

# AMERICAN IMMIGRATION LAWYERS ASSOCIATION

## Key Provisions<sup>1</sup> from the “Comprehensive Immigration Reform Act of 2006” (S. 2611)<sup>2</sup>

### Title I—Border Enforcement

- Increases border personnel, port of entry inspectors (to 500) and Border Patrol agents (to 2400) over the next 5 years.
- Provides for the construction of several hundred miles of fencing and vehicle barriers along U.S.-Mexico border.
- Requires and allocates funding for DHS to obtain and use a wide variety of technologically advanced equipment to patrol the border and establish a “virtual fence” to provide a barrier to illegal immigration.
- Authorizes DHS to establish and maintain border patrol checkpoints along roads located near the U.S.-Mexico border.
- Authorizes DHS to construct as necessary additional ports of entry along U.S. border.
- Requires DHS to work in conjunction with the appropriate federal agencies to develop a national strategy for border security.
- Requires DHS to work in conjunction with ICE, CBP, and various federal, state, local and tribal authorities to develop and implement a plan to thwart alien smuggling.
- Requires coordination with the government of Mexico to tighten security at both the northern and southern borders of Mexico.
- Requires DHS to submit plan within 6 months of enactment for installing US-VISIT system at every U.S. port of entry.
- Increases document fraud identification and detection training for CBP officers.
- Requires all DHS documents giving evidence of immigration status to be machine-readable, tamper resistant, and contain biometric identification data allowing DHS to electronically verify such status.
- Makes a number of changes regarding requirements for the biometric entry/exit system.
- Requires mandatory detention for aliens (except Cubans and Mexicans) apprehended at or along the U.S. border while entering illegally. Unless the alien is granted humanitarian parole, mandatory detention lasts until the alien is removed or formally admitted into the country.
- Makes it a crime to evade inspection at any U.S. border checkpoint, punishable by fines and/or imprisonment for up to 3 years. Imprisonment for up to 10 years if intentional infliction of bodily harm occurs during evasion; imprisonment for life if death occurs, with possibility of death sentence. Failure to obey orders of any border enforcement officer punishable by up to 5 years in prison.
- Allows Governor of a state, with approval of Secretary of Defense, to call on National Guard to temporarily assist with securing U.S.-Mexico border.
- Extends deadline (until June 1, 2009) for implementation of Western Hemisphere Travel Initiative. Authorizes Secretaries of State and Homeland Security to develop secure travel documents called “Passport Cards” for international travel across the U.S.-Mexico border,

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<sup>1</sup> This snapshot of the bill, still a work in progress as we analyze further, will be supplemented by a more comprehensive analysis shortly.

<sup>2</sup> Passed by the Senate in May 2006 and loosely referred to as the “Hagel/Martinez Compromise”.

U.S.-Canada border, and travel between U.S. and a country located in the Caribbean or Bermuda. Recommends other modifications to improve cross-border travel initiatives.

- Imposes penalties for construction and/or use of cross-border tunnels:
  - Up to 10 years imprisonment for any person who knowingly or recklessly disregards tunnel built on that person's property
  - Up to 20 years imprisonment for knowingly building or financing construction of cross-border tunnel
  - Twice the normal maximum penalty of imprisonment for unlawful smuggling of humans, goods, controlled substances, weapons of mass destruction, or member of a terrorist organization, if such smuggling involved use of a cross-border tunnel
- Authorizes grants for border counties seriously impacted by increased crime and violence to purchase equipment and other law enforcement assets.
- Authorizes appropriations for emergency deployment of border patrol agents, assets, and resources if a Governor declares an international border security emergency.

