

SUMMARY OF SENATE IMMIGRATION BILL:

“BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION MODERNIZATION ACT”

Legalization of undocumented persons in U.S. on December 31, 2011

- Registered Provisional Immigrant (RPI) status:
- **Eligibility:**
- Continuous physical presence since December 31, 2011- brief trips after December 31, 2011 excepted
- Derivative spouses and unmarried children also eligible if physically present when principal granted and present on December 30, 2012
- Can apply for RPI status from outside U.S. if physically present in U.S. prior to December 31, 2011, were deported for non-criminal reason, and have USC or LPR spouse or child
- Current removal proceedings or reinstatement does not bar eligibility
- Public charge, labor certification and documentation requirements grounds of inadmissibility do not apply
- Unlawful entry, stowaways, misrepresentation, and other grounds of inadmissibility do not apply *unless inadmissible conduct after statute enacted*
- Failure to attend removal proceeding and prior removal grounds of inadmissibility do not apply *unless after date of registration*
- **Ineligibility:**
- If convicted of three misdemeanors or one felony, aggravated felony, voted unlawfully, national security, or health-related grounds -- minor traffic offenses not considered AND conviction does not include an expungement
- If LPR, refugee, valid nonimmigrant status – (with the exception of those in TPS status)
- Subject to grounds of inadmissibility not specifically exempted, but waivers available non-criminal, non-security related grounds of inadmissibility based on humanitarian concerns, family unity, public interest
- **Benefits:**
- RPI status allows for protection from deportation, detention, work authorization, travel
- No accrual of unlawful presence
- Six years of RPI status and extension available
- **Application Process:**
- Application period will be for one year after final regulation (possible 18-month extension)
- Pay filing fee, \$500 penalty, and assessed taxes

- Applications may be filed by family unit
- Filing fee required for those 16 years and older
- Biometrics and biographic form required
- Interview possible
- ***Review of Denial or Revocation:***
- If denied or revoked, one administrative appeal at newly created appellate agency
- Federal district court review available
- If in removal proceedings, circuit court of appeals review with order of removal
- ***Extension:***
- RPI status renewable for an additional six year period upon payment of filing fee, \$500 penalty, remains eligible, and maintenance of regular employment
- ***Protections for Applicant:***
- No federal employee may use the information in the RPI application for any purpose other than to decide on any immigration benefit
- Any person who improperly uses information obtained through the RPI application may be fined not more than \$10,000
- ***Protections for Employer:***
- Not subject to employer sanctions if know RPI applicant or will be applying
- ***Special Provision for DACA grantees:***
- DHS may grant RPI status to DACA grantee if national security clearances and law enforcement clearances completed and no conduct since DACA grant that would make person ineligible for RPI

Adjustment to LPR status after 10 years

- Conditioned on clearing of current family-based backlog and enforcement triggers
- Demonstrate continuous residence, payment of taxes, regular employment in U.S or 125% of federal poverty guidelines, knowledge of English and civics, remains eligible for RPI (no denial or revocation)
- Payment of filing fee and \$1,000 penalty
- Waivers granted for RPI status continue to apply to same grounds of inadmissibility for LPR status

Naturalization after LPR status is available after three years

Border Security and “Triggers” for RPI Status and Adjustment of Status

- Establishes “Border Security Goal” for effective control in high risk border sectors along the Southern border. The goal is to be reached during first five years after enactment and establishment of “Southern Border Security Commission” if goals not met
 - Southern Border Security Commission will issue report and recommendations with \$2 billion set aside for implementation over a ten year period beginning on date of enactment.
- Within 180 days of enactment, the DHS Secretary must develop a “Comprehensive Southern Border Security Strategy” to achieve and maintain effective control between the ports of entry in all high risk border sectors along the Southern border.
 - \$3 billion over a five year period beginning on the date of enactment to implement the “Comprehensive Southern Border Security Strategy”
- Within 180 days of enactment, the DHS Secretary must develop a “Southern Border Fencing Strategy” to identify where fencing and technology should be deployed along the Southern border
 - \$1.5 billion over a five year period beginning on the date of enactment to implement “Southern Border Fencing Strategy”
- DHS must submit to Congress a Notice of Commencement of implementation of “Comprehensive Southern Border Security Strategy” and “Southern Border Fencing Strategy” before DHS may begin processing applications for RPI status
- Before individuals in RPI status may adjust to LPR status, DHS must submit to Congress certification that:
 - Comprehensive Southern Border Security Strategy has been substantially deployed and is substantially operational
 - Southern Border Fencing Strategy is substantially complete
 - A mandatory employment verification system (E-Verify) has been implemented
 - An electronic exit system at air and sea ports of entry is in use
 - DREAMers and Agricultural Workers are exempt from these triggers
- Additional funding for drones, other detection and surveillance capabilities, and 3,500 additional CBP agents

DREAM ACT: Adjustment of Status to LPR for Certain Noncitizens who Entered the U.S. as Children

- RPI for five years
- Younger than age 16 on date of initial entry to U.S.
- Has high school diploma or GED in U.S.

