of this Act, and these amendments, and section  
15 212(a)(3)(B) of the Immigration and Nationality Act (8  
16 U.S.C. 1182(a)(3)(B)), as amended by this section, shall  
17 apply to—

18           (1) removal proceedings instituted before, on, or  
19           after the date of the enactment of this Act; and

20           (2) acts and conditions constituting a ground  
21           for inadmissibility, excludability, deportation, or re-  
22           moval occurring or existing before, on, or after such  
23           date.



In section 104(a)(1) of the bill, insert “of the Immigration and Nationality Act” after “237(a)(4)(B)”

In section 237(a)(4)(B) of the Immigration and Nationality Act, as proposed to be amended by section 104(a)(1) of the bill, strike “would be considered inadmissible pursuant to” and insert “is described in”.

Amend section 104(a)(2) of the bill to read as follows:

1           “(2) EFFECTIVE DATE.—The amendment made  
2           by paragraph (1) shall take effect on the date of the  
3           enactment of this Act, and the amendment, and section  
4           237(a)(4)(B) of the Immigration and Nationality  
5           Act (8 U.S.C. 1227(a)(4)(B)), as amended by  
6           such paragraph, shall apply to—

7           “(A) removal proceedings instituted before,  
8           on, or after the date of the enactment of this  
9           Act; and

10           “(B) acts and conditions constituting a  
11           ground for inadmissibility, excludability, depor-  
12           tation, or removal occurring or existing before,  
13           on, or after such date.”.

At the end of title I of the bill, add the following:



1 **SEC. 105. JUDICIAL REVIEW OF ORDERS OF REMOVAL.**

2 (a) IN GENERAL.—Section 242 of the Immigration  
3 and Nationality Act (8 U.S.C. 1252) is amended—

4 (1) in subsection (a)—

5 (A) in paragraph (2)—

6 (i) in subparagraph (A), by inserting  
7 “(statutory or nonstatutory), including sec-  
8 tion 2241 of title 28, United States Code,  
9 or any other habeas corpus provision, and  
10 sections 1361 and 1651 of such title” after  
11 “Notwithstanding any other provision of  
12 law”;

13 (ii) in each of subparagraphs (B) and  
14 (C), by inserting “(statutory or nonstatu-  
15 tory), including section 2241 of title 28,  
16 United States Code, or any other habeas  
17 corpus provision, and sections 1361 and  
18 1651 of such title, and except as provided  
19 in subparagraph (D)” after “Notwith-  
20 standing any other provision of law”; and

21 (iii) by adding at the end the fol-  
22 lowing:

23 “(D) JUDICIAL REVIEW OF CERTAIN  
24 LEGAL CLAIMS.—Nothing in subparagraph (B)  
25 or (C), or in any other provision of this Act  
26 which limits or eliminates judicial review, shall



1 be construed as precluding review of constitu-  
2 tional claims or pure questions of law raised  
3 upon a petition for review filed with an appro-  
4 priate court of appeals in accordance with this  
5 section.”; and

6 (B) by adding at the end the following:

7 “(4) CLAIMS UNDER THE UNITED NATIONS  
8 CONVENTION.—Notwithstanding any other provision  
9 of law (statutory or nonstatutory), including section  
10 2241 of title 28, United States Code, or any other  
11 habeas corpus provision, and sections 1361 and  
12 1651 of such title, a petition for review filed with an  
13 appropriate court of appeals in accordance with this  
14 section shall be the sole and exclusive means for ju-  
15 dicial review of any cause or claim under the United  
16 Nations Convention Against Torture and Other  
17 Forms of Cruel, Inhuman, or Degrading Treatment  
18 or Punishment, except as provided in subsection (e).

19 “(5) EXCLUSIVE MEANS OF REVIEW.—Notwith-  
20 standing any other provision of law (statutory or  
21 nonstatutory), including section 2241 of title 28,  
22 United States Code, or any other habeas corpus pro-  
23 vision, and sections 1361 and 1651 of such title, a  
24 petition for review filed with an appropriate court of  
25 appeals in accordance with this section shall be the



1       sole and exclusive means for judicial review of an  
2       order of removal entered or issued under any provi-  
3       sion of this Act, except as provided in subsection (e).  
4       For purposes of this Act, in every provision that lim-  
5       its or eliminates judicial review or jurisdiction to re-  
6       view, the terms ‘judicial review’ and ‘jurisdiction to  
7       review’ include habeas corpus review pursuant to  
8       section 2241 of title 28, United States Code, or any  
9       other habeas corpus provision, sections 1361 and  
10      1651 of such title, and review pursuant to any other  
11      provision of law (statutory or nonstatutory).”;

