

Immigration Law: Historical Overview, Current Law, and New Proposals

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Part I

Definitions

Definitions

- **Lawful Immigrant/Lawful Permanent Resident/LPR:** A Noncitizen permitted to reside permanently in the US (but can be deported)
- **Naturalization:** The process by which a LPR becomes a US citizen
- **Nonimmigrant visa holder:** Someone who holds a visa permitting him/her to remain in the US temporarily for some purpose

Definitions

- **Asylee:** Someone who has been granted Asylum *in the US* because they meet the definition of a refugee as defined by law
- **Refugee:** Someone who is recognized as a refugee abroad and permitted to enter the US as a refugee
- **Special Immigrant:** Several types, including certain juveniles, some Iraqis, some Afghans, & some military translators.

Definitions

- **Nonimmigrant visas**
 - A & G: Diplomats
 - B1/B2: Visitors for business or pleasure
 - C & D: Crewmen
 - E: Treaty Trader
 - F: Full-time Student
 - H-1B: Professional worker/specialty occupation
 - H-1A: Nurse
 - H-2A: Agricultural temporary worker
 - H-2B: Nonagricultural temporary worker

Definitions

- **More Nonimmigrant Visas**
 - J: Exchange student
 - K: Fiance of US citizen + kids
 - L: Intracompany transferee
 - M: Vocational Student
 - N: Parents & children of special immigrants
 - O: Outstanding Researcher
 - P: Performer

Definitions

- **More Nonimmigrant Visas**

- R: Religious Workers
- S: Criminal Informant (think snitch)
- T: Victim of trafficking
- U: Crime victim
- V: Certain spouses & children of LPRs (petition had to be filed by 12/21/00 & pending 3 years)

Definitions

- **Labor Certification:** Process thru which DOL certifies that an employment immigrant will not displace US workers. Must be approved before visa petition filed.
- **Visa Petition:** Application for an immigrant visa; can be through employment or family. Only one step to LPR status; once petition approved, must go to next step.
- **Visa category:** Type of immigrant visa.
- **Preference System:** Quota system that permits a certain number of individuals to immigrate per visa category per country per year.

Definitions

- **Family Immigrant Visas:**
 - **Immediate Relative:** spouse, minor child, parent or widow/widower of USC. ***Not subject to preference system quotas.***
 - **Second Preference: 2A**=Spouse, minor child of LPR; **2B**=Unmarried Son/Daughter over 21 of LPR
 - **Third Preference:** Married Son/Daughter of **USC**
 - **Fourth Preference:** Sibling of **USC**

Definitions

- **Immigrant Visas Through Employment**
 - **Priority Workers/EB-1:** - Persons of Extraordinary Ability, Outstanding Professors & Researchers, & Multinational Execs & Mgrs.
 - **Advance Degree or Exceptional Ability/EB-2:** Includes Nurses, Soviet Scientists, Int'l Med. Graduates etc. Most need a labor certification to qualify.
 - **Professional, Skilled & Other/EB-3:** College level or unusual ability.
 - **Special Immigrants/EB-4:** Includes juvenile court dependents, religious workers, translators, etc.

Definitions

- **Adjustment of Status:** The process by which a nonimmigrant visa holder, or family based petition beneficiary, or asylee or refugee, or special immigrant becomes a LPR ***while in the US.***
- **Consular Processing:** The process by which that person is granted an immigrant visa ***at a US Consulate abroad.*** However, even if approved, the person does not become a LPR until he/she is admitted to the US at the border.

Definitions

- **Waiting for the Priority Date to Become Current:**
 - Refers to the time it takes from approval of an immigrant visa petition to the time the person is eligible to apply for immigration, either through adjustment or consular processing.
 - Can be many years, depending on the visa category and the demand for immigrant visas from each country for each category.

Definitions

- **Admission:** The legal process, called inspection, of being lawfully permitted to enter the US, either as an immigrant or a nonimmigrant.
- **Parole:** Permission to come into the US due to humanitarian or other reasons, but without a visa of any kind. This is not considered a legal “entry” or “admission,” but it is lawful.

