



Memorandum

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SUBJECT: Selected Provisions in the Comprehensive Immigration Reform Act of 2006 (S. 2611)

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This memorandum provides a summary of the guest workers and pathways to citizenship provisions in the Comprehensive Immigration Reform Act of 2006 (S. 2611), as passed by the Senate. The information provided is taken directly from a Congressional Research Service report entitled *Immigration Legislation and Issues in the 109th Congress* (RL33125), coordinated by Andorra Bruno.

Temporary Immigration

The Immigration and Nationality Act (INA), as amended, provides for the temporary admission of various categories of foreign nationals, who are known as nonimmigrants. Nonimmigrants are admitted for a temporary period of time and a specific purpose. They include a wide range of visitors, including tourists, foreign students, diplomats, and temporary workers. The latter group is the subject of major legislation and considerable interest in the 109th Congress. The main nonimmigrant category for temporary workers is the H visa.¹ Among the visa classifications in the H visa category are the H-1B visa for professional specialty workers, the H-2A visa for agricultural workers, and the H-2B visa for nonagricultural workers. Foreign nationals also may be temporarily admitted to the United States for work- or business-related purposes under other nonimmigrant categories, including the B-1 visa for business visitors, the E visa for treaty traders and investors, and the L-1 visa for intracompany transfers.

¹ Foreign nationals not already legally residing in the United States who wish to come to the United States generally must obtain a visa to be admitted.

Guest Workers

The H-2A and the H-2B visa programs mentioned above are the two main programs for temporarily importing low-skilled workers, sometimes referred to as guest workers. Title IV of S. 2611, as passed by the Senate, would establish a new H-2C guest worker visa for aliens coming temporarily to the United States to perform temporary labor or services other than the labor or services covered under the H-2A visa or other specified visa categories. As introduced, S. 2611 would have capped the proposed H-2C visa at 325,000 the first fiscal year and would have established a process for adjusting the cap in subsequent fiscal years based on demand for the visas. A Senate floor amendment (S.Amdt. 3981) that was agreed to by voice vote replaced these provisions with a provision placing an annual cap of 200,000 on the H-2C visa. Under Title IV of S. 2611, an H-2C worker's initial authorized period of stay would be three years, and could be extended for an additional three years. H-2C nonimmigrants in the United States could adjust to a legal permanent resident (LPR) status. Petitions for employment-based *immigrant* visas could be filed by an H-2C worker's employer or, if the H-2C worker had maintained H-2C status for a total of four years, by the worker.

H.R. 4437, as passed by the House, does not contain guest workers provisions.

“Pathways to Citizenship” for Unauthorized Aliens

S. 2611 contains controversial provisions that would enable certain unauthorized aliens in the United States to adjust to legal permanent resident (LPR) status. Under Title VI, Subtitle A of S. 2611, the Secretary of the Department of Homeland Security would adjust the status of an alien and the alien's spouse and minor children to LPR status if the alien meets specified requirements. The alien would have to establish that he or she was physically present in the United States on or before April 5, 2001; did not depart during the April 5, 2001-April 5, 2006 period except for brief departures; and was not legally present as a nonimmigrant on April 5, 2006. Among the other requirements, the alien would have to establish employment for at least three years during the April 5, 2001-April 5, 2006 period and for at least six years after enactment, and would have to establish payment of income taxes during that required employment period. Such adjustments of status would not be subject to numerical limits.

Also under Title VI, Subtitle A of S. 2611, aliens who are unable to meet the presence and employment requirements for adjustment to LPR status but who have been present and employed in the United States since January 7, 2004, and meet other requirements, could apply to DHS for Deferred Mandatory Departure (DMD) status. Eligible aliens would be granted DMD status for up to three years. An alien in DMD status could apply for immigrant or nonimmigrant status while in the United States, but would have to depart the country in order to be admitted under such status. The alien could exit the United States and immediately re-enter at certain land points of entry. Aliens granted DMD status who are subsequently admitted to the country as H-2C aliens could apply to adjust to LPR status, as described above in the *Guest Workers* section.

Title VI, Subtitles B and C of S. 2611 contain additional provisions that would enable certain unauthorized aliens in the United States to apply for LPR status. Subtitle B would establish a “blue card” program for certain agricultural workers in the United States. Under

the program, aliens who had performed requisite agricultural employment, apply within 18 months and are otherwise admissible would be able to obtain “blue card” status. Not more than 1.5 million blue cards could be issued during the five years beginning on the date of enactment. After meeting additional requirements, blue card holders would be able to adjust to LPR status outside the INA’s numerical limits.

Subtitle C, known as the DREAM Act, would enable aliens who first entered the United States before age 16, have a high school diploma or the equivalent or have been admitted to an institution of higher education, and meet other requirement to apply for LPR status. Individuals who qualify would be granted LPR status on a conditional basis. No numerical limitations would apply. The conditional LPR status would be valid for six years, after which the alien could apply to have the condition removed subject to specified requirements.

During Senate consideration of S. 2611, several amendments to eliminate or modify legalization provisions in the bill were debated. These included two unsuccessful amendments to delete the Subtitle A and Subtitle B legalization provisions for aliens who had been in the United States since April 5, 2001, and for agricultural workers (S.Amdt. 3963), and to expand the Subtitle A legalization program for those in the United States since April 5, 2001, to cover aliens in the country since January 1, 2006 (S. Amdt. 4087).

H.R. 4437, as passed by the House, does not contain provisions to legalize the status of unauthorized aliens in the United States.