

IMPLEMENTING IMMIGRATION REFORM IN THE AGE OF BELT TIGHTENING

BY NOLAN RAPPAPORT AND GREG SISKIND

On May 30, 2007, the U.S. Citizenship and Immigration Services (USCIS) bureau announced an increase in fees for the processing of immigration benefit applications and petitions.¹ The immigration benefits application processing system is almost entirely funded by the fees charged by USCIS. On September 20, 2007, the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law held an oversight hearing on the fee increase.² Arturo Vargas³ testified that the fee increase would impose a prohibitive financial burden on countless immigrant families.⁴

Unfortunately, this fee increase will not cover the anticipated legalization program to provide lawful status for the twelve or more million immigrants who at present live in the United States without legal status. This figure does not include the anticipated guest worker program or the anticipated increases the bill would make in both family-based and employment-based visas.

The supporters of legalization apparently believe that the legalization application fees would be more than enough to provide the funds needed to process their applications. The problem with that approach is that it does not allow for funds to cover the start-up costs of the program, and these funds will be needed before USCIS can begin to process the millions of applications that will no doubt be filed once the application process opens. USCIS will have to hire and train a large number of additional personnel, purchase or lease additional office equipment, design software systems, lease additional office space, and so on. The funds for these start up-costs could be appropriated, but this would be a departure from the fee-based funding currently used to cover the cost of processing the benefit applications.

Even if the funds were appropriated, the mammoth task of rolling out a legalization program along the lines being discussed would take time. In fact, it could take USCIS years to fully process the applications for the millions of individuals expected to apply. The proposals call for extensive background checks, English examinations, medical examinations, payment of back taxes, verification of residency in the United States, etc. There are strong policy arguments in favor of these requirements, but achieving the goal of beginning to integrate these people into American society would be delayed an intolerably long period.

We propose supplementing the legalization program with a pre-registration program that would provide modest interim benefits and also provide funds for the start-up costs of the larger legalization program without requiring an appropriation. The system would be offered online in order to quickly register the expected mass number of applicants. Under this system, the legalization applicants would be encouraged to pre-register on the Internet for the legalization program. The pre-registration fee would be a partial prepayment of the anticipated fee for the later legalization application. For instance, if the registration fee is 40% of the fee for the legalization application, the person registering for the program would receive a 40% credit towards payment of the fee for the legalization application.

The status we are proposing is similar to Temporary Protected Status (TPS),⁵ which is a temporary remedy that provides a safe haven for aliens who are fleeing from potentially dangerous situations.⁶ Applicants who register for the legalization program would obtain a temporary, very restricted new form of lawful status. A status document with a short expiration date (perhaps thirty or sixty days) would be downloaded and printed, and then later a more secure card that could be renewed periodically would be mailed to the registrant. This would provide a temporary lawful status and work

¹ www.uscis.gov/files/pressrelease/FinalFeeRulePressRelease052907.pdf.

² http://judiciary.house.gov/hearings/hear_092007.html.

³ Executive Director of the National Association of Latino Elected and Appointed Officials Educational Fund.

⁴ <http://judiciary.house.gov/hearings/pdf/2007pdf/Vargas070920.pdf> at 3.

⁵ INA §244, 8 U.S.C. §1254a.

⁶ <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=609d3591ec04d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=609d3591ec04d010VgnVCM10000048f3d6a1RCRD>.

authorization to encourage people to "come out of the shadows." Immigration restrictionists may object to even this limited benefit, but the reality is that the undocumented immigrants who would benefit from this program already are living and working in the United States. They would not be provided with the other benefits of a legalization program, such as being able to travel into and out of the United States or being able to bring their families here to live with them. Also, the limited lawful status would be temporary. It would terminate after a specified period of time if the alien does not apply for legalization or when the registrant completes the legalization application process and his or her application is either granted or denied.

The program would be coupled with severe penalties for fraud and willful misrepresentation to ensure that individuals who know they are ineligible do not attempt to pre-register. Moreover, the pre-registration documents themselves would not be permitted to be used for identification purposes. For example, employers would still need to see a photo identification (like a passport) to comply with employment verification rules during the pre-registration phase. All of the grounds of inadmissibility that would apply in the legalization context – criminal activity, security risks, etc. – would apply to this program as well.

Pre-registration would solve the "chicken and egg" problem of how to start a massive legalization program quickly without having to burden taxpayers and without making applicants and employers wait years to begin participating. The program could handle millions of applications and also ensure that the enforcement efforts contemplated under the comprehensive immigration reform proposals do not ensnare precisely the people a legalization program is intended to cover while those individuals are waiting on the program's implementation.

Nolan Rappaport was the immigration counsel for the Democrats when they were in the minority. He has more than thirty years of experience as an immigration lawyer, including seven on the House Judiciary Committee. He has written numerous immigration bills, including the Rapid Response Border Protection Act, H.R. 4044; the Foreign Anti-Sex Offender Protection Act, H.R. 5610; the Save America Comprehensive Immigration Act, H.R. 2092; the Commercial Alien Smuggling Elimination Act, H.R. 2630; the Comprehensive Immigration Fairness Reform Act, H.R. 3918; and the Tsunamis Temporary Protected Status Act, H.R. 60.

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REMINDER:

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14 Bender's Immigr. Bull. 229 (Feb. 15, 2009).