

## Did You Know?

### Legalization – Related and Other Provisions in the “Grand Compromise” Immigrant Legal Resource Center

As organizations and individuals review the “grand compromise,” the Secure Borders, Economic Opportunity and Immigration Reform Act of 2007, and determine their positions on this important measure, it is important to understand what the bill does and does not do. As the bill moves through Congress, it is important to pay attention to the debate and any changes that take place. Below are highlights about the legalization provisions to date and related issues in the bill.

The bill would create a new Z nonimmigrant visa category for people currently living in the U.S. in undocumented status who have been continuously physically present in the U.S. since 1/1/07, are admissible under most immigration laws, and are working or have met certain work requirements in agriculture and intend to continue agricultural work. Spouses, children (under 18 on the date of application) and parents also can obtain this visa if they also were continuously physically present since 1/1/07. The bill also includes the DREAM Act and AgJobs proposals with some changes.

#### **THE PROCESS:**

- **Application Period:** Starting six months after date of enactment, the USCIS shall issue an interim final rule and begin accepting Z visa applications. The application period will last one year – with the Secretary of DHS having the discretion to extend the application period another 12 months.
- **Requirements:** The Z visa applicant must provide evidence of continuous physical presence, employment, or education to meet Z visa statutory requirements, complete a detailed application form, submit fingerprints for a background check, be interviewed by the USCIS, and register for selective service if a male is between the ages of 18 and 25.
- **USCIS checks:** Once the agency accepts the complete application, the USCIS has one business day to conduct initial background checks before issuing people temporary work authorization, advance parole, temporary protection from deportation, and temporary suspension of classification as an unauthorized alien.
- **Visa Granted:** After all background checks are complete, the Z visa is granted and applicants will receive a new document proving their status. The visa provides work authorization, ability to travel, and the ability to change jobs.
- **Grounds of Inadmissibility Waived:** Certain grounds of inadmissibility (such as the unlawful presence bars, misrepresentation, and false claims to citizenship) would not apply and would thus not stand in the way of people receiving a Z visa. .
- **Period of Z Visa and Extension:** The Z Visa is good for an initial four years and can be extended every four years indefinitely if certain conditions are met including: timely filing of all change of address notifications; remaining eligible for Z visa – including fulfilling the work and good moral character requirements; paying relevant fees; for the first renewal demonstrating an effort to learn English and U.S. civics; for the second renewal, demonstrating proficiency in English and knowledge of U.S. civics by passing an exam. Delays in filing extensions may be waived only at the discretion of the Secretary of DHS.
- **Earned Adjustment:** To obtain legal permanent residency, a Z holder must file an application at a U.S. consulate in his/her country of origin. All Z visa holders would be eligible to apply for permanent residency during a 5-year period starting on the date that the family-based immigrant backlog (of petitions submitted before May 2005) has been eliminated. Green card applications will be processed through application of a merit-based point system over the course of 5 years, and cannot begin until existing backlogs in family-based and employment-based visas are current.
- **Denials and termination of status:** If an applicant’s Z visa is denied, the applicant can be prosecuted for having used false documents and can be placed in removal proceedings before an immigration

judge. Individuals who have “aggravated felony” convictions are subject to deportation without a right to a hearing before an immigration judge. Z visa status will end if the visa holder fails to timely file an extension, becomes ineligible (including by failing to maintain employment), is found removable for criminal conduct, is found to be newly inadmissible, or uses the Z visa documentation fraudulently. Spouses and children of Z visa holders lose their visas if the principle becomes ineligible.

## **ISSUES:**

**Fines and Fees:** The Z visa applicant must pay an initial processing fee to fully cover costs that is capped at \$1,500 per beneficiary. The principal applicant also pays a \$1,000 penalty, a \$500 State Impact Assistance Fee, and a \$500 penalty for each derivative. (The total for a family of 4 could be as high as \$9,000). To extend the Z visa (every four years), there is a cap of \$1,500 per beneficiary. (Thus, the total for a family of 4 to extend their Z visas could be as high as \$6,000 every 4 years). In addition, the principle applicant must pay a \$4,000 penalty in addition to application fees, and must have paid taxes as a Z visa holder or entered into an agreement with the IRS to make payments.

**Time Periods:** Z visa applicants would be unable to adjust to permanent resident status until existing backlogs in family-based and employment-based visas are cleared out and the triggers (noted below) have been met. These mandates would mean that these legalized immigrants would have to wait at least 13 years, and possibly up to 18 years, before they could apply for citizenship. Also, it appears that Z visa holders would be unable to petition for their spouses and minor children who live abroad until they are legal permanent residents (LPRs) – a process that could take between 9 and 13 years. There also are a limited number of visas (87,000 annually) available each year. Thus, the waiting lists for families, instead of being resolved, will become very long.