## **Title II—Interior Enforcement**

- Grants DHS overbroad authority to detain indefinitely any foreign national who has received a final removal order but who cannot be removed through no fault of his/her own. This provision seeks to circumvent the Supreme Court ruling in *Zadvydas v. Davis*.<sup>3</sup>
- Expands the definition of “aggravated felony” to include abetting, counseling or inducing the commission of a predicate offense and increases the number of offenses that fall under this category. Provisions are not retroactive.
- Bars the following classes of individuals from being able to show that they possess the “good moral character” required for purposes of naturalization:
  - noncitizens the Attorney General *suspects* of having engaged in “terrorist activity” or falling within other security-related grounds;
  - noncitizens convicted of an aggravated felony at *any* time, regardless of whether the crime was classified as an aggravated felony at the time of the conviction. DHS or DOJ may waive the bar only if the person completed the sentence more than 10 years ago.
- Allows the government to take into consideration the applicant's conduct at *any* time—even before the time period for which good moral character is required to be shown in connection with the benefit sought. It also would limit judicial review of naturalization denials.
- Increases criminal penalties relating to gang violence and alien smuggling, and makes those that DHS “has reason to believe” have been a part of a street gang inadmissible and deportable.
- Grants DHS authority to deny visas to citizens of countries that refuse or delay in accepting individuals ordered removed from the U.S.
- Expands the definition of “criminal alien smuggling” to include those who “facilitate or encourage” this act. New definition also encompasses those who shield undocumented immigrants from prosecution or encourage such immigrants to stay in the U.S. Immunity from

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<sup>3</sup> In the bill reported out of the Judiciary Committee, habeas challenges under this section could only be brought in the U.S. District Court for the District of Columbia. This was modified via the Manager's Amendment and habeas challenges can be brought in any jurisdictionally appropriate U.S. District Court.

prosecution is granted to religious entities and humanitarian organizations that provide assistance to undocumented immigrants.

- Makes videotaped testimony in removal hearings admissible.
- Increases fines, and imposes criminal penalties, on those who enter illegally or reenter illegally after removal. Illegal entry or illegal overstay is not, as had been proposed originally, a felony. Aiding and abetting illegal reentry is also a crime, excepting those who provide medical or other humanitarian assistance.
- Imposes limitations on collateral attacks on the validity of removal orders, thereby raising the standard to get the order overturned.
- Expands the criminal code to include additional passport, visa, and document-related offenses, with a limited exemption for certain vulnerable populations (such as refugees, asylees, and trafficking victims) who may rely on false documents to flee abuse.
- Makes every person identified in the newly-expanded category of passport, visa, and document-related offenses inadmissible and/or deportable. This could reach individuals who omit any piece of information on an immigration application, even if this information is minor. These provision apply primarily to prospective conduct.
- Allows State and local prisons to hold undocumented or removable persons for 14 days beyond completion of criminal sentence in order to facilitate transfer to Immigration and Customs Enforcement officers. Appropriates funding to DHS in order to provide sufficient transportation and officers for this purpose. Makes federal database and other resources available to State and local law enforcement officers for this purpose.
- Shortens voluntary departure period while in removal proceedings from 60 days to 45 days, and shortens affirmative voluntary departure period from 120 days to 60 days.
- Imposes uniform statute of limitations of 10 years for all immigration offenses.
- Reimburses states for fees incurred during processing of undocumented aliens through state criminal justice system.
- Mandates stricter requirements for aliens to notify DHS of address changes, and imposes an increase in fines and/or imprisonment for failure to comply. Alien is presumed to be a flight risk if he/she fails to comply on more than one occasion.
- Makes a third drunk driving conviction an aggravated felony. Only convictions after enactment of this act are considered.
- Mandates expedited removal for all (except nationals of Canada, Mexico or Cuba) who are found to be undocumented within 100 miles of the border and cannot prove they have been in the U.S. for at least 14 days.
- Mandates expedited removal of non-legal permanent residents who have committed certain crimes.
- Reaffirms state and local authority to investigate, apprehend, detain, arrest or transfer to federal authorities any alien for the purpose of assisting in enforcement of *criminal* provisions of immigration laws.
- Adds alien smuggling to list of crimes punishable under money laundering statutes.

- Requires DHS, within 180 of enactment, to provide to DOJ’s National Crime Information Center any information it has relating to those:
  - With Pending removal orders
  - With voluntary departure agreement
  - Identified by federal officers as being unlawfully present
  - Have had visa revoked

Information is to be promptly removed once alien has been granted legal authority to enter and/or remain in U.S.

