

COMPREHENSIVE IMMIGRATION REFORM ACT OF 2006

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The following is a summary of the Hegel-Martinez compromise language that modifies the Specter bill. The version of the Specter bill approved by the Judiciary Committee last week is on our web site at <http://www.visalaw.com/06mar4/index.html>.

Title I

New Section 4 contains a severability clause which says that any amendments added by the act that are invalidated will not invalidate the whole law. The clause is moved here from Section 235.

New Section 116 added regarding deaths along the US-Mexican border. The Frist Amendment requires CBP to collect data on the causes of death and the total number of deaths. A report must be produced annually on this that analyzes trends and recommends actions.

Titles II and III remain unchanged.

Title IV

Section 409 and 410 on student visas are moved to Section 507 and 508.

The DREAM Act is moved from Sections 431-442 to 621-632.

Title V

There are important changes in the number of employment-based green cards. The total number will now be 450,000 per year from fiscal year 2007 to fiscal year 2016. The increase from the earlier 290,000 (which was an increase from the current law's 140,000) is to accommodate some of the undocumented workers who will now have to queue up behind the longer term residents (those over five years) as well as all persons currently awaiting employment based green cards either in the US or abroad). After FY 2016, the numbers will drop back down to 290,000 per year.

Section 503 is amended to make clear that the 30% of employment-based green cards reserved for unskilled workers is to go first to people physically present in the US before January 4, 2004.

Title VI

Title VI, Subtitle A is renamed “Access to Earned Adjustment and Mandatory Departure and Reentry.” The section is now called the “Immigrant Accountability Act of 2006.”

Substantial changes are made to this Title. First, a new Section 245B is created to deal with the adjustment of status of undocumented immigrants.

The Five Years+ Group

DHS shall adjust people who meet the following requirements:

1. Application filed and fine of \$2000 paid (not applicable to minors) and normal adjustment application fees established by DHS.
2. The alien meets specific residency tests:
 - a. The alien was physically present in the US on or before the date that is five years before April 5, 2006;
 - b. The alien was not legally present in the US on April 5, 2006 (non-immigrants who have violated any condition of his or her visa shall be considered not to be legally present in the US); and
 - c. The alien did not depart from the US during the five year period except for brief, casual and innocent departures.
3. The alien must not be inadmissible on health, criminal, security, polygamy and child abduction grounds. But several immigration violations that lead to inadmissibility will be excused. Other inadmissibility grounds may be waived by DHS on humanitarian grounds, to ensure family unity, or when it is in the public interest. Public charge inadmissibility grounds will not apply to those who have worked and shown the ability to support himself or herself without public cash assistance. Alien smuggling is not a ground for inadmissibility if the action was taken for humanitarian purposes. Illegally reentering after being removed or violating a voluntary departure order will not render a person ineligible to adjust under this section.
4. The alien shall be employed in the US for at least three years during the five year period ending on April 5, 2006 and at least six years after the date of enactment of this law. The three year employment requirement does not apply to people under 20 years of age when this law is enacted. The six year requirement will be reduced for those under 20 when the law passes by an amount equal to the time beginning on the date of enactment and ending on the date on which the individual turns 20. The six year employment requirement will be reduced for people with physical or mental disabilities or as a result of pregnancy. The three and six year employment requirements would be reduced by one year for each

year of full-time post-secondary study in the US during the relevant period. Employment need not be with the same employer.