**People who are Ineligible:** Those ineligible for the Z visa include people subject to final orders of removal, those who had been previously deported and reentered the U.S. unlawfully, and individuals convicted of one felony, one “aggravated felony,” three or more misdemeanors, one crime of violence, or one crime of reckless driving or DUI if the crime results in an injury. (There is an extremely difficult to obtain extreme hardship waiver available.) In certain states, disorderly conduct, loitering violations or traffic infractions that are so minor they are not considered crimes under state law may be considered “misdemeanors” that count toward the 3 misdemeanor bar. In addition, the bill includes bars to eligibility for the Z visa (as well as DREAM Act, AgJobs and the Y worker visa to people with criminal convictions).

**Mandated Return – the So-Called “Touchback:”** In order to obtain legal permanent residency, the Z visa holder must file an application to adjust status in person at a U.S. consulate in his/her country of origin. The applicant’s family may remain in the U.S. and maintain their Z status. This process could cause problems because: the decision of the consular officer to deny permanent residency cannot be reviewed; the capacity of consulates to deal with this program is questionable; the government has had problems with the accuracy of their databases – thus causing confusion in the program; and it is unclear how long people will have to remain outside of the country, away from their jobs and families during this process.

**Continuous Employment Requirement:** The bill requires that Z visa holders between 16 and 65 must remain continuously employed full time in the U.S. (or would become deportable) as a condition of their nonimmigrant status except if: the person is pursuing a full course of study; employed while also engaged in study; has a physical or mental disability; or the ability to work has been temporarily interrupted by events such as war, civil disorder, hurricanes or earthquakes. This requirement would make it less likely that workers will come forward with any complaints about their employers for fear of losing employment and endangering their and their family’s eligibility for permanent residency.

Triggers: Neither the legalization program nor the temporary worker program (except for agricultural worker program) can take place until the Secretary of Homeland Security certifies in writing to the President and Congress that the following has taken place: 18,000 Border Patrol agents have been hired; 200 miles of vehicle barriers, 370 miles of fencing, 70 ground-based radar and camera towers along the southern land border; and 4 unmanned aerial vehicles and supporting systems deployed; all removable aliens apprehended crossing the southern border are detained and there are enough resources to maintain this practice, including resources to detain up to 27,500 noncitizens per day on an annual basis; DHS is using secure and effective identification tools to prevent unauthorized workers from obtaining jobs; and DHS has received and is processing and adjudicating in a timely manner applications for Z nonimmigrant status, including conducting all necessary background and security checks. By relying on the implementation of technology and systems that in some cases have not been designed or tested, these triggers may very well block any path to legalization. The bill includes a Sense of Congress resolution (that does not have the force of law) that such triggers can be “completed” within 18 months of enactment.

Administrative and Judicial Review: The bill recognizes the principle of judicial review without actually providing effective review in practice of either Department of Homeland Security (DHS) implementation or of individual denials. An applicant whose status has been denied, terminated, or revoked may file an administrative appeal no later than 30 days after the decision. There is very limited judicial review. After the administrative appeal, applicants have no remedy unless they are placed in removal proceedings, and then only if they are order removed can they raise a challenge at the Court of Appeals. However, if applicants are not placed in removal proceedings, they have no way to challenge the decision. There is no review for late filings which is a significant problem given the overarching problems with the 1986 amnesty law.

Document Fraud: The proposal contains provisions that are aimed at enhancing our security by stopping the use of fraudulent passports. However, in reality these provisions are yet another significant step in criminalizing not just the "bad actors" but huge segments of our immigrant communities, mostly the working poor. The proposal expands both the list of document-related crimes and the penalties that accompany them. In addition to criminalizing the use of false documents, the proposal goes on to make noncitizens both inadmissible and deportable for such document violations. Undocumented noncitizens who come forward to apply for the legalization program put forward in this proposal would be risking criminal prosecution (and significant time in jail) if their applications are denied.

Social Security Contributions: The bill includes a provisions that would require immigrants who have worked and paid into the Social Security system to forfeit the contributions they made before obtaining a newly issues Social Security number.

## **RELATED ISSUES:**

Family Reunification: The proposal eliminates 4 of the family preference categories, cuts off petitions for immigrant relatives filed after May 2005, eliminates the “immediate relative” category for parents of U.S. citizens, and mandates that, other than spouses and minor children of U.S. citizens, family members must compete in the point system for the small number of visas annually available. Family-based immigration is one of the cornerstones of U.S. immigration policy. Not only does it reflect the U.S.’s pro-family traditions, family-based immigration also has served the country well economically, socially and culturally.