- Encourages DHS to enter into cooperative agreement with at least one local law enforcement agency in each state within two years of enactment of this Act.
- Requires DHS to construct or acquire at least 20 detention facilities capable of holding at least 20,000 aliens who have been detained pending removal or decision on removal.
- Requires, within two years of enactment, that U.S. attorneys in all federal criminal court cases determine immigration status of defendants

### **Title III—Unlawful Employment of Aliens**

- Creates a new Electronic Employment Verification System (EEVS) for employers to use to evaluate the work authorization of individual employees, requiring all employers to participate, and making it illegal to hire or continue to employ an undocumented alien.
- EEVS replaces old I-9 system.
- Imposes civil/financial penalties on employers who hire undocumented workers and/or fail to keep proper records; imposes criminal penalties for repeat violations and bars federal contracts with employer for 5 years.
- Timetable for implementation:
  - For **new** hires, all employers must participate 18 months after date that \$400 million has been made available to implement EEVS.
  - Employers may volunteer to participate before the 18-month period.
  - DHS has authority to require participation (regarding **all** hires) before 18-month period for “critical employers” (relating to national security); and for employers DHS has reasonable cause to believe has engaged in unlawful employment in the past.
- Attestation for employers:
  - Employer must attest that it has verified the identity and eligibility to work by taking specific steps including examining the following:
    - For U.S. Citizens: U.S. passport or state-issued driver’s license.
    - For Aliens: LPR card or employment authorization card.
    - When above unavailable, DHS can authorize use of other documents. Alternative document must have photograph and tamper-resistant security feature.
- Attestation for employees:
  - Employees must attest that they are eligible to work in the U.S.
  - Individuals subject to \$5000 fine and/or imprisonment for 3 years for false attestation.
- Document Retention:

- Employers must collect and retain, for 5 years after date of hire, employee attestations.
- Employers required to retain copies of other documents used for identification etc.
- Prohibited from using any documents required and retained for anything but compliance with Title III requirements.
- Verification Process:
  - Employer must use EEVS to confirm individual's employment eligibility no later than 3 days after date of hire
  - Employer must record the following information:
    - Name/DOB/SSN/State person born in
    - EIN from individual's employer in any one of the last 5 years
    - Alien's identification or work authorization number
  - DHS must provide (via EEVS) response to employer within 10 days
    - DHS confirmation and code provided where worker verified
    - Secondary manual verification begins if and when worker not verified
    - DHS notice of temporary non-confirmation and code when worker found ineligible after secondary manual verification
  - When worker found ineligible, he/she is given notice of this and has 10 days to submit evidence contesting ineligibility. Non-confirmation notice becomes final if worker fails to comply or prove eligibility.
  - DHS must provide final confirmation or non-confirmation within 30 days after worker contests non-confirmation notice. If DHS fails to respond within 30 days, the worker is granted default confirmation. This process remains in effect until DHS can confirm that its data is accurate 99% of the time, after which time DHS will issue default non-confirmation when a definitive answer is not possible within 30 days.
  - Employer must terminate worker upon final non-confirmation notice, and provide to DHS any information DHS feels will assist in enforcing immigration laws
  - Workers have 60 days after termination to file administrative appeal
    - DHS and SSA will develop procedures to review appeals
    - If DHS determines that termination was due to agency error, worker entitled to compensation for lost wages (for period worker would otherwise have been employed)
  - Workers have 60 days after administrative review decision to seek judicial review via civil action
  - If court overturns administrative decision, worker entitled to compensation for lost wages (for period worker would otherwise have been employed)
- Employers not liable for any employment-related action taken in good faith reliance on information provided by EEVS.
- Both DHS and GAO must submit to Congress annual reports on effectiveness of EEVS.
- DHS has authority to require SSA to disclose to DHS employer taxpayer identification information that was formerly confidential in cases where fraud or non participation in EEVS suspected.
- EEVS can only collect minimum information necessary to operate EEVS
  - Misdemeanor if information not required is knowingly and willingly collected
  - Felony if any EEVS information is knowingly disclosed
    - To commit or assist another in committing identity fraud
    - To unlawfully obtain employment
    - Any other purpose not provided for by law