Definitions

- **Visa Overstay:**
 - Nonimmigrant visa holder who remains in US beyond time authorized
- **EWI:**
 - Entry without inspection; general term for those who crossed into US without any documentation/permission. Also called undocumented/illegal aliens.
- **Both Visa Overstays & EWIs are illegally in the US.**

Definitions

- **Inadmissibility Grounds:** Reasons to deny someone admission to the US. Includes certain people who have been unlawfully present in the US, many crimes, fraud/misrepresentation, public charge, etc. People who have not been “admitted,” including those paroled, are subject to these grounds.
- **Deportability Grounds:** Reasons to expel someone who has previously been admitted. Similar to, but not identical, to inadmissibility grounds.
- **Note: LPRs can be deported/removed if they fall within either of these grounds.**

Definitions

- **Deportation proceedings:** Before 4/1/97, hearing before an immigration judge for someone who has been admitted, but is now charged with being *deportable*.
- **Exclusion proceedings:** Before 4/1/97, hearing before an immigration judge for someone who has **NOT** been admitted, but is now charged with being *inadmissible*.

Definitions

- **Removal Proceeding:**
 - Since 4/1/97, hearing to for both those deportable (after having been admitted) and those inadmissible (never having been admitted).
 - Those inadmissible have to prove eligibility for relief and that they deserve it.
 - The govt bears the burden of proving that someone is deportable.

Definitions

- **Relief from Removal:** Many kinds, such as
 - Asylum, withholding of removal, CAT Relief
 - Fraud/misrepresentation waiver
 - Criminal waivers (cancellation, 212(h))
 - Relief for battered spouses/children/parents of USC's or LPRs
 - 10-year cancellation relief (for those present in the US for at least 10 years + other requirements)
 - Adjustment, special immigrant, U, T visas etc.

Definitions

- **Deferred Action:**

- The Act of permitting a removable noncitizen to remain in the US for some compelling reason. Part of immigration agencies' prosecutorial discretion. Not written into statute, but recognized in cases.
- **DACA:** Deferred Action for Child Applicants (for those brought here as children by parents; 2012)
- **DAPA:** Deferred Action for Parents of Americans and Lawful Permanent Residents (new program).

Definitions

- **Deferred Action Criteria:**
 - Likelihood of removal
 - Presence of sympathetic factors
 - Likelihood that due to sympathetic factors, adverse publicity will be generated
 - Continued presence desired by law enforcement for investigation or review
 - Whether person is high or low priority for immigration enforcement

Definitions

- **Due Process in Immigration Cases:**
 - Immigrants outside US borders have no due process rights; can be expelled without a hearing.
 - Immigrants “admitted” have 5th Amendment Due Process Rights (limited)
 - No 6th Amendment Right to Counsel, so no public defender program for immigrants. May have counsel “of their own choice.” Why? Because Immigration violations generally are considered *civil*, not criminal

Definitions

- **Immigration Hearing System:**
 - Immigration Courts: Under USDOJ; decide cases in removal hearings.
 - Board of Immigration Appeals (BIA): Administrative Appeals Court, also under DOJ
 - Appeals from BIA go directly to Federal Appellate Courts (Circuit Courts)
- **Board of Alien Labor Certification Appeals/ BALCA:** Reviews denials of labor certs in employment cases.

Part II

Key Elements in U.S. Immigration Law History

Key Elements in U.S. Immigration Law History

- 1776-1875:
 - Open immigration, followed by
 - First provisions for naturalization (1790)
 - Alien Sedition Act of 1798
 - first restrictions for “dangerous aliens” and
 - male nationals age 14+ of any country with which we were at war, who could be detained or expelled by order of the President.
- 1864: Act to Encourage Immigration
 - Made employment contracts binding due to need for labor in factories during the Civil War

Key Elements in U.S. Immigration Law History

- 1875-1917:
 - Exclusions for Convicts & Prostitutes (1875)
 - Chinese: Chinese Exclusion Act of 1882
 - First General Immigration Law, excluding “idiots, lunatics, convicts and persons likely to become public charges” (1882)
 - Labor Exclusions: Alien Contract Labor Laws, 1885 & 1888 (designed to protect American labor from cheap foreign competition)

Key Elements in U.S. Immigration Law History

- 1875-1917 (continued):
 - First Bureau of Immigration Established, 1891
 - Immigration Act of 1907: Exclusions added for “feeble minded persons, unaccompanied children, persons with TB, & persons with a physical or mental defect that might affect their ability to earn a living.”

