

Summary of Senate Immigration Compromise

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Courtesy of Siskind, Susser, Bland, P.C. – Immigration Lawyers (www.visalaw.com)

Note – These items generally include areas of COMPROMISE between the parties and there are many other provisions that were included in last year’s S.2611 bill that are going to be in the bill introduced in the Senate. These are just areas where there were negotiations to change last year’s bill. For a summary of S.2611, go to <http://www.visalaw.com/2611-summary.pdf>.

Title I

Compromises in Title I of the bill mainly include requiring meeting demonstrated trigger events and benchmarks before a guest worker program will start or Z visas will be issued (with the significant exception of probationary Z visas).

The triggers:

1. Hiring 18,000 border patrol officers
2. 200 miles of vehicle barriers and 350 miles of fencing
3. 70 ground-based radars and camera towers on southern border
4. deployment of four unmanned aerial vehicles
5. end of catch and release policy
6. resources to detain 27,500 aliens per day on an annual basis
7. Implementation of secure identification tools to prevent unauthorized work
8. receiving, processing and adjudication of Z visa applications.

Title II – Interior Enforcement

There is some toughening of rules relating to detaining criminal aliens, the definition of “aggravated felony”, penalties relating to gang activity, and fraud surrounding passports, visa, marriage fraud and other immigration fraud.

There are also increased penalties for illegal entry and reentry. Aliens will be prohibited from possessing firearms. New provisions are added to reimburse local law enforcement for immigration training. There is also a provision calling for the streamlining of background checks for immigration status.

Title III – Worksite Enforcement

Current I-9 system to be replaced by employee electronic verification system (EEVS) with significant penalty increases for employer violators.

Employers in national-security related industries, “critical infrastructure employers” and federal contractors must immediately start using the electronic verification system upon enactment of the law. Everyone else will join them in verifying new hires within eighteen months or the date DHS says the system is operational. All current employees must be verified under the new system within three years of enactment.

Employers will transmit data to the EEVS between the date of hire and the end of the first date of employment. If the EEVS is unable to determine worker status it will issue an “inclusive nonconfirmation” an employee can continue working, but must seek to resolve the status with the appropriate agency. If an employer receives a “final nonconfirmation”, the employer must terminate the employee unless the employee files an appeal within 15 days of getting a final nonconfirmation.

The Social Security Administration must share information with DHS so it can verify status for the EEVS.

Within six months, SSA must start issuing tamper-resistant social security cards.

Calls for employer audits to ensure compliance.

Title IV – The Guest Worker Program

A new Y visa system is set up for guest workers.

Y-1 –non-seasonal guest workers

Y-2A – agricultural seasonal workers

Y-2B – non-agricultural seasonal workers

Y-3 – spouses and minor children

“matching willing workers and willing employers” – employers must post positions on a database and match up with workers who register there. Y workers must be paid the higher of the actual wage of the “prevailing competitive” wage. Employers will need to go through an advertising process.

Y-3s only can enter if they have health insurance, the principal Y visa holder earns at least 150% of the poverty level for the household size. Y-3s are eligible to enter in another status.

Y visas will be available in two year increments. After the two years, a worker must depart the US for a year and can then reenter for two more years. After departing again, a final two year term in the US is possible.

Y workers who fail to depart are permanently barred from seeking a future immigration status.

Caps: Y-1 – 400,000 plus market-based adjustment provision.

Y-2A – no cap

Y-2B – 100,000 plus market adjustments

Y-3s – no more than 20% of total Y-1 numbers.

A standing commission will make recommendations to Congress on changes to the annual numbers in the Y category.

Title V – Legal Immigration

Family category numbers reduced to reflect elimination of various family categories.
Employment numbers increased after the processing of family backlog numbers.

440,000 extra green cards to work through family backlog numbers (goal of processing all within eight years)

10,000 extra numbers set aside for exceptional Y workers.

The employment-based immigration system will be replaced with a new merit-based points system. Points will be awarded based in the following areas:

- Ability to speak English.
- Level of schooling, including added points for training in science, math, and technology.
- Job offer in a high-demand field.
- Work experience in the United States.
- Employer endorsement.
- Family ties to the United States.

Elimination of the following family categories:

- F-1 (adult children of US citizens)
- F-2B (adult children of permanent residents)
- F-3 (married children of US citizens)
- F-4 (siblings of US citizens)

Still can complete processing if case filed by May 1, 2005

Cap on parents of US citizens of 40,000/year

Cap on F-2A children/spouses of green card holders of 87,000

A new parent visa will be created to allow parents of US citizens to visit the US for up to 100 days per year.

The green card lottery will end.

Title VI – Legalization Program

Creates four-year renewable “Z” visa for people who entered before January 1, 2007.

Z-1 – principal or employed alien

Z-2 – spouse or elderly parent of Z-1

Z-3 – children under 21

Z-1s must be employed and pay fees to be eligible; must pay \$5000 fine to be eligible for green card (appears to be \$1000 up front and \$4000 later) under merit-based points system.

An initial probationary status awarded upon filing, fingerprinting and completion of one-day background checks. After triggers met (see Title I) and background checks complete, an applicant who can show continued employment and no criminal history can apply for a Z visa.

Zs can adjust to permanent residency after the family backlog is over and the remainder of the \$5000 fee paid. A merit-based point system will be incorporated in to the system for converting Z visas to permanent residency.

DREAM Act – Individuals under 30 who entered the US out of their own control as children can qualify for a green card after three years rather than six years.

OTHER MEASURES

- English is designated the official language of the United States
- Free English instruction courses will be made available over the Internet