## **Title IV—Temporary Worker Program with Labor Protections & Path to Permanent Status**

- Creates a temporary worker program (H-2C), with a potential path to legal permanent residence for 200,000 low-skilled workers per year currently outside the US
- Visa category becomes available 18 months after date that \$400 million has been made available to implement EEVS (see Title III).
- Before hiring H-2C, employer must first advertise the job at the prevailing wage, make recruitment efforts to find an available U.S. worker, and attest to these recruitment efforts in the H-2C application.
- The H-2C worker must be paid not less than the greater of the actual wage paid by the employer or the prevailing wage for the occupational classification taking into account location and experience. In this title, prevailing wage is defined such that it captures, for example, union contracts, service contract wage rates, etc.
- Unemployment rate of 9% for low-skilled or unskilled workers in a given metropolitan or micropolitan statistical area triggers a freeze on H-2C hires. This also applies to non-agricultural sectors.
- H-2C worker must pay application costs, a \$500 fee, and undergo background, security, and medical checks.
- H-2C visa is valid for 3 years, and can be renewed for another 3 years, for a total of 6 years. After the 6 years are up, the H-2C worker must either return home or have a green card application pending.
- H-2C worker with 4 years in H-2C status can self-petition for permanent residence by:
  - Petitioning DOL for certification that there are insufficient numbers of U.S. workers willing and able to fill the job; and
  - Submitting at least two of the following four documents to prove employment:
    - SSA records
    - IRS records
    - Records maintained by H-2C worker's employer
    - Records maintained by any government agency
- H-2C worker must return home if unemployed for 60 days unless unemployment is due to:
  - Physical or mental disability of worker or worker's spouse, child or parent
  - Vacation or medical/maternity leave approved by employer
  - Any other circumstances beyond worker's control
- H-2C visa is portable
- Spouses and children of H-2C workers can come to US as derivatives

## **Title V—Backlog Reduction**

- Immediate relatives no longer count against the family based cap of 480,000 per fiscal year, thereby adding 254,000 new visas per year to eliminate backlogs.
- Recaptures unused visas from FY 2001-2005.
- Creates recapture mechanism for unused visas for all years going forward.

- Raises employment based cap to 450,000 for fiscal years 2007 through 2016; cap drops to 290,000 in 2017 and each fiscal year thereafter.
- Creates an overall cap of 650,000 that includes spouses and children of employment-based principals.
  - Once the 650,000 numbers have been used by principals, spouses and children, no more visas may be issued to principals.<sup>4</sup>
- Increases per country ceilings for both employment-based and family-based immigrant visas
- The new allocation of family-sponsored preference categories is:
  - 10% for unmarried sons and daughters of U.S. citizens
  - 50% for spouses, minor children and unmarried adult sons and daughters of permanent residents
    - 77% of these allocated to spouses and minor children of permanent residents
  - 10% for married sons and daughters of US citizens
  - 30% for brothers and sisters of citizens
- The new allocation of 450,000 employment-based visas is:
  - EB-1: 15%
  - EB-2: 15%
  - EB-3: 35%
  - EB-4 (investors): 5%
  - EB-5: 30% (“other workers”)
    - 30% of these “other worker” green cards are to be set aside for use by people physically present in the US before January 4, 2004.
- Shortage occupations, including nurses and physical therapists, exempt from worldwide and per-country numerical caps.
- Creates new special immigrant category with a path to permanent resident status for widows and orphans at risk of harm and mandates expedited processing of such visa applications.
- Provides relief for widows and minor children of sponsors who die prematurely.
- Creates J-Stem visa (subset of current J visa) that mirrors the new F-4 visa created in a later section of the bill. The F-4 and J-Stem visas are for students pursuing advanced degrees in a STEM (science, technology, engineering, mathematics) field. Both F-4 and J-Stem visa holders can adjust status and both can secure three year employment authorization documents and advance parole documents without having to renew annually.
- Modifies the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) to retroactively allow individuals who were under 21 on October 21, 1998 to apply as qualifying children and be eligible for adjustment benefits. Persons excluded, removed, deported or ordered to depart voluntarily are now allowed to file motions to reopen.

### **Subtitle B—SKIL Act Provisions**

- **H-1B Visa Provisions**
  - increases the H-1B cap from 65,000 to a more realistic 115,000 per fiscal year
  - provides for a market-based cap escalator that takes effect in fiscal year after years in which U.S. employers have an increased need for more H-1B professionals

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<sup>4</sup> Hence, the 450,000 (and subsequently 290,000) cap is artificial since 450,000 numbers will not, in all likelihood, be available to employment-based principals. The actual number available to principals will depend on the number of spouses and minor children who are counted against the 650,000 ceiling. This provision, added by Senator Bingaman is quite confusing and it is unclear how this will be implemented.