5. As evidence of employment, an alien must submit at least two of the following documents for each of the three and six year periods of employment:
 - a. Social Security records
 - b. Pay records or employer work verification
 - c. IRS records
 - d. Union or day labor center records
 - e. Any other government records (such as works compensation, disability records or business licensing records)
6. Aliens unable to meet the evidence test above can submit at least three of other types of documents including sworn declarations. Like the earlier bill version, there is a statement directing DHS to act liberally in implementing these requirements.
7. The burden of proof to prove employment is modified. Previously, the standard was that the alien must prove by a preponderance of the evidence that the alien meets the requirements and that the burden shall be met by producing “sufficient evidence to demonstrate such employment as a matter of reasonable inference.” The new standard is “just and reasonable inference.” Once the burden is met, the burden shifts to DHS to disprove the alien’s evidence with a showing which negates the reasonableness of the inference to be drawn from the documentation.
8. All back state and federal income taxes must be paid and alien must prove that no tax liability exists or that the alien has entered into an agreement to pay all outstanding liabilities with the IRS or state revenue department.
9. Applicants must meet the citizenship English and civics tests. A discretionary exception is provided for the disabled and the elderly.
10. A security clearance must be met. The applicant must submit fingerprints and agencies are expected to complete security checks within 90 days of the submission of fingerprints.
11. The applicant has complied with Selective Service registration requirements.
12. No one will be allowed to adjust until the earlier of a) ALL pending applications on the date of enactment under INA Sections 201, 202, or 203 HAVE BEEN PROCESSED before an adjustment may be processed or b) eight years after the date of enactment.
13. Spouses and children under 21 on the day of enactment of the law may adjust. Exceptions are made for battered spouses and children. Inadmissibility rules that

- apply to principal applicants apply to spouses and children as well. Background checks as described above also apply.
14. Numerical green card limits do not apply to this group of applicants.
 15. Principals and dependents with pending applications to adjust under this law are eligible for work and travel documents and shall not be subject to being detained, determined inadmissible, or removed unless the applicant commits an act which renders him or her ineligible to adjust under this law.
 16. DHS will provide applicants with a document of authorization that reflects applicability for benefits under the law. The document will not be issued until security clearances are received and agencies are directed to ensure that a 90 day processing time is met.
 17. People in deportation proceedings eligible for the law will have their proceedings terminated unless the proceedings are based on criminal or security grounds.
 18. Aliens apprehended before the application period described above who can show prima facie eligibility to adjust under the new law (but for the fact that the alien may not apply to adjust until the beginning of this period), shall not be removed until the alien has had the opportunity to file during the six months following the beginning of the period of eligibility (unless there are criminal or security grounds for removal).
 19. It shall be a crime punishable by up to five years to commit fraud or knowingly create or supply false documents in support of an application under this section. Employers, unions and others are excepted from this if they provide incorrect data used by the alien in order to obtain such employment shall not be considered in violation of this provision.
 20. Nothing shall preclude an alien from seeking permanent residency under any other provision of the law for which they may be eligible.
 21. DHS shall provide a single level of appellate review. Only evidence on file at the time of the determination of the application or evidence newly discovered during the time of the appeal shall be considered. After denial of this appeal, the case may be reviewed by a District Court and then federal appellate courts. Removal may not take place until a final decision is rendered establishing ineligibility (unless removal is based on criminal or security grounds).
 22. Employers are protected from liability relating to the employment of aliens adjusting under the new law. They are also insulated from liability for providing employment records to aliens seeking to adjust under the new law.

23. Anyone present on January 7, 2004 who seeks to adjust but doesn't meet the employment or continuous physical presence tests can apply under the departure and reentry section below.

24. DHS must issue regulations within 120 days of enactment of the law.

The Two to Five Year Group

DHS may grant Deferred Mandatory Departure status to people in the US illegally to allow such people to depart the US and seek readmission as a nonimmigrant or immigrant alien. Residency requirements for DMD status are as follows:

1. The alien was physically present in the US on January 7, 2004.
2. The alien has been continuously present in the US since this date, except for brief, casual, and innocent departures; and
3. The alien was not legally present in the US on the date of enactment under any non-immigrant status.

Employment requirements are as follows:

1. The alien was employed in the US, whether full-time, part-time, seasonally or self-employed before January 7, 2004; and
2. The alien has been continuously employed in the US since that date, except for brief periods of unemployment lasting not longer than 60 days.
3. Aliens may show employment by presenting Social Security, IRS or other government records, employment records, or union, day labor center or similar work assistance organization records. If such records cannot be produced, then two other types of documents must be presented including bank records, business records, sworn affidavits from non-relatives or remittance records. Like the five year group, DHS is directed to be reasonable.

