

On 6/6/07, the Senate resumed consideration of amendments to the CIR bill (S. 1348).

Highlights:

- **The following amendments passed:**
 - Kennedy Amendment (#1333) to Increase Immigration-Related Penalties for Criminal Activities
 - Lieberman Amendment (#1191) to Improve Treatment of Asylum Seekers
 - Cornyn Amendment (#1250) to Allow Sharing of Info from Legalization Application with Law Enforcement
 - Sessions Amendment (#1234