Key Elements in U.S. Immigration Law History

- 1917-1951: First Quota Systems
 - **Asiatic Barred Zone Act (1917)**: Excluded all natives of the Asia-Pacific Triangle + established a literacy requirement.
 - **Quota Act of 1921**: Three percent quota (based on 1910 census data) imposed on ***Southern and Eastern European citizens*** (enacted in response to fear that they would inundate the US), but not on Western European citizens

Key Elements in U.S. Immigration Law History

- 1917-1951: First Quota Systems (continued)
 - National Origin Quota Act (1924):
 - Restricted Immigration to 2% of the number of foreign born persons for each nationality (based on 1890 census).
 - Established a ceiling of 150,000 admissions per year
 - Established a system for issuing visas abroad (by consulates)

Key Elements in U.S. Immigration Law History

- 1952-1964: Beginning of the Modern Era
 - McCarran-Walter Act (Imm. Act of 1952):
 - Retained national quota system but decreased it to 1/6 of 1% of 1920 census
 - Repealed Asiatic Barred Zone, but established racial quotas for Asians.
 - Established preference system within quotas for those with special skills (employment visas)
 - Established deportation procedures & relief from deportation
 - Established procedures for denaturalization
 - Established political grounds for exclusion.

Key Elements in U.S. Immigration Law History

- 1965-1985:
 - 1965 Amendments
 - Eliminated racial & national origin quotas, but established quotas for Western & Eastern Hemispheres
 - Established a 20,000/fiscal year cap on immigration for Eastern Hemisphere countries
 - Changed priority status for skilled workers & family
 - Established a labor certification requirement and a conditional refugee status

Key Elements in U.S. Immigration Law History

- 1965-1985:
 - **Cuban Adjustment Act:** Any Cuban who has been inspected and admitted or paroled into the US on or after January 1, 1959 may become a LPR after two years (modified to one year in 1976), if admissible. No limit on numbers; no other eligibility requirements.
 - 1976 Amendments: Applied 20,000/fiscal year cap on immigration to Western Hemisphere countries
 - 1978 Amendments: Eliminated the hemispheric quota system & established a worldwide quota of 290,000 visas/year

Key Elements in U.S. Immigration Law History

- 1965-1985:
 - **Refugee Act of 1980:**
 - Established procedure for applying for asylum in the US based on the UN Convention Relating to the Status of Refugees
 - Reduced worldwide quota to 270,000 but authorized admission of 50,000 refugees
 - Allowed 5,000 refugees per year to “adjust status” to become lawful permanent residents
 - **1981 Amendments:** Established a waiver of exclusion for possession of 30g or less of marijuana

Key Elements in U.S. Immigration Law History

- 1986-1995
 - Immigration Reform & Control Act of 1986 (IRCA); the original amnesty law
 - *For the first time, created sanctions for hiring people not authorized to work in the US.*
 - Prohibited discrimination based on citizenship/nationality
 - Created several legalization (amnesty) laws
 - Allowed fathers to petition for illegitimate children
 - *Allowed expedited deportation procedures for people convicted of crimes*

Key Elements in U.S. Immigration Law History

- 1986-1989:
 - Immigration Marriage Fraud Amendments
 - Established a 2-year conditional permanent residency for spouses of US citizens
 - Prohibited “adjustment” to permanent residence for 2 years if the marriage took place during deportation/exclusion proceedings
 - Established a 5-year bar on petition for a new spouse where the petitioner’s residence was obtained thru marriage unless the petitioner can prove the 1st marriage was bona fide.
 - Created more restrictions for people charged with material misrepresentation upon entry or in an application for immigration benefits.