Other requirements are as follows:

1. The alien must be admissible and have not engaged in persecution. Immigration violations are generally excused. Other inadmissibility provisions may be waived pursuant to Section 212. Persons ordered deported, removed or to depart voluntarily and those who failed to comply with such orders are **INELIGIBLE** for DMD status.

2. Medical exams may be required.
3. DMD status may be terminated if DHS determines that the alien was not eligible for such status or the alien commits an act that makes the person removable from the US.
4. DHS must create a new DMD application form. The form shall require an alien to waive judicial and administrative review or appeal.
5. DHS must interview applicants and use biometric authentication at the time of document issuance.
6. Applications for DMD must start no more than three months after the DMD application form is first made available. An alien must submit a DMD application no later than six months after the date on which the application form is first made available. Failure to file on time will render a person ineligible for DMD status.
7. DHS will ensure that all DMD applications are processed within 12 months after the date on which the application form is first made available.
8. DMD status may not be granted until background checks are completed.
9. Applicants must acknowledge unlawful presence and surrender any Social Security account number or card in their possession as well as any false or fraudulent documents. None of this information will be used in any criminal proceedings against the alien.

DHS will grant DMD for periods up to three years. The alien must depart the US before the expiration of DMD status. A DMD alien must register with DHS at the time of departure and surrender the DMD status document at that time.

Departure and Reentry requirements are as follows:

1. The DMD alien can apply for readmission as an immigrant or nonimmigrant either from within the US or outside the country, but shall not be granted admission until the person has departed.
2. Departure and immediate reentry will be permitted at any US-VISIT entry/exit ports of entry.
3. Consular interview requirements are waived.
4. Numerical limits applicable to non-immigrant categories like the new H-2C category are not applicable.

5. Spouses and children do NOT have to depart if the principal applicant meets the departure requirement. Derivative benefits associated with the immigrant or nonimmigrant visa granted to the principal alien will also not be subject to applicable caps.
6. The departure requirement may be waived if the alien is otherwise granted an immigrant or nonimmigrant visa and the alien can demonstrate a substantial hardship.
7. Aliens who timely depart under DMD are not subject to the unlawful presence bars.
8. People who fail to depart in a timely manner will be subject to a 10 year benefits bar and may be subject to fines of up to \$3000.
9. DMD applicants must work and can only be excused from working for up to 60 days. Applicants will be granted Social Security cards at the time DMD status is granted.
10. Time spent in DMD status will not be counted as a period of physical presence in cancellation of removal cases unless DHS finds that an extreme hardship exists.

DHS will grant DMD-holders a machine-readable, tamper-resistant document with biometric identifiers. The document will be used for both travel and work. Traveling with the card will not trigger unlawful presence reentry bars. The person must get back into the US using the travel document before the DMD status has expired. And time spent outside the US will not extend the DMD period.

DMD-holders will be considered to be permanently residing in the US under color of law and shall be treated as a nonimmigrant. But the alien may be deemed ineligible for public assistance.

DMD-holders are not eligible to apply to change to another non-immigrant status in the US.

Adjustment will not be allowed until all INA Section 201, 202 and 203 applicants are processed or eight years have passed since the date of enactment of the law, whichever comes first. Applicants for DMD status must pay a \$1000 fee.

Spouses and children are subject to the same conditions as the principal DMD-holder. But spouses and children pay a \$500 fee.

Unlike the five years+ group, there are no appellate rights for this group.

The Under Two Year Group

Those who do not fall into either of the two groups described above must leave and reenter on H-2C status and will have to pursue a green card using conventional green card strategies. Since the unlawful presence bars are waived for H-2Cs for time out of status prior to passage of the law, this should be a possible strategy, though applicants will need to be careful to depart the US within six months of the law passing. Raised employment-based green card caps should enable much of this group to get lawful status after several years have passed.