- creates an exemption from the overall H-1B cap for those foreign professionals who have earned a medical specialty certification through post-doctoral U.S. training and experience
- creates an exemption from the overall H-1B cap for those foreign professionals who have earned a U.S. master's or higher degree
- Extends current 20,000 cap exemption for those with U.S. advanced degrees to include those with advanced degrees (Master's or higher) earned in foreign countries
- **Employment Based (EB) Immigrant Visa Provisions**
  - Streamlines the adjudication process and provides for premium processing of EB visa petitions.
  - Creates exemption from EB cap for those foreign professionals who:
    - have earned a medical specialty certification through post-doctoral U.S. training and experience and those who have earned a U.S. master's degree or higher
    - have earned a STEM master's degree and have worked for 3 years in the U.S.
    - are outstanding researchers, professors, or professionals of extraordinary ability, or who hold a national interest waiver
    - will work in occupations designated by DOL as lacking sufficient U.S. worker that are able, willing and qualified to fill those positions
  - Streamlines labor certification process for established employers.
  - Creates process to eliminate procedural delays in labor certification process.
  - Authorizes filing for adjustment of status even if no visa numbers are available, provided a \$500 fee is paid. Adjustment cannot actually occur until number becomes available.
- Reforms student visa system including, among other things, extension of optional practical training (OPT) for F-1 students to 24 months.
- Authorizes extensions of stay for L-1 visa holders beyond the statutory limitation if a labor certification application or immigrant visa petition have been filed and pending for more than 365 days.

### **Subtitle C—Preservation of Immigration Benefits for Hurricane Katrina Victims**

- Provides for special immigrant status for those directly affected by hurricanes of 2005
- Automatically extends nonimmigrant status for those directly affected by hurricanes of 2005
- Creates new deadlines for extension or change of nonimmigrant status
- Provides humanitarian and other relief for surviving spouse and children of aliens who died as a direct result of the hurricanes
- Provides age out protection for those who otherwise became ineligible for an immigration benefit due to hurricanes
- DHS has discretionary authority to waive immigration violations committed as a direct result of the hurricanes

# **Title VI—Work Authorization & Legalization of Undocumented Individuals**

## **Subtitle A—Access to Earned Adjustment and Mandatory Departure and Reentry**

### **Brief Overview:**

- Undocumented in U.S. for at least 5 years prior to April 5, 2006 (*estimated 6.7 million*)
  - Becomes eligible for eventual permanent legal status after completing an additional 6 years of employment post-enactment, payment of a \$2,000 fine and an additional \$1,250 in supplemental fees, meeting English and civics requirement, passing background checks and paying taxes owed.
  - May not be granted LPR status (“green card”) until current family- and employment-based backlogs are cleared.
  - After 5 years as legal permanent resident, can apply for citizenship.
  - Certain bars to eligibility exist (see below)
- Undocumented in U.S. less than 5 but more than 2 years, (*estimated 2.8 million*)
  - Given “Deferred Mandatory Departure” (DMD) status, providing work authorization and eventual path to permanent status with following requirements:
    - Must leave country within 3 years, “touch base” and return.
    - Can apply for readmission *before* departure.
    - Departure requirement waived for spouses/children. Principal alien may also seek a waiver if s/he can demonstrate substantial hardship to him-/herself or to an immediate family member.
  - Certain bars to eligibility exist (see below)

### **Detailed Summary:**

#### **GROUP 1: Undocumented Immigrants in U.S. For At Least 5 Years Prior to April 5, 2006**

The bill provides work authorization and path to legal permanent residence for long-term undocumented immigrants who meet the following requirements:

- Have resided in the U.S. for at least five years prior to April 5, 2006.
- Worked a minimum of three years during the five year period, and continue to work at least six years after enactment (Some exceptions are made for people with disabilities, those who leave the workforce as a result of pregnancy, children, students, and the elderly).
- Pay all federal and state income taxes owed.
- Demonstrate requisite knowledge of English and U.S. civics. (Some exceptions are made for disabled and elderly people.)
- Pass national security and criminal background checks.
- Register for Military Selective Service, if required.
- Be otherwise admissible under immigration law. (Some grounds of inadmissibility do not apply while others may be waived.)
- Pay a \$2,000 fine for each adult legalizing, in addition to application fees, as well as a \$750 state impact assistance fee (\$100 for the spouse and each child) and a \$500 supplemental immigration fee “for any alien who receives any immigration benefit under this title.”
- Features of the Earned Legalization Program:

