



Questions and Answers about the Senate Immigration Bill (The Secure Borders, Economic Opportunity, and Immigration Reform Act of 2007)

THE SENATE AGREEMENT – IT'S JUST A BILL

This week, the Senate is debating an immigration bill that is the product of compromise among a group of Senators and the White House. It is only a bill. As the bill is considered in the Senate, and as another bill is considered in the House, there will be many changes. It is too early to tell whether any bill will pass Congress this year. If Congress does pass a bill, it will be different from what is described below. This document is to answer some questions about what is being considered now. It is based on lengthy summaries of the bill.

Why is the Senate agreement so complicated and harsh?

Drafting and passing legislation is a political process. The more divided Congress is on an issue (and the more divided the public is) the more the legislative process is marked by compromise. In the case of immigration, many factions make demands. On the Republican side, the loudest demands come from a significant faction of the party who would prefer less immigration, and who would severely punish undocumented immigrants and never allow them to become legal. On the Democratic side, a temporary worker program and cuts in family visas are among the most objectionable provisions. With Congress nearly equally divided between the two parties, legislators must find a combination of compromises to accommodate the demands of all factions. Otherwise, either side is able to block legislation from moving forward. This is particularly true in the Senate. Senators who object to a bill can threaten to filibuster it (endlessly debate it). In that case, the Senate needs 60 votes to stop debate and move on to pass the legislation. Failure to win 60 votes means the legislation goes no further.

Why do we go forward now? Why don't we just wait until we have a more favorable Congress?

We cannot predict when we will have another opportunity to move an immigration bill that will put undocumented immigrants on a path to citizenship. For the foreseeable future, such a bill will have to be bi-partisan, as there are a significant number of members of both parties who favor more harsh immigration measures. If Congress does not complete work this year, it will likely be at least two years before they come back to immigration reform, and in those two years, many families will be broken up through continued raids and other enforcement, and many individuals will die in the desert because there will continue to be no legal way for them to enter the country. If that is the consequence of stopping the Senate bill now, it is better to let it proceed and see if we can fix the troublesome parts.

Do we have a realistic chance of improving the bill?

It is a risk, but we have three opportunities: once, on the Senate floor in the amendment process; secondly, in the House of Representatives, which will probably start with a more generous bill; and finally in a conference committee of the House and Senate, which will have many members who understand the importance of immigration to our country. It will be difficult to end up with a bill that advocates of immigrants will like and that will have the support of enough Members of Congress to pass, but it is worth trying to get there.

What are the triggers?

In the Senate agreement, there are a number of provisions that were included to satisfy Senators who were skeptical that the government is serious about enforcing immigration laws. They wanted enforcement measures in place before legalization or new worker programs could start. In the agreement, there are a series of “benchmarks” or “triggers” that must take place before the implementation of some of the other provisions in the bill. The triggers **do not apply** to the following:

- Undocumented immigrants who are applying for a Z visa. Undocumented immigrants who meet the various conditions for provisional Z visa status would be able to obtain a Z visa regardless of whether the triggers had been met. (They would not be able to gain *permanent residence* before the triggers are met.)
- Agricultural workers and certain workers in agriculture-related jobs.

The triggers in the bill include the following:

- Border patrol: Agents and support staff are increased to 18,000. Currently, Congress is already considering an administration request to bring the Border Patrol staffing level from just under 15,000 to just over 18,000.ⁱ
- Border barriers: The agreement stipulates there must be in place at least 200 miles of vehicle barriers, 370 miles of fence, 70 ground-based radar and camera towers, and 4 unmanned aerial vehicles.
- Resources to end “catch and release”: Immigration and Customs Enforcement must have the resources to remove anyone apprehended crossing the southern border, including detention space for 27,500.
- Identification of workers: The agreement stipulates that DHS must have established strict standards for identification documents and an electronic verification system to verify an employee’s eligibility to work.
- Timely processing of the undocumented: DHS must show that it is receiving and processing in a timely manner the applications submitted by undocumented immigrants applying for Z visas (provisional status).

