

Senate Passes Comprehensive Immigration Reform, House Remains Obstacle to Enactment

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Senate Passes Comprehensive Immigration Reform! *House Remains Obstacle to Enactment*

WASHINGTON DC, MAY 25 - The American Immigration Lawyers Association (AILA) applauded the action of a bipartisan coalition of Senators who today voted 62 to 36 to pass a compromise version of comprehensive immigration reform. "This historic action by the Senate creates the possibility that our 20th century immigration laws may finally be reformed to meet the needs of a 21st century America", stated Deborah Notkin, president of the Association.

The path ahead to enact a bill that can be signed into law is fraught with dangers, as the Senate must now negotiate with the House to achieve a final "conference" bill that both bodies can pass and send to the President. While President Bush has stated unequivocally that he favors a comprehensive approach, House leaders remain stuck in a harsh "enforcement only" mode, having passed the onerous Sensenbrenner bill, H.R. 4437 last December. Recent statements by House leadership adamantly opposing the earned legalization and temporary workers programs contained in the Senate bill illustrate the wide divide that will have to be bridged if final legislation is to be enacted.

"The Senate bill is not perfect", Notkin continued. "It still contains some overly-harsh enforcement provisions and strips important due process protections. We will continue to push to correct these provisions as the bill moves into conference negotiations. But the bill is a welcome and needed step forward in pointing the way towards a workable, fair, functioning immigration system that rewards work, reunites families, protects refugees, and provides smart border enforcement that facilitates trade while ensuring security."

The Senate bill contains the following important provisions, in addition to many measures that address border and interior enforcement and create a new employment verification system:

- **Path to Legal Status for Undocumented Currently in the United States**
 - Undocumented in U.S. for at least 5 years prior to April 5, 2006 (estimated 6.7 million) eligible for 6 years of work authorization and path to eventual permanent legal status, upon payment of \$2,000 fine, meeting English and civics requirement, passing background checks and paying taxes owed.
 - Will get LPR status ("green card") after current family backlogs are cleared
 - After 5 years as LPR, can apply for citizenship.

- Undocumented in U.S. less than 5 but more than 2 years, (estimated 2.8 million) "Deferred Mandatory Departure (DMD) status, providing work authorization and eventual path to permanent status with following requirements:
 - Must leave country within 3 years, "touch base" and return
 - Can apply for readmission before departure
 - Departure requirement waived for spouses/children, or if substantial hardship on person or immediate family.

- **Family Unity and Family and Employment Visa Backlog Relief**
 - Those in current family backlogs will get "green cards" before any of the currently undocumented
 - New family preference cap of 480,000, adding 260,000 new visas per year to eliminate backlogs
 - New employment-based cap of 450,000 for a 10-year period, adding 310,000 new visas per year; spouses and children of certain employment-based immigrants capped at 650,000, others may remain outside the cap
 - 30% of employment-based cap reserved for "essential" workers
 - Provisions for widows, orphans, and lower threshold for affidavits of support

- **High-Skilled Immigration Reforms**
 - Reform of student visa rules to authorize dual intent, expand the period of OPT, and create a direct path to permanent status for certain advanced degree students
 - Increase in H-1B cap to 115,000 with market-based escalator and exemption for STEM advanced degree holders
 - Exemptions for the annual employment-based cap for STEM advanced degree holders, aliens of extraordinary ability, and outstanding professors and researchers

- **New Temporary Worker Program with Labor Protections and Path to Permanent Status**
 - New program for 200,000 new temporary "essential" workers per year
 - 3 year visa, renewal for 3 years, with portability to work for employer of choice
 - Current undocumented who entered U.S. after January 2004 are eligible, must leave country to apply, 3/10 year bars are waived
 - Employer has to seek U.S. worker first; labor protections and market wage requirements
 - Can apply for permanent status ("green card"), within the new employment-based cap; can self-petition if worked for 4 years, otherwise employer can petition

- **Reforms to Agricultural Worker Program**
 - Farmworkers who show that they performed at least 150 days of agricultural work in the U.S. during the 24 month period ending December 31, 2005 can get temporary resident status ("blue card"); spouse/minor kids get status too
 - To earn permanent status ("green card"), farmworkers must perform agricultural work for at least 100 work days per year for 5 years, OR perform 150 days per year for 3 years. Participants may work outside agriculture but only if they are continuing to meet the annual agricultural work requirement.
 - The earned legalization program has a cap of 1.5 million.
 - The H-2A temporary foreign worker program will allow employers in the dairy industry to hire workers even when they are year-round workers.

- **Path to Legal Status for Undocumented High School Students (DREAM Act)**
 - Students who enter U.S. before age of 16 and are present for 5 years preceding date of enactment, and who have graduated from high school (or GED), can apply for 6-year conditional status
 - Within 6 years, if graduated from college or completed two years in a degree program, or served in Armed Forces, conditional status becomes permanent status ("green card")