Key Elements in U.S. Immigration Law History

- 1986-1989:
 - **Anti-Drug Abuse Act of 1986:**
 - Redefined drug exclusions to include all controlled substances (**retroactive**)
 - **Anti-Drug Abuse Acts of 1988:**
 - Created aggravated felony ground of deportability
 - Precluded aggravated felons from release from detention during deportation proceedings
 - Precluded voluntary departure for aggravated felons
 - Barred re-entry of aggravated felons for 10 years
 - Expanded firearms grounds of deportability.

Key Elements in U.S. Immigration Law History

- Immigration Act of 1990:
 - Changed employment based visa categories
 - Put a cap on immigration
 - Allowed widows/widowers of US citizens to apply for permanent residence
 - Changed and limited certain employment-based nonimmigrant visas
 - Established Temporary Protected Status for individual from countries suffering political or environmental upheaval; status granted in 18 month intervals.

Key Elements in U.S. Immigration Law History

- Immigration Act of 1990 (continued):
 - Expanded the definition of an aggravated felony
 - Expanded the ability of immigration courts to issue *in absentia* deportation orders
 - Eliminated the “good cause” requirement to obtain a waiver of the 2-year bar to adjustment for marriages in deportation proceedings
 - Created Diversity Visa Program

Key Elements in U.S. Immigration Law History

- 1991-1995:
 - Chinese Student Protection Act
 - Soviet Scientists Immigration Act of 1992: in response to breakup of former USSR, provided visas for scientists, engineers, etc.
 - Adjustment under 245(i): Allowed for people normally not permitted to adjust (obtain LPR status without leaving the US) to do so upon payment of a fee (terminated in 1997 unless certain applications filed by 1/14/98).

Key Elements in U.S. Immigration Law History

- 1991-1995:
 - Violent Crime Control Act of 1994 & Immigration & Nationality Technical Corrections Act of 1994:
 - Created protections for foreign nationals subjected to battery or extreme cruelty (VAWA –reauthorized in 2005 & 2006)
 - Created S visa for persons providing info to law enforcement authorities
 - Established summary deportation for non-LPR aggravated felons who are ineligible for relief
 - Broadened definition of aggravated felony

Key Elements in U.S. Immigration Law History

- 1996-2000:
 - **Anti-Terrorism & Effective Death Penalty Act of 1996 (AEDPA)**: Short-lived law (April 24, 1996-April 1, 1997) that expanded restrictions on noncitizens convicted of crimes, broadened the aggravated felony definition, broadened expedited and summary deportation proceedings, and reinstated the provision requiring incarceration of noncitizens convicted of most deportable offenses.

Key Elements in U.S. Immigration Law History

- 1996-2000 (continued):
 - **The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA):** Radical changes in immigration system such as:
 - 3 & 10 year bars to admission for permanent residence for those unlawfully present in the US (waiver available for some); **bars triggered by departure from US**
 - 10 year bar for those unlawfully present for a year or more who are removed or who depart the US and return without inspection (no waiver)
 - New inadmissibility and deportability provisions for false claims to US citizenship and unlawful voting

Key Elements in U.S. Immigration Law History

- 1996-2000 (continued):
 - The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (continued):
 - Added terrorism grounds of inadmissibility/deportability
 - Added DV grounds of deportability
 - Added affidavit of support requirements for family immigration
 - Changed deportation & exclusion proceedings to removal
 - Added requirement that asylees must apply within 1 yr of arrival in the US & required them to prove that grounds were “1 central reason” for persecution.

Key Elements in U.S. Immigration Law History

- 1996-2000 (continued):
 - The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA (continued):
 - Replaced 212(c) relief for LPRs convicted of crimes with much more stringent LPR cancellation of removal
 - Similarly replaced generous suspension of deportation with Non-LPR cancellation of removal
 - Added mandatory detention for people removable for certain crimes
 - Retroactively expanded aggravated felony definition
 - Allowed federal judges to order deportation as a condition of probation

Key Elements in U.S. Immigration Law History

- 1996-2000 (continued):
 - Nicaraguan Adjustment & Central American Relief Act (1997):
 - Adjustment to LPR for Nicaraguans & Cubans who were continuously present in the US from 12/1/95 + their spouses, unmarried children
 - Salvadorans and Guatemalans made eligible for suspension of deportation if they registered under the ABC settlement or applied for asylum before 4/1/90
 - Eastern Europeans made eligible for suspension of entered before 12/31/90 & applied for asylum before 12/31/91.