Point System: The measure bases future migration flows on a merit point system that would select people based on high skill and education levels. Family members in the eliminated preference categories would have to compete within the point system. Adult (21 or older) sons or daughters of citizens are

given only 8 points; Adult (21 or older) sons or daughters of legal permanent residents only 6 points; and siblings of citizens and legal permanent residents are given only 4 points.

Proponents of the point system cite as their models the systems in Canada and other countries, without revealing that the system in Canada, for example, does not even work as intended to bring in needed workers. As proposed, the point system would dramatically reduce family-based immigration and, with its emphasis on high skill levels, would not reflect the needs of the future labor market according to the Bureau of Labor Statistics: 50% of workers with less than bachelor's degree and 50% with a bachelor's degree or more. Business leaders also have expressed concern that a point system would cede too much power to bureaucrats to determine who would gain entry to the U.S. Notwithstanding substantive concerns about the point system, any change of the magnitude proposed must be fully explored and tested through a pilot program to determine its workability and evaluate its impact. Furthermore, a point system cannot take the place of immigration reform that reduces the backlog in family-based immigration, facilitates the migration of future family members, allows new workers to sponsor their family members, and facilitates the process to legalize people who are here

“Gang” provisions: The bill includes an extremely broad definition of “criminal gang,” including an “ongoing group, club, organization or association of 5 or more persons” implicated in one of a long list of offenses that encompasses non-violent crimes such as identity theft. The bill also gives immigration judges the broad discretion to decide what organizations, clubs or groups are criminal gangs. In addition, under this measure, association is being punished, not membership. Thus individuals who are associated with gangs can be deported: This presents the potential for neighbors, friends, and family members of gang members to be subject to deportation. The bill also does not require a conviction for someone to be considered an associate, and the immigration judge needs only a “reason to believe” that immigrants, including undocumented youth, have associated with a gang for them to be subject to deportation. Finally, the definition of criminal gang is retroactive. Thus, anyone who has ever associated with a gang, even if it was 20 years ago, could be deported.

Due Process Concerns: The bill expands the aggravated felony category that, while limited, represents an unacceptable and unwarranted erosion of due process because it lowers the standards of evidence that the government is required to meet in order to classify and deport someone as an aggravated felon. It allows an immigration judge or officers from DHS to rely on mere allegations of fact that have never been proven by the government to any court of law. This represents a significant departure from the current procedures and would mark a dangerous step that will make it easier in the future to further erode due process protections in this arena.

Much of the reform debate to date has mischaracterized provisions that would eliminate due process protections by labeling them as interior enforcement measures. In reality, these provisions would distort the American system of justice by dramatically and negatively impacting on the rights of noncitizens. In addition to mislabeling these measures, Congress has not even adequately addressed them. Given the fact that many would deeply impact legal permanent residents, the “other 12 million,” it is important for these provisions to get the attention they deserve. Furthermore, a basic principle underscoring immigration reform is that actions taken due to being undocumented, such as working with a false ID, should not be roadblocks to eligibility for participation in a legalization program.

Indefinite Detention: The bill allows the indefinite detention of noncitizens who have final orders of deportation, even though the U.S. Supreme Court implies that such detention would be unconstitutional.

Workers Required to Return to their Counties of Origin: The bill includes a program that would allow temporary workers to enter and work in the U.S. for two years at a time, return home for a year after every two-year stint to their countries of origin, and could stay only for a total of six year. They would not be allowed to become lawful permanent residents. A new worker program must include the option for

these workers to self-petition for legal permanent residency and citizenship, change jobs, have full labor rights, bring their families to the U.S. with them, and self-petition for permanent residency and citizenship. If people are good enough to work here, they should be good enough to stay here.

Mandatory Security Checks for Pending Applications: The bill requires that an interagency task force be established to resolve applications for immigration benefits where security checks have been pending for more than two years and allocates additional funds to the Federal Bureau of Investigation (FBI) to complete these checks. The bill also requires the FBI to submit a report to Congress within 180 days after enactment on the delays by types of applications, including by country of origin, and what steps are being taken to expedite applications where background checks have been pending for more than 180 days. This provision is significant as there currently are overwhelming delays of many years in the processing of applications for permanent residency, naturalization, and other immigration benefits because of security checks.

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The Immigrant Legal Resource Center (ILRC) is a national organization based in San Francisco that provides legal expertise on immigration law and policy, undertakes advocacy and educational initiatives and works with immigrants to help them engage in the democratic process.

Immigrant Legal Resource Center  
1663 Mission Street, Suite 602  
San Francisco, California 94103  
415-255-9499  
[www.ilrc.org](http://www.ilrc.org)