

## HOUSE IMMIGRATION REFORM PART II 2013

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This is continuation of series of articles providing AILA's (American Immigration Lawyers Association) on various topics as contained in Senate Bill S. 744 passed by the Senate, action or inaction in the House and AILA's position of these issues.

### **The Legal Immigration System**

America's legal immigration system must be reformed to provide a flexible and smoothly functioning system that meets the needs of our families, the economy, and our society. The visa quota backlogs of years or even decades have forced individuals to choose between life in the U.S. and life with their families abroad. Furthermore, these visa backlogs have hindered or halted business operations and opportunities.

But the problem is not solely with unacceptable backlogs. It is also with the structure of the legal immigration system itself. Only certain people qualify to access our legal immigration system, with many of the people who want to be here legally and who would benefit our economy foreclosed from any means of getting visas. For them, the law has created no "line" to get into, even if they wanted to "do it the right way." And even those who can access the system face so many categorical exclusions and procedural hurdles that they often get derailed along the way.

### **Family**

Family reunification has been a cornerstone of the immigration system and keeping families strong is in our national interest. Immigration reform should retain all family-based preference categories and set them at adequate levels to allow family members to unite in a reasonable period of time. Reform should also eliminate the limit on spouses and children of lawful permanent residents by redefining them as "immediate relatives."

- Immigration is not a zero-sum proposition. Some proposals limit family-based visa categories as a trade-off to increase employment visa categories. This approach is premised on the faulty assumption that America can only absorb a fixed number of immigrants at a given time.
- The Senate bill, S. 744, makes important improvements to the family-sponsored immigration system by reducing visa backlogs, recapturing unused visas from past years, allowing parents of U.S. citizens to bring their minor children, and allowing for quicker reunification for spouses and minor children of lawful permanent residents. Unfortunately, the Senate bill eliminates the ability of U.S. citizens to petition for their siblings and certain adult children.

### **Business**

Reform will not be successful unless it ensures American businesses have access to the workers they need, protects workers' rights, guarantees fair wages and working conditions, and provides workers with a means to apply for green cards if they choose to do so. Talented immigrants have made crucial contributions to the development of next generation technologies and have founded some of the most innovative businesses in the United States. As global economic integration deepens, sustainable growth will depend in part on our continued ability to attract the best and brightest innovators.

- Immigration reform should increase access to green cards for science, technology, engineering and math college graduates, entrepreneurs, and investors.
- Immigration reform should create a mechanism that enables the legitimate market need for H-1B visas to be met, while at the same time ensuring that the H-1B visa process remains timely.

### **How does Senate bill 744 address employment immigration?**

S. 744 improves the system by focusing the annual numerical limits for green cards only on the actual workers (and not counting the family members who might be accompanying them) and exempting those already known to create jobs. S. 744 recaptures unused employment-based green cards and eliminates the nonsensical and discriminatory limits on visa numbers based on country of origin. It also provides visas for innovators who can attract investment and create jobs in the U.S.

However, the Senate bill creates new recruitment and wage rate calculations for certain employers seeking nonimmigrant (H-1B and L-1) workers that complicate their ability to hire these important employees. The bill will make it particularly difficult for small businesses that are the engine of our economy and need realistic access to the talents that can help them grow. The approach the Senate has taken, requiring that many foreign workers be paid significantly more than their U.S. peers, will likely make these foreign workers unaffordable for many employers. S. 744 also includes an unworkable government-run internet recruitment process for H-1Bs.

### **How does the SKILLS Act, H.R. 2131, address employment immigration?**

- The SKILLS Act improves the legal immigration system by providing more green cards for STEM (science, engineering and math) college graduates, increasing the H-1B visa cap, improving the E-2 treaty trader visa, and eliminating per country caps for employment-based visas.
- The major flaw in the SKILLS Act is that it eliminates the sibling family preference category and the diversity visa program without adding corresponding measures to retain the valued aspects those categories represent. The SKILLS Act takes a misguided “zero-sum” approach to legal immigration that is not based on our nation’s needs. Increasing the number of visas in one category does not necessitate decreasing in another. Each category meets a need and sacrificing one for another will create gridlock in an already backlogged system.

**What are the concerns with the Agricultural Guestworker Act, H.R. 1773?** H.R. 1773 creates a new temporary agricultural guest worker program by replacing the current H-2A program with an H-2C visa for temporary agricultural workers. The new program would allow employers to bring in 500,000 agricultural guest workers per year in addition to those undocumented workers who return to their country of origin and return to the U.S. on guest worker visas. A major shortcoming of this bill is that neither current undocumented farm workers nor future H-2C guest workers would have the opportunity to earn permanent legal status (green cards). Also, a process requiring current undocumented farm workers to leave within two years of enactment and return later would be unrealistic and unworkable.

*To be continued...*

For more information, please feel free to contact the Immigration and Nationality Lawyers at the NPZ Law Group at 201-670-0006 or by e-mailing us at [info@visaserve.com](mailto:info@visaserve.com).