Key Elements in U.S. Immigration Law History

- 1996-2000 (continued):
 - Haitian Refugee Immigration Fairness Act (1998):
 - Similar to NACARA, for Haitians
 - Had to have filed for asylum before 12/31/95
 - Or Paroled into US before then
 - Or were children at time of arrival before 12/31/95
 - Other requirements

Key Elements in U.S. Immigration Law History

- 1996-2000 (continued):
 - **American Competitiveness in the 21st Century Act:**
 - Increased H-1B Visa Cap for FY 2001-2003 & other provisions related to H-1B visa.
 - Allowed certain employment nonimmigrant visa holders to obtain H-1B extensions beyond normal 6-year limit until their adjustment applications could be adjudicated (enacted due to long waits for permanent resident visas due to per country quotas)

Key Elements in U.S. Immigration Law History

- 1996-2000 (continued):
 - **Syrian Adjustment Act (2000)**: Allowed Syrian Jews previously granted asylum to obtain LPR status independent of the statutory limit of 10,000 asylees per FY.
 - **Victims of Trafficking & Violence Protection Act of 2000**:
 - Created T visa for victims of trafficking
 - Created U Visa for crime victims
 - Amended & expanded VAWA provisions

Key Elements in U.S. Immigration Law History

- 1996-2000 (continued):
 - **Child Citizenship Act of 2000:**
 - Expanded provisions for foreign born children to acquire US citizenship through their parents.
 - Created exception to inadmissibility & deportability grounds for false claims to US citizenship & unlawful voting for persons whose parents are US citizens & who reasonably believed themselves to be US citizens at the time of the violation.

Key Elements in U.S. Immigration Law History

- 1996-2000 (continued):
 - LIFE Act Amendments:
 - Extended 245(i) adjustments to 4/30/01 for persons present in US on 12/21/00
 - Created V visa for spouses & minor children beneficiaries of immigrant visa petitions filed on or before 12/21/00.
 - Provided for adjustment to LPR for persons covered by lawsuits regarding eligibility for legalization programs under IRCA (CSS v. Meese, LULAC v. INS, Zambrano v. INS)
 - Other provisions

Key Elements in U.S. Immigration Law History

- 9/11 & Aftermath

- **USA Patriot Act**

- Tripled number of border patrol officers & inspectors at northern border
 - Allowed INS/DOS to receive crime info from FBI
 - Required development of interagency background checks etc.
 - Expanded definition of terrorism
 - Made endorsers of terrorism + their spouses & children inadmissible

Key Elements in U.S. Immigration Law History

- **9/11 & Aftermath**

- **USA Patriot Act (continued):**

- Established grounds of inadmissibility for soliciting funds for terrorist groups or activities, as well as those whom the AG reasonably believe to have been involved in money laundering
 - Retroactive application of these provisions to persons in removal proceedings
 - Redefined terrorist org. to include a group of 2 or more, whether organized or not, that engages in terrorism
 - Allowed special immigrant status for some family members of 9/11 victims

Key Elements in U.S. Immigration Law History

- **9/11 & Aftermath**

- **Homeland Security Act of 2002:**

- Created DHS, consisting of USCIS (Citizenship & Immigration Services - adjudications), ICE (Immigration Control & Enforcement, and CBP (Customs & Border Patrol).

