

Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744)

Legalization—Certain Paths to Citizenship for the 11.5 million

- **Registered Provisional Immigrants (RPI):** Individuals who entered the United States before December 31, 2011 and have been physically present in the U.S. since that time will be eligible for RPI status provided they pass a background check, have not been convicted of a serious crime, pay any assessed tax liability, and pay appropriate fees and a \$1000 fine which can be paid in installments. Individuals who have been deported and have certain family relationships with citizens or green card holders may also be eligible for RPI status.
 - **Initial registration** will be valid for six years. It provides for work and travel authorization.
 - **Renewal:** RPIs applying for renewal will be subject to a new background check, payment of processing fees, and payment of taxes. RPIs must provide evidence of having been 1) regularly employed while meeting a requirement that he/she is not likely to become a public charge or 2) having resources to demonstrate 100% of the poverty level.
 - **Adjustment of Status to Permanent Residency:** At the end of ten years, RPIs may apply for adjustment of status, provided that they demonstrate: 1) they are admissible, 2) pay an additional \$1000 fine per adult plus application fees; 3) prove they are learning English; 4) pay their taxes; 5) pass a background check and 6) demonstrate compliance with the employment requirement. Under the revamped legal immigration system, individuals present in the U.S. for 10 years in lawful status can adjust status to lawful permanent residence. RPIs may apply for naturalization after an additional three year wait, making the total path to citizenship about 13 years. □ **Timeline:** DHS has 12 months to issue regulations. Then there is a one year initial application period which can be extended by the Secretary for up to 18 months.
- **DREAM Act:** Individuals who entered the U.S. before the age of 16 and who have completed high school or obtained a GED in the U.S. may register for RPI status through the DREAM Act. Individuals who received Deferred Action for Childhood Arrivals are grandfathered into RPI status. DREAM RPIs are exempted from penalties and the triggers. Five years after registration, DREAM RPIs may apply for adjustment of status; their time in RPI status will count towards eligibility for naturalization, allowing them to apply for naturalization immediately after receiving their green card.
- **Agricultural program:** Undocumented farm workers who can demonstrate a minimum of 100 work days or 575 hours in the two years prior to the date of enactment would be eligible for an Agricultural Card. Workers who work at least 100 days a year for five years or at least 150 days a year for three years can adjust status to permanent residency. To be eligible for permanent residence, agricultural workers must show that they have paid all taxes, have not been convicted of any serious crime, and pay a \$400 fine.
- **Integration:** Creates an Office of New Americans, a New Americans taskforce and additional initiatives to help immigrants learn English, American civics and integrate into local communities. Provides funding for programs to help non-profits and local government with these initiatives.

Future Immigration: Family, Employment and Merits System

- **Lawful Permanent Residents' spouses and children:** The current family based categories will be revised to permit the spouses and children of lawful permanent residents to immigrate immediately.
- **Additional changes to the current family system:** The current sibling category will be eliminated 18 months after enactment. The 3rd preference family category (adult married children of U.S. citizens) will have an age cap of 31 beginning 18 months after enactment. The backlog reduction program will include processing of petitions in phased-out family categories. U.S. citizens can petition for a sibling for up to 18 months after enactment.
- **New Family "V" Visa:** Creates a new nonimmigrant visa for families with approved petitions to work and live in the U.S. while waiting for their green card. Allows other family members including siblings to visit the U.S. for up to 60 days per year.
- **Parental Rights Protections:** The bill heightens child welfare protections to ensure parental rights are not terminated on the basis of a parent's immigration status alone.
- **Employment-Based Reforms:** Spouses and children of employment based visa applicants, STEM graduates with doctoral degrees, certain other professionals, and certain foreign doctors are exempt from the employment visa cap. The cap on low-skilled workers is raised.

- **Backlog Reduction and Improvements:** Additional provisions to streamline processing and reduce backlogs include elimination of employment based country caps, an increase in family based country limits, and recapture of unused visa numbers. Popular programs for foreign doctors (Conrad-30), religious worker recruitment, and EB-5 investors are permanently reauthorized. Numerous other technical fixes to improve and streamline current visa programs are included (additional protections for stepchildren, widows, and other family members.)
- **New Merit-Based System:** Creates a “Track One” merit based visa which will initially allocate 120,000 visas annually based on a points system. Points will be awarded for factors such as education, employment, family in the U.S. and length of residence in the U.S. Half of the merit visas will be set aside for high skilled individuals and half of the cap will be for lower skilled workers.
- **A new “Track Two” merit-based system** is created to clear the employment and family backlogs. In addition, this system allows individuals who are lawfully present in the U.S. for over ten years with work authorization to adjust status to permanent residence.

Reforms to Non Immigrant Visa Programs

- **H-1B:** Changes to the H-1B high skilled visa program include expanding the current cap from 65,000 to 110,000. Allows for work authorization for spouses and children. Increases requirements for recruiting and offering jobs to U.S. workers at higher wages prior to hiring foreign workers. Increases fines and wage requirements for companies that are heavy-users of H-1B visas..
- **Deterring Abuse:** Establishes significant new authorities and penalties to prevent, detect, and deter fraud and abuse of the H-1B and L-1 visa systems by fraudulent employers. Increases wages for foreign workers to help protect Americans.
- **New Worker Program (W Visa):** Establishes a new nonimmigrant W classification for lesser-skilled foreign workers performing services or labor for a registered employer in a registered position. Spouses and minor children are included and are work-authorized.
- **Agriculture:** A new agricultural guest worker visa program would be established to provide a more stable agricultural workforce. The H-2A program would sunset after the new guest worker visa program is operational.
- **INVEST Visa:** This bill creates a new INVEST visa for foreign entrepreneurs who seek to come to the U.S. to start their own companies.
- **J1 Visas:** The fees placed on J-1 visas are reduced from 500 to 100 dollars. The seafood industry in Alaska may utilize the Summer Work Travel program and utilize guest work visas. It also requires the culture exchange visitor work program (J-Visa) to ensure labor recruiters will be required to follow the Fair Labor Standards Act except for education programs.
- **African and Caribbean visa:** 10,500 visas per year for workers from certain Caribbean and African countries.