THE LEGALIZATION PROGRAM

How does the legalization program work?

The Senate agreement provides for a multi-step process for putting undocumented immigrants on a path to citizenship. In the first step, undocumented immigrants apply for a provisional visa, a Z visa. With a Z visa, the undocumented immigrant is granted permission to work and travel. The visa is good for four years. The Z visa may be renewed multiple times. The next step is to adjust to permanent status. Z visa holders may apply for permanent status after the current immigration backlogs are eliminated. (Backlog reduction provisions included elsewhere in the agreement should accomplish this goal in eight years.) Once the backlogs are cleared, Z visa holders will have five years to apply for permanent status.

Who qualifies for a Z visa?

An undocumented immigrant who has been in the U.S. continuously since January 1, 2007. Applicants must be admissible under the immigration laws. A number of infractions that would normally make someone ineligible to immigrate are waived, such as unlawful presence (obviously), failure to attend a removal proceeding, misrepresentation and false claims to U.S. citizenship and other bars to admissibility. Grounds of admissibility cannot be waived for individuals who have committed certain crimes, are a security threat, or for certain other reasons. A Z visa applicant must be working or must meet certain requirements related to agricultural work.

Are family members of Z visa applicants eligible for Z visas as well?

The spouse and minor children (under 18 years of age) of the principal Z visa applicant may also apply for a Z visa (if they were *inside* the U.S. prior to January 1, 2007), and they would also be entitled to work authorization and ability to travel. However, if the spouse and minor children are *outside* the U.S., a Z visa applicant would not be able to bring his spouse and minor children until he or she gets a green card—which may take 9 – 13 years.

What fines and fees must undocumented immigrants pay?

- Initial Fees and Penalties: To obtain a Z visa, an undocumented immigrant must pay a processing fee to cover the cost of processing, but no more than \$1,500. In addition, there is a penalty of \$1,000 plus a \$500 “State Impact Assistance Fee.”

For each family member, there is a maximum \$1,500 application fee per application, *plus* a \$500 penalty per application. For a family of four, initial fees and penalties could be as high as \$9,000.

A Z visa will be good for four years before having to be renewed.

- Renewal fees: When a Z visa holder goes to renew the Z visa (after four years), he or she must again pay processing cost of up to \$1,500 for him or herself and for each family member. For a family of four, this could mean up to another \$6,000 in costs.
- Adjustment to permanent status: In addition to the application fee for permanent residence that must be paid by each applicant (which may be going up to \$905 later this year), the *principal* applicant will have to pay a penalty of \$4,000.
- Payment: There will be an installment option for payment of fines and fees for applicants who cannot afford to pay the entire amount immediately with the application.

What other requirements must be met to obtain a Z visa?

The main requirements for a Z visa are: submitting an application that will include work history and other factors relating to eligibility for the visa; being fingerprinted and undergoing a criminal background check; being interviewed by USCIS; providing evidence of continual presence and employment or education (since January 1 of this year).

How long will it take to get a Z visa?

Once an application is submitted, USCIS has *one* business day to conduct an initial background check. If the applicant passes the initial check, USCIS must give the applicant temporary work authorization, discretionary permission to travel, and temporary protection from deportation. The

applicant will get a document to show he or she is a Z visa applicant. Once the full background check is completed and the Z visa is granted, the temporary document will be replaced with the visa.

What happens to immigrants who the government is trying to deport?

There will be temporary protection from deportation for undocumented immigrants who are apprehended by the government between the time the law is enacted and the end of the registration period for the Z visa (18 or 24 months after the law is enacted), as long as the immigrant can show he or she may be eligible for a Z visa. This protection from deportation also applies to immigrants who are already in removal proceedings after the law is enacted.

What happens to immigrants with final orders of removal or who are subject to reinstatement?