- **Trafficking Victims Protection Reauthorization Act:**

- Expanded T visa provisions
 - Added new aggravated felony ground of deportability to include slavery & trafficking offenses

Key Elements in U.S. Immigration Law History

- 9/11 & Aftermath
 - Intelligence Reform & Terrorism Prevention Act of 2004: Among other things,
 - retroactively eliminated judicial review via habeas, mandamus, or All Writs Act of the revocation of an immigrant or nonimmigrant visa except in removal proceedings and only if it's the sole ground for removal
 - Added removal ground for those who rec'd military training by a terrorist org.
 - Expanded inadmissibility ground for genocide

Key Elements in U.S. Immigration Law History

- **9/11 & Aftermath**

- REAL ID Act of 2005:

- Restrictions on asylum & withholding of removal eligibility
 - Increased burden of proof for relief from removal
 - Changes effective for applications filed on or after 5/11/05
 - Broadened definition of terrorism *retroactively*.
 - Severe restrictions on judicial review, including eliminating review of discretionary decisions.

Key Elements in U.S. Immigration Law History

- **9/11 & Aftermath**

- Violence Against Women Reauthorization Act of 2005 (VAWA 2005)

- Amended & expanded U & T visa provisions
 - Exempted battered children from residency requirement for adoption
 - Allowed VAWA self petitions for abused parents of USC's

Key Elements in U.S. Immigration Law History

- **9/11 & Aftermath**

- Adam Walsh Child Protection & Safety Act of 2006:

- Added deportation ground for failure to register as a sex offender
 - Prohibited USCs & LPRs convicted of certain sexual offenses from petitioning for spouses & children unless the DHS Secretary determines there's no risk to the beneficiary

Key Elements in U.S. Immigration Law History

- **9/11 & Aftermath**

- **Secure Fence Act of 2006:**

- 18 mo. Deadline to take control of border thru systematic surveillance, physical infrastructure
 - Established reinforced fencing in parts of TX, NM, & CA

- **National Defense Authorization Act for FY 2008:**

- 5000 visas/yr for Iraqis employed by US govt in Iraq, or org. closely associated w/US mission in Iraq, or members of a persecuted religious or minority community, or providing faithful & valuable services to US + spouses & children

Key Elements in U.S. Immigration Law History

- **9/11 & Aftermath**

- **Trafficking Victims Protection Reauthorization Act:**

- Amendments to U & T visas and adjustment, + Stay of removal when someone files a prima facie U or T visa request
 - Expanded inadmissibility ground for human traffickers
 - Special immigrant status for juveniles in custody of person or entity appointed by a state or juvenile court; replaced requirement that they must be eligible for long-term foster care to finding that reunification with one or both parents not viable due to abuse, neglect or abandonment.

Key Elements in U.S. Immigration Law History

- **9/11 & Aftermath**

- **Afghan Allies Protection Act of 2009:**

- Created special Immigrant status for citizens/nationals of Afghanistan who was employed by or on behalf of US for at least one year on or after 10/07/01, who provided faithful and valuable service, & who is or has been subject to a serious threat due to that employment.
 - Spouses & children included, even if principal deceased

Part III

Present Immigration System & Why It Doesn't Work

Present System & Why It Doesn't Work

- ❖ For both family & employment categories, waits are too long. Families kept apart, employers kept waiting. Foreign students, educated here, can't stay so go elsewhere & compete w/US business.
- ❖ Nonimmigrant visa categories likewise have long waits. H-1B visas typically run out within days (or sometimes 1 day) of when they become available.
- ❖ Labor certification (for employment based visas) too slow & cumbersome.

Present System & Why It Doesn't Work

Bars to Immigration Too Harsh - Examples:

- ❖ False claim to USC & unlawful voters – permanent bar, even if you believed you were a USC or entitled to vote, except for some children of USCs.
- ❖ Misrepresentation/fraud: Permanent bar for parents of USCs.
- ❖ Unlawful presence bars: 10 year penalty on immigration keeps people otherwise eligible to immigrate here illegally.

Present System & Why It Doesn't Work

Bars to Immigration Too Harsh - Examples:

- ❖ Affidavit of Support Requirement (petitioner/ sponsor must show earns at least 125% of Poverty Income Guidelines for size of family) is too rigid: does not permit counting of intending immigrant's income if without work permit. Permanent bar to immigration.