- Certain grounds of inadmissibility may not be waived: those relating to health, criminals, security, polygamists, and child abductors.
- Individuals with removal orders, voluntary departure agreements, or who are in removal proceedings may apply for legalization; they may not be detained or removed from the U.S. pending a decision on their legalization applications, unless their deportation is for criminal or security reasons.
- Individuals who pass initial background checks may obtain work and travel authorization while awaiting final decisions on their applications for legal permanent residency.
- Family members may be derivatives on the adjustment application.
- Applicants may not obtain legal permanent residency until existing backlogs for immigrant visas are cleared.
- Visas awarded under this program will not count against the normal numerical limitations for immigrant visas.
- The bill includes some protections for employers whose formerly undocumented workers are on the path to legalization.
- It also protects the immigrant by stating that information furnished by the applicant may not be used for any purpose other than to make a determination on the application.
- The bill includes both administrative and judicial review of denials, including mandatory stays of removal for cases under review.
- Individuals ineligible for legalization (Note: DHS has authority to waive bar to admissibility under certain conditions):
  - Those ordered removed for reasons that relate to overstaying a period of authorized stay under the visa waiver program; those subject to expedited removal; or those issued a final order of removal under section 240 of the INA
  - Those who fail to depart on a voluntary departure order;
  - Those subject to reinstatement (illegal entry following a removal order);
  - Those whom the Secretary of DHS determines have been convicted of a serious crime and therefore a danger to the community;
  - Those whom the Secretary of DHS has reasonable grounds for believing the alien has committed a serious crime outside the United States or is a danger to the security of the United States; or
  - Those who have been convicted of a felony or 3 or more misdemeanors.

## **GROUP 2: Undocumented Immigrants in U.S. on January 7, 2004, But Who Do Not Meet Group 1 Requirements**

The bill creates a “Deferred Mandatory Departure” (DMD) status that provides work authorization and an eventual path to legal permanent residency for undocumented immigrants, if they meet the following requirements:

- Were physically present in the U.S. on January 7, 2004, were employed before this date, and have been continuously employed since.
- Are otherwise admissible under U.S. law, pass national security and criminal background checks, a medical examination, admit under oath to unlawful presence, and turn in all false documents used to obtain work. (Some grounds of inadmissibility do not apply while others may be waived.)

- Pay a \$1000 fine plus application fees (Spouse and children must submit an additional fine of \$500 each as well as application fees). As with Group I applicants, Group II applicants also must remit a \$750 state impact assistance fee (\$100 for the spouse and each child) and a \$500 supplemental immigration fee “for any alien who receives any immigration benefit under this title.”
- Features of the DMD Program:
  - A DMD grantee would receive up to three years U.S. work authorization. However, if he has not left the country after one year, he would be subject to additional monetary penalties.
  - Failure to depart at the conclusion of three years would make the DMD holder ineligible for most types of immigration benefits or relief for a period of ten years.
  - DMD holders could travel outside the U.S. legally and be readmitted if the period of DMD had not expired.
  - DMD holders who are out of work for more than 60 days must leave the U.S. and re-enter before obtaining a new job. (The DHS Secretary may reauthorize an alien for employment without requiring his or her departure).
  - Aliens granted DMD are not subject to the unlawful presence bar to reentry at INA 212(a)(9)(B).
  - Protects confidentiality of the immigrant by stating that information furnished by the applicant may not be used for any purpose other than to make a determination on the application.
  - Individuals ordered removed, excluded, deported or to depart voluntarily are ineligible for DMD status. Waiver available if able to show: (1) did not receive notice of removal hearing, (2) failure to appear for removal or hearing was due to exceptional circumstances, or (3) removal would result in extreme hardship to alien’s LPR or citizen spouse, parent, or child.
  - The applicant would be required to waive any right to judicial review of decisions on the DMD application and any right to contest a future removal action (other than a claim for refugee-related relief).<sup>5</sup>
  - DMD holders could apply for readmission as an immigrant or nonimmigrant while still in the U.S. or from any location outside the U.S., but would not be granted admission until they had actually departed the U.S. The individual would not have to return to his home country, but rather leave the U.S. and re-enter through a port of entry (undergoing the inspection process typical of international arrivals). The individual would not be required to be interviewed at the consulate.
  - The departure requirement could be waived if the DMD holder is granted an immigrant or nonimmigrant visa and can demonstrate substantial hardship on him or an immediate family member if forced to leave the U.S.
  - Family members may be derivatives on the DMD and subsequent immigration applications. They are not subject to the return requirement.
  - DMD holders could not obtain legal permanent residency until existing backlogs for immigrant visas are cleared.
  - Numerical limitations for DMD grantees (and their family members) who are returning to the U.S. as nonimmigrants would be waived. Immigrant visas awarded to this group would count against the numerical limits for immigrant visas.
- Individuals ineligible for DMD status (Note: DHS has authority to waiver bar to admissibility under certain conditions):
  - Those ordered removed for reasons that relate to overstaying a period of authorized stay under the visa waiver program; those subject to expedited removal; or those issued a final order of removal under section 240 of the INA
  - Those who fail to depart on a voluntary departure order;

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<sup>5</sup> The Manager’s Amendment restored administrative review over DMD application denials.