An immigrant who has already been ordered deported, or who has left the country after a deportation order was issued and then re-enters the country (and has the deportation order reinstated) is not eligible to apply for a Z visa.

Do undocumented immigrants have to leave the country to apply for legal status?

The application for a Z visa takes place in the United States. Once an immigrant has a Z visa, he or she will be able to work and to travel outside of the U.S. and to return. So, someone with a Z visa may visit his or her home country and come back to the U.S. To apply for permanent residence, the principal Z visa holder must return to his or her home country and apply in person at the U.S. consulate. *The immigrant will still have the Z visa, so he or she may still travel back and forth to and from the U.S.*

What are the requirements relating to English?

When a Z visa holder renews the Z visa for the *first* time (after four years), the applicant must show that he or she is trying to learn English and U.S. history and government, either by taking a naturalization exam or by showing enrollment or attempted enrollment in an English class. At the *second* renewal of the Z visa (after eight years), the applicant must know English and U.S. civics well enough to pass the naturalization exam. Some exceptions to the language requirement are made for minors (under 18 years of age), disabled people, and long-term U.S. residents over the age of 50.

How does a Z visa holder get a green card?

After the backlog is cleared for family-based immigration visas (in about eight years), Z visas holders will be able to apply for green cards. To do this, the principal Z visa holder must return to his or her home country and apply for an immigrant visa at a U.S. consulate. (The Z visa will still allow the immigrant to travel back and forth to the U.S.) Applicants will be sorted according to a “point” system where points will be awarded for job skills, education, language ability, family relationships, and (for Z visa holders) U.S. employment (extra points for employment in agriculture), home ownership, and medical insurance.

Once Z Visa holders apply for a green card, how long will it take? What is the cap?

There will be a special allocation of green cards to Z visa holders over a period of five years, with 20% allocated each year.

FAMILY IMMIGRATION

How will the backlog for family visas be eliminated?

There will be 567,000 visas made available for family-based immigration each year until the backlogs are eliminated (for anyone for whom a family-based petition was filed prior to May 1, 2005). (This total does not include immediate relatives of U.S. citizens, who are not subject to a cap, as is currently the case.) With these extra numbers, the backlog should be eliminated in eight years. Unfortunately, those who got in line for a visa after May 1, 2005 would have to re-apply through the point system, unless they can access what will remain of the family-based system (if they are a spouse, minor child, or parent of a U.S. citizen or a spouse or minor child of a permanent resident).

What changes does the Senate bill make to the family-based immigration system?

The Senate proposes to re-define the category of “immediate relative” of U.S. citizens. Currently, that category includes minor children, spouses, and parents of citizens. This category is not numerically capped. Under the Senate proposal, parents will no longer be included in this category. Instead, the Senate proposal creates a new preference category for parents, capped at 40,000 per year. Currently, over the last three years, an average of approximately 90,000 parents of U.S. citizens have immigrated to the U.S. each year.

The Senate agreement proposes to cut the first preference (unmarried adult children of U.S. citizens); the second (B) preference (adult unmarried children of legal permanent residents); the third preference (married adult children of U.S. citizens); and fourth preference (brothers and sisters of U.S. citizens).

What family members will still be able to immigrate with family sponsorship?

The family immigration system will be reduced to the following categories:

- Spouses and children of U.S. citizens, who will still be considered “immediate relatives” and not capped.
- Minor children and spouses of U.S. permanent residents (who will have about the same number of visas available as today, about 87,000).
- Parents of U.S. citizens (with a cap of 40,000).

Family members who will no longer qualify through family sponsorship may obtain permanent residence through the “point system,” if they have enough points. These include adult unmarried children of U.S. citizens; adult married children of U.S. citizens; adult unmarried children of permanent residents; and siblings of U.S. citizens.

How does the “point system” work?

The point system will emphasize job skills, education, and English language ability. Family members—and anyone else who wants to come to the U.S.—may obtain a visa through the point system, but they must first obtain enough points (55 minimum) by possessing a combination of job skills (up to 47 points), education (up to 28 points), and language ability (up to 15 points).