Present System & Why It Doesn't Work

Bars to Immigration Too Harsh - Examples:

- ❖ Aggravated felony includes misdemeanor theft conviction with one year suspended sentence + any drug trafficking including selling \$10 baggie of MJ. LPRs convicted of same ineligible for most forms of relief; can be deported even if here for decades.
- ❖ Minor crimes make people ineligible to immigrate through various means (non-LPR cancellation, family & employment petitions).

Present System & Why It Doesn't Work

Waiver Criteria Too Rigid:

- ❖ Must show extreme hardship to certain relatives to get many waivers of inadmissibility and/or deportability grounds.

Expedited Removal Unfair: No due process if caught at border; can be expelled w/o hearing.

Immigration Hearings Unfair:

- ❖ No right to counsel; limited due process rights, even for children, mentally incompetent people, etc.

Present System & Why It Doesn't Work

Permanent Residents Disadvantaged:

- ❖ Must wait years to bring in spouse, minor children
- ❖ Children who turn 21 while waiting for priority date go to another visa category w/long wait (somewhat alleviated by Child Status Protection Act)
- ❖ Can't petition for married offspring; siblings

Part IV

Senate Bill 744

Senate Bill 744

- **Status:**
- Crafted by bipartisan committee of 4 Democratic & 4 Republican Senators (Charles Schumer (D-NY), John McCain (R-AZ), Richard Durbin (D-IL), Lindsey Graham (R-SC), Robert Menendez (D-NJ), Marco Rubio (R-FL), Michael Bennet (D-CO), & Jeff Flake (R-AZ))
- Passed in in the spring of 2013.
- To date, House refuses to take it up

Senate Bill 744

Title I Border Enforcement:

- Creates So. Border Security Commission
- Goal to apprehend 9 of 10 noncitizens who try to enter illegally.
- Mandates that DHS increase surveillance of border w/Mexico & increase fencing to 700 miles.
- Allocates **\$46.3 billion** for border enforcement.

Senate Bill 744

Title I Border Enforcement:

- DHS must certify that border strategy has begun before “registered provisional immigrant” (RPI) status is granted.
- DHS must certify that fencing/surveillance substantially deployed, 38,000+ border patrol agents deployed, E-verify mandated for all US employers & DHS is using electronic system to monitor those exiting the border before LPR status can be granted to RPIs.

Senate Bill 744

Title II: Immigrant Visas-RPI Status Criteria:

- Have been physically present in the U.S. on or before Dec. 31, 2011,
- Have maintained continuous presence up until the date of application,
- Have settled any assessed federal tax liability,
- Not have been convicted of certain criminal offenses (Agg. felony, 3 or more misdemeanors, some foreign offenses and unlawful voting.
- Not have been a lawful permanent resident, asylee, refugee, or present in the U.S. in a lawful nonimmigrant status.

Senate Bill 744

Title II: Immigrant Visas-RPI Status Criteria:

- After 6 yrs in RPI status, must apply to renew.
- After 10 yrs in RPI status, may apply for LPR.
- After 3 yrs as LPR, may apply to become USC.
- Fees & fines apply: cost of app. + \$1000 for RPI & \$1000 at adjustment to LPR.
- Pmt of back taxes required.
- Time limits apply to applicant and family members.

Senate Bill 744

Title II: Immigrant Visas-Application for LPR from RPI Criteria:

- Employed, likely to make at least 125% of income poverty guidelines, or satisfies certain educational requirements.
- Studying course of English & US History/Civics
- DHS secretary may waive certain restrictions for humanitarian purposes, to ensure family unity, or if it is in the national interest.

Senate Bill 744

Title II: DREAM Provisions - Must have:

- Entered US before age 16
- Got HS or GED, +
- Attended at least 2 years of college or served 4 years military.
- Can apply for LPR after 5 yrs
- Upon obtaining LPR, can immediately apply for USC

Senate Bill 744

- **Title II – New Family & Employment Immigration System**
- Spouses & Children of LPRs immediate relatives
- Elimination of category for siblings of USCs
- Married sons/daughters of USCs must be under 31 to qualify (no age limit before)

Senate Bill 744

Title II – New Family & Employment Immigration System

- Track I Merit based immigrants, under a point system similar to Canada's
- Track II Merit-based immigrants, for people with approved immigrant visa petitions pending for 5 or more yrs
- Repeal of Diversity Visas.