Interior Enforcement

- **Five year phase-in of mandatory E-Verify:** An electronic employment verification system (E-verify) will cover all employers within a five year period. It requires identity verification through use of enhanced fraud-proof documents. Specifically prohibits creation of a national ID card.
- **Anti-fraud measures:** Expands ability to protect against identity theft of Social Security numbers by allowing employees to block their social security number and gives employees access to personal E-verify history. It provides for an expansion of the photo identification mechanism as a component of E-verify and encourages states to provide photos to DHS.
- **Due Process:** Expands due process protections for employees to ensure that legal workers are not prevented from working due to errors in the system or because of employer negligence or misconduct.
- **Worker Protections:** Includes protections for employers and employees, including pre-emption of state verification laws, expansion of U visas in employer abuse situations, and program funding. The bill also cracks down on labor recruitment abuse.
- **Refugee/Asylum Issues:** This section of the bill is named Frank R. Lautenberg Refugee and Asylum Reform Act and eliminates the one year asylum filing deadline. Eliminates family reunification barriers for certain asylees and refugees. Authorizes streamlined processing for certain high risk refugee groups.

Authorizes asylum officers to grant asylum for eligible applicants during expedited removal, and permits qualified stateless individuals to apply for lawful permanent resident status.

□ **Immigration Court Improvements:** Authorizes increase in immigration court personnel, additional resources, and more training for judges and other staff; access to counsel for vulnerable populations to improve efficiency of courts, and permanently codifies legal orientation programs.

□ **Interior Enforcement:** Tightens certain grounds of inadmissibility relating to document and passport fraud, driving while intoxicated following three convictions, conviction for gang related activities, convictions related to domestic violence, child abuse, stalking, violation of protection orders and failing to register as a sex offender. Prohibits and or increases penalties for abusive smuggling, illegal entry, and re-entry.

□ **Detention Reform:** Increases oversight of detention facilities and expands alternatives to detention.

□ **Judicial Discretion:** Expands the authority of immigration judges and DHS to waive removal on humanitarian grounds. Also expands the ability of immigration judges to conduct bond hearings.

Border Security

□ **Border Plan:** The DHS Secretary must develop a Comprehensive Border Security Strategy and Southern Border Fencing Strategy within six months before the registration period for Registered Provisional Immigrant status (RPI) begins. The bill specifies certain minimum technologies that must be included in the plan. These strategies must be designed to achieve persistent surveillance of the border and a 90% effectiveness rate for apprehensions and returns in high risk border sectors. The bill appropriates \$3 billion for this plan which will include technology, personnel and other resources.

□ **Triggers:** Before Registered Provisional Immigrants (RPIs) receive a Green Card, the Secretary of Homeland Security must certify that the following five conditions are met:

- The Department of Homeland Security has submitted a Comprehensive Southern Border Security Strategy to Congress and the plan has been deployed and is operational.
- The Border Patrol has 38,405 Border Patrol agents on the southern border. This means an agent every 1,000 feet along the southern border.
- At least 700 miles of fencing has been completed along the Southern Border(because 350 miles have already been built this requires an additional 350 be built).
- The mandatory employment verification system has been fully implemented for all employers, which will make it almost impossible to work in the United States illegally.
- The mandated electronic entry/exit system has been fully implemented at all international air and sea ports of entry within the United States, improving the identification of visa overstays.

□ **Southwest Border Security Commission:** After five years, if the specified goals of 90% effectiveness and persistent surveillance have not been met, a Southern Border Security Commission will be established to make further recommendations for achieving these goals. The Commission would recommend up to \$2 billion in additional DHS spending that would be available to achieve the border security goals if they have not yet been met. The Commission will start holding public meetings before the five year mark.

□ **DHS Oversight:** To protect the integrity of the system, additional resources will be devoted to implementing a DHS-wide use of force policy and associated training in appropriate use of force and the impact of federal operations on border communities. A Border Oversight Taskforce is established to take testimony and conduct hearings in order to review and recommend changes to existing border policies.

□ **Training:** DHS must develop, in conjunction with DOJ's Office of Civil Rights, training for Border Patrol agents and certain others on: civil, constitutional, human and privacy rights of individuals; use of force policies; identifying vulnerable populations such as children and victims of crime and human trafficking; and the impact of border operations on communities. Section 3721 restricts Border Patrol enforcement activities at hospitals, schools, religious facilities, and organizations that assist children, pregnant women, victims of crime or abuse, or individuals with disabilities.

□ **DHS Ombudsman:** The current duties of the USCIS Ombudsman's office will be expanded to encompass all DHS immigration functions. DHS will be required to issue regulations on racial profiling that are based on a study analyzing individualized data on DHS officers enforcement activity.

□ **Access to Emergency Personnel:** DHS is directed to place up to 1,000 distress beacons along the border where migrant deaths occur and DHS is required to report on migrant deaths and efforts taken to mitigate those deaths.