- Has higher education degree or at least two years in good standing toward higher education degree; or has served in uniformed services for at least four years and, if discharged, received an honorable discharge. A hardship exception is available for this requirement
- Provides list of each secondary school attended in U.S.
- Knowledge of civics and English; exception for physical or developmental disability
- Time in RPI status considered as LPR status for naturalization eligibility

Merit-based system for gaining LPR status

- One component begins five years after implementation
- Points earned based on skills, education, family ties, and length of time in U.S.
- At least 120,000 visas allotted each year, but capped at 250,000 (increase conditioned on unemployment rate below 8.5%)
- Will shift present weight given to family-based immigrant visas (75% of annual total now) to job skills (50% of total in 10 years)
- Another component starts on October 1, 2014 for approved employment-based petitions waiting in backlog for three years or family-based petitions waiting for five years
- Reduction of employment- and family-based visa applicants pending on date of enactment or filed after enactment through specific formula with goal to eliminate backlog by 2023

Changes to family-based immigration

- Immediate Relatives (IRs) are now spouses, minor unmarried children of USCs and LPRs, and parents of USCs aged 21 and over
 - IRs get derivatives
 - K status now available for fiancé(e)s of LPRs
- Preference categories are now:
 - Adult unmarried children of USCs and LPRs
 - Married children of USCs who are under 31 on date petition filed
- F-3 (Third preference category) eliminated for married sons and daughters of USCs 31 and over
- F-4 (Fourth preference category) eliminated (18 months after enactment)
- Backlog:
 - Family members currently in backlog will immigrate w/in 10 years
 - V status available again for spouses and children with approved petitions who are stuck in backlog

- Definition of child:
 - Step-children must be under 21 when marriage creating step-relationship occurred (was under 18)
 - Child adopted under age 18 (was under age 16) is a “child” for immigration purposes
- 204(l): If IR died before enactment, beneficiary has two years following enactment to self-petition.
 - Appears to include parents of adult USCs
 - Parole in of those removed who would now have relief
 - Anyone removed after death of IR under new definition may be paroled back in and adjust w/o penalty of 212(a)(9)
 - Anyone removed who would have had 204(l) relief may be paroled back in to adjust w/o 212(a)(9) penalties
 - 204(l) available to beneficiaries who are outside the U.S. and consular processing
 - Widow/ers don’t need to self-petition w/in two years of the death of the petitioner

Changes to employment-based immigration

- Exemption from annual quotas for various categories (derivative children and spouse, certain professionals, certain foreign doctors)
- Reallocation of annual quota for other employment-based visas
- Increases employment-based visas for skilled workers to 40% of total
- Maintains employment-based visas for special immigrants at 10% of total
- Maintains employment-based visas for those who foster employment at 10% of total
- Creates a three-year INVEST visa for entrepreneurs
- Eliminates sunset for non-minister special immigrants
- Allows for work authorization while timely-filed petition or application is pending

AgJOBS

- Farmworkers who have been working in the U.S. for 100 “work days” in the last two years can qualify for Agricultural Card Program
- They can apply for LPR status after working in agricultural employment for either three years (at least 150 days/year) or five years (at least 100 days/year), show payment of taxes, no serious criminal conviction, and \$400 fine
- Spouses and children also eligible to immigrate
- New streamlined agricultural guest worker program to replace current H-2A program and ensure adequate supply of farm laborers as well worker protections
- W-2 visas for contract laborers; W-3 visas for portable, at-will employment