- Those subject to reinstatement (illegal entry following a removal order);
- Those whom the Secretary of DHS determines have been convicted of a serious crime and therefore a danger to the community;
- Those whom the Secretary of DHS has reasonable grounds for believing the alien has committed a serious crime outside the United States or is a danger to the security of the United States; or
- Those who have been convicted of a felony or 3 or more misdemeanors.

### **GROUP 3: Undocumented Individuals Entering U.S. After January 7, 2004**

- Individuals must depart the U.S., but could apply for H-2C temporary worker visa under Title IV from home country and would then be eligible for the permanent residence process.
- Certain inadmissibility grounds would be waived for those seeking reentry via H-2C visa. Grounds waived include the three- and ten-year reentry bars.
- Principal applicants would be counted against the annual H-2C visa cap.

#### **Subtitle B--Reforms to Agricultural Worker Program**

- Agricultural workers who show that they performed at least 150 days of agricultural work in the U.S. during the 24-month period ending December 31, 2005, can get temporary resident (“blue card”) status; spouse/minor kids get status, too.
- To earn permanent (“green card”) status, farmworkers must perform agricultural work for at least 100 work days per year for 5 years, OR perform 150 days per year for 3 years. Participants may work outside agriculture but only if they are continuing to meet the annual agricultural work requirement.
- The Blue Card program has a cap of 1.5 million.
- The H-2A temporary foreign worker program will allow employers in the dairy and sheepherding/goat herding industries to hire workers even when they are year-round workers.

#### **Subtitle C--Path to Legal Status for Undocumented High School Students (DREAM Act)**

- Strikes restriction on in-State tuition for undocumented students.
- Students who enter U.S. before the age of 16 and who are present for 5 years preceding date of enactment, and who have graduated from high school (or GED), can apply for 6-year conditional resident status.
- Within 6 years, if graduated from college or completed two years in a degree program, or served in Armed Forces, conditional status becomes permanent status (“green card”).

### **Title VII—Miscellaneous Provisions**

- Increases the number of immigration judges and immigration-related government attorneys.
- Restructures Board of Immigration Appeals (BIA) and makes significant statutory changes to the adjudicatory process including rolling back the current streamlining procedures.
- Mandates national expansion of the legal orientation program.
- Mandates GAO study of immigration appeals process, including consideration of consolidating all BIA appeals and *habeas corpus* petitions in immigration cases into one centralized appellate court
- Establishes federal grants to be awarded to state courts for purpose of developing and maintaining court interpreter program.

- Requires DHS to consult with federal, state and local law enforcement agencies and compile and submit a National Land Border Security plan to Congress. Plan is to include an assessment of security vulnerability.
- Provides means to adjust status for certain nonimmigrant victims of 9/11, and for cancellation of removal for certain immigrant victims of 9/11.
- Appropriates funding for DHS to acquire and maintain unmanned aerial vehicles for surveillance purposes along the border.
- Allows for adjustment of status process to continue for surviving spouse, parents and children of qualifying relative who died while those adjustment applications were pending.
- Declares English the “national language” of the United States, and requires demonstration of knowledge of English and U.S. history and government in order to obtain citizenship. Competing provision declares English the “common and unifying” language of the United States.
- Appropriates funding for port of entry vulnerability studies and for studying ways to improve border security.
- Provides a waiver to those facing bars to reentry due to unlawful presence or due to reentry after removal order, provided individual has an immigrant visa petition filed prior to date of enactment. Fine for those applying for waiver is \$2000.

### **Title VIII—Intercountry Adoption Reform**

- Reforms laws and revises procedures relating to adoption of children from other countries.
- Provides for automatic citizenship for adopted children born outside the U.S.
- Creates nonimmigrant visas for children traveling to U.S. to be adopted by a U.S. citizen.

#### **21le6010B**