Family members may then gain additional points, up to eight, depending on family relationship: eight points for adult children of U.S. citizens; six points for adult children of permanent residents; and four points for siblings of U.S. citizens or permanent residents. For family members for whom

petitions had already been filed after May 1, 2005 (and who must re-apply using the point system), two additional points are awarded.

The number of persons admitted through the point system varies for the first several years of the program (ultimately, 380,000 will be admitted annually).

In short, a family member (other than a spouse or minor child) who does not already have a good education, job skills or experience, or ability to speak English will have a difficult time getting an immigrant visa.

TEMPORARY WORKER PROGRAM

What is the temporary worker program?

The Senate bill creates a new temporary worker program, a Y-1 visa. This is the avenue by which most lower-skilled immigrants would come in the future. 200,000 Y-1 visas will be issued each year. The current H-2A, for agricultural workers, and H-2B, for seasonal, non-agricultural workers, are included as subcategories in the temporary worker program (Y-2A and Y-2B). The Y-2B program, for seasonal non-agricultural workers, will allocate 100,000 visas per year, with the possibility of an increase to 200,000. (Currently, 66,000 visas are available through the H-2B program.) Visas for agricultural workers (Y-2A) will not be capped, as is currently the case.

What benefits does a temporary Y visa provide?

With a Y visa, a foreign worker may come to the U.S. and work for up to two years. The visa may be renewed twice for two years each, but only after the worker spends one year outside of the U.S. after each two-year work period. Visa holders may travel, and they may change jobs.

Can a temporary worker bring family members to the U.S.?

The temporary worker may bring spouses and children, but only if the family can demonstrate that their household income will be at least 150% of the poverty level, and that the cost of any medical care is covered by medical insurance. If a temporary worker brings family members, he or she may only renew the temporary visa once, and the family may only accompany the temporary worker on one of the two two-year stays in the U.S.

What are the fees for the Y visa?

Temporary workers will have to pay a processing fee plus a state impact fee of \$500. If the temporary worker brings family members, there is an additional charge of \$250 for each family member, with a cap of \$1,500 per family.

What are the obligations of employers?

Before an employer applies for a temporary foreign worker, he must first take a number of steps to try to hire an American worker. If he cannot find an American worker for the job, he must submit a labor certification to the Department of Labor. For each worker, the employer pays a processing fee of \$500 to \$1,250, depending on the size of the employer. In the application, he must attest: that there are not sufficient U.S. workers willing and able to take the job; that the temporary worker is not taking a U.S. worker's job or affecting the wages or working conditions of U.S. workers; that the temporary worker will be paid prevailing competitive wages; that the temporary worker will not be going to a workplace where there is a strike; and that a number of other requirements will be met.

Employers who violate the terms of the program can be barred from it, and may be subject to monetary penalties or, in some cases, criminal penalties. Employers may not obtain temporary workers if they are located in a county with an unemployment rate of more than seven percent.

What worker protections does the temporary worker have?

A temporary worker is not tied to a particular employer, but may accept work with an employer other than the one who petitioned for him, as long as the new employer has an approved labor certification and petition. The bill prohibits employers from threatening temporary workers for exercising protected rights. The employer must certify with the government a number of conditions relating to wages and working conditions (see above). The bill provides for the hiring of 200 additional Department of Labor investigators per year for the next five years, for enforcing labor standards in areas where there is a high use of the temporary worker program. (The actual hiring of these investigators would be made possible by appropriations—a separate bill.)

Can a temporary worker change jobs?

Yes. A temporary worker may change jobs, as long as the new employer has successfully gone through the labor certification process.

Can a temporary worker gain permanent residence?

Not likely. After Z visa holders begin to adjust to permanent residence (in eight years), there will be 10,000 visas set aside per year for “exceptional Y visa holders. That will be between one and two percent of the total number of temporary workers entering each year.

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