Changes to inadmissibility and deportability grounds

- Crime-based inadmissibility and deportability for certain convictions involving participation in a criminal street gang
- Crime-based inadmissibility for clear and convincing evidence of certain conduct involving participation in a criminal street gang; this basis of inadmissibility is waivable where the noncitizen has renounced all association with the gang
- Ineligibility for RPI status for certain convictions involving participation in a criminal street gang, or clear and convincing evidence of certain conduct involving participation in a criminal street gang. Conduct-based bar may be waived
- Crime-based inadmissibility for noncitizen convicted of three or more DUI offenses, where at least one offense occurs after enactment of new law
- Crime-based deportability for noncitizen convicted of three or more DUI offenses
- Aggravated felony deportability for sexual abuse of a minor does not require that the age of the victim be established by evidence in the record of conviction

Discretionary authority with respect to removal, deportation, or inadmissibility

- IJ with discretion to decline to order removal of noncitizen where makes determination that removal is not in public interest or would result in hardship to noncitizen's USC or LPR parent, spouse or child, or, subject to exceptions, where the noncitizen is prima facie eligible for naturalization
- DHS Secretary with discretion to waive inadmissibility of noncitizen where makes determination that refusal is not in public interest or would result in hardship to noncitizen's USC or LPR parent, spouse or child; this provision is subject to several exceptions including several crime-based inadmissibility categories
- Reinstatement of removal not applicable where noncitizen reentered U.S. prior to age 18 or reinstatement would not be in the public interest or would result in hardship to the noncitizen's USC or LPR parent, spouse, or child
- Unlawful presence waiver available to parent of USC or LPR son or daughter; must show qualifying relative will suffer hardship, not extreme hardship
- Exceptions to inadmissibility based on unlawful presence under 212(a)(9)(B) apply to permanent bar under 212(a)(9)(C)
- Misrepresentation ground of inadmissibility limited to conduct within the 3 year period prior to seeking admission
- False claim to citizenship ground of inadmissibility requires knowing false claim and does not apply where the claim was made when (a) the noncitizen was under age 18; or (b) otherwise lacked mental competence. Waiver available upon showing of extreme

hardship to noncitizen or to noncitizen's USC or LPR parent, spouse, son or daughter.
Waiver also available to certain VAWA self-petitioners

- Deportability for false claim defined with reference to inadmissibility for false claim

Nonimmigrant visa changes

- Increase in annual cap on H-1B visas from 65,000 to 110,000 with gradual rise to 180,000 based on a High Skilled Jobs Demand Index
- Protections for U.S. domestic workers by requiring employers to pay higher wages and undergo recruitment of U.S. workers
- More visas for those with degrees in science, technology, engineering, or mathematics (STEM), which could lead to LPR status
- New W visa category for lower-skilled workers and their dependents
- Initial W visa period is three years, renewable provided not unemployed for more than 60 consecutive days
- Eligible employers must be registered and comply with worker protections
- Annual caps of W visas for first four years, beginning April 1, 2015 (20,000 for first year; 35,000 second year; 55,000 third year; 75,000 fourth year)
- Creation of Bureau of Immigration and Labor Market Research that will determine annual cap of W visas, declare shortage occupations, influence recruitment methods

Employment verification

- Mandatory employment verification system (E-Verify) shall be put into place; all employers must comply within five-years of issuance of implementing regulations; time frame varies depending on number of employees
- Non-citizens must show biometric work authorization card at time of hiring and be photo-matched with system
- U.S. citizens undergo photo-matching of passports or drivers licenses
- Social security numbers “locked” into E-Verify system

Naturalization

- English and civics requirements don't apply to:
 - those with mental or physical impairment
 - 65 or older, been an LPR for at least 5 years

- Civics requirement can be waived for anyone who's at least 60 and has been an LPR for 10 years
- English not necessary if:
 - At least 50, and LPR for 20 years
 - At least 55, LPR for 15 years
 - At least 60, LPR for 10 years

Asylum

- 1-year filing deadline eliminated
- 2 year window to file motions to reopen cases denied solely based on the 1 year filing deadline
- Detained asylum seekers have claims heard first by Asylum Officer at an asylum interview, rather than immediately having to present case in Immigration Court in removal proceedings

Stateless persons

- Creates new “conditional lawful status” for stateless persons, with work authorization, and then path to LPR status after one year

U Status

- Cap increased to 18,000 per year from 10,000

Removal proceedings

- Appointment of counsel at government expense, if necessary, to represent:
 - Unaccompanied alien children
 - Individuals who are incompetent due to serious mental disability
 - Particularly vulnerable individuals
- Expansion of Legal Orientation Program (LOP) to ensure that information regarding procedures and rights in removal proceedings are provided to all detainees within five days of being taken into custody