Senate Bill 744

Title II – New Family & Employment Immigration System

- New V Visa for beneficiaries of family visa petitions to live & work in US while waiting to be LPRs
- New W visa for unskilled workers to work for 3 yrs w/registered employers in shortage occupations

Senate Bill 744

- **Title II – New Family & Employment Immigration System**
- RPIs, “blue card” farmworkers & V visa holders not eligible for many public benefits, but eligible for Affordable Care Act
- Also may not claim credit for SS withholdings earned while not authorized to work

Senate Bill 744

Title III – Interior Enforcement

- Phased in electronic employment verification mandated
- Provides that neither back pay nor other damages can be denied based on immigration status [repeal of Hoffman Plastics decision; 535 US 137 (2002)]
- Increases legal protections for immigrant workers wrongfully terminated, etc. Includes U Visa for whistleblowers.

Senate Bill 744

Title III – Interior Enforcement

- One administrative level of appeal for RPI denials
- Review of admin denials in Federal District Courts
- District Court denials can be appealed to Circuit Courts of Appeal

Senate Bill 744

Title III – Interior Enforcement - New inadmissibility grounds

- Fraud: Penalties for misuse of a passport & for fraudulently providing immigration services.
- Gang, 3 DUIs, sex abuse & DV grounds added.

Part V

Legality of DACA & DAPA

Legality of DACA & DAPA

DACA = Deferred Action for Child Applicants for those who:

- Were under the age of 31 as of June 15, 2012;
- Came to the United States before age 16th;
- Continuously resided in the US since 6/15/07;
- Were physically present in the US on 6/15/12, and at time of DACA application;
- Had no lawful status on 6/15/12;
- Are currently in school, have HS or GED certificate, or are an honorably discharged veteran of the Coast Guard or US Military;
- Have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

Legality of DACA & DAPA

DAPA=Deferred Action for Parents of Americans and LPRs:

- Expands eligibility for DACA to people of any age who entered the US before age 16 & lived in the United States continuously since January 1, 2010,
- Extends DACA and work authorization from two years to three years.
- Allows parents of USCs & LPRs to request deferred action and employment authorization for three years, in a new Deferred Action for Parents of Americans and Lawful Permanent Residents program if they have lived in the US continuously since January 1, 2010, and pass required background checks |

Legality of DACA & DAPA

DAPA (continued)

- Expands provisional waiver program to spouses & children of LPRs
- Modernizes, improves and clarifies immigrant and nonimmigrant visa programs to grow the economy and create jobs
- Promotes citizenship education and public awareness for LPRs and allows naturalization applicants to use credit cards to pay the application fee

Legality of DACA & DAPA

Texas et. al v. USA, Civil No. B-14-254 (US District Court for the Southern District of Texas, Brownsville), February 16, 2015:

- Asserts that instead of exercise of prosecutorial discretion, DAPA is creating a new legal benefit, and that is not allowed.
- Also accuses Feds of abdicating its responsibility to enforce imm laws, and
- Says DAPA illegal under APA b/c notice was not given
- Does not deal w/original DACA provision
- Not a constitutional decision.

Legality of DACA & DAPA

Problems w/TX Decision:

- Declaration Feds have failed to secure borders is speculative (Obama admin has deported more than any other)
- Harm to states (expense of issuing driver's licenses) is speculative.
- Prioritizing immigration enforcement is strictly within discretion of DHS.

Legality of DACA & DAPA

Problems w/TX Decision:

Legality of Deferred Action Recognized by US Supreme Ct:

- *Reno v. Arab-American Anti-Discrimination Committee*, 525 US 471 (1999):
- *Heckler v. Chaney*, 470 US 82 (1985): No judicial review of agency's decision not to enforce the law. (But TX judge says Feds are creating a benefit, not merely failing to enforce).

Useful Websites

- [USCIS.GOV](https://uscis.gov) (DHS branch called Citizenship & Immigration Services)
- nilc.org – National Immigration Law Center
- cliniclegal.org – Catholic Legal Immigration Network