12               (2) in subsection (b)—

13                   (A) in paragraph (3)(B), by inserting  
14                   “pursuant to subsection (f)” after “unless”;  
15                   and

16                   (B) in paragraph (9), by adding at the end  
17                   the following: “Except as otherwise provided in  
18                   this section, no court shall have jurisdiction, by  
19                   habeas corpus under section 2241 of title 28,  
20                   United States Code, or any other habeas corpus  
21                   provision, by section 1361 or 1651 of such title,  
22                   or by any other provision of law (statutory or  
23                   nonstatutory), to review such an order or such  
24                   questions of law or fact.”; and



1           (3) in subsection (g), by inserting “(statutory  
2           or nonstatutory), including section 2241 of title 28,  
3           United States Code, or any other habeas corpus pro-  
4           vision, and sections 1361 and 1651 of such title”  
5           after “notwithstanding any other provision of law”.

6           (b) EFFECTIVE DATE.—The amendments made by  
7           subsection (a) shall take effect upon the date of the enact-  
8           ment of this Act and shall apply to cases in which the  
9           final administrative order of removal, deportation, or ex-  
10          clusion was issued before, on, or after the date of the en-  
11          actment of this Act.

12          (c) TRANSFER OF CASES.—If an alien’s case, brought  
13          under section 2241 of title 28, United States Code, and  
14          challenging a final administrative order of removal, depor-  
15          tation, or exclusion, is pending in a district court on the  
16          date of the enactment of this Act, then the district court  
17          shall transfer the case (or the part of the case that chal-  
18          lenges the order of removal, deportation, or exclusion) to  
19          the court of appeals for the circuit in which a petition for  
20          review could have been properly filed under section  
21          242(b)(2) of the Immigration and Nationality Act (8  
22          U.S.C. 1252), as amended by this section, or under section  
23          309(c)(4)(D) of the Illegal Immigration Reform and Im-  
24          migrant Responsibility Act of 1996 (8 U.S.C. 1101 note).  
25          The court of appeals shall treat the transferred case as



1 if it had been filed pursuant to a petition for review under  
2 such section 242, except that subsection (b)(1) of such  
3 section shall not apply.

4 (d) TRANSITIONAL RULE CASES.—A petition for re-  
5 view filed under former section 106(a) of the Immigration  
6 and Nationality Act (as in effect before its repeal by sec-  
7 tion 306(b) of the Illegal Immigration Reform and Immi-  
8 grant Responsibility Act of 1996 (8 U.S.C. 1252 note))  
9 shall be treated as if it had been filed as a petition for  
10 review under section 242 of the Immigration and Nation-  
11 ality Act (8 U.S.C. 1252), as amended by this section.  
12 Notwithstanding any other provision of law (statutory or  
13 nonstatutory), including section 2241 of title 28, United  
14 States Code, or any other habeas corpus provision, and  
15 sections 1361 and 1651 of such title, such petition for re-  
16 view shall be the sole and exclusive means for judicial re-  
17 view of an order of deportation or exclusion.

In section 202(a)(2) of the bill, strike “to the Sec-  
retary.” and all that follows through the period at the  
end and insert the following: “to the Secretary of Trans-  
portation. Such certifications shall be made at such times  
and in such manner as the Secretary of Transportation,  
in consultation with the Secretary of Homeland Security,  
may prescribe by regulation.”

Strike section 202(d)(11) of the bill.



Strike section 202(e) of the bill.

In section 206(a) of the bill, strike “certify” and insert “set”.

In section 206 of the bill—

(1) redesignate subsection (b) as subsection (c);

and

(2) insert after subsection (a) the following:

1       (b) COMPLIANCE WITH STANDARDS.—All authority  
2 to certify compliance with standards under this title shall  
3 be carried out by the Secretary of Transportation, in con-  
4 sultation with the Secretary of Homeland Security and the  
5 States.

At the end of the bill, add the following:

6 **SEC. 208. LIMITATION ON STATUTORY CONSTRUCTION.**

7       Nothing in this title shall be construed to affect the  
8 authorities or responsibilities of the Secretary of Trans-  
9 portation or the States under chapter 303 of title 49,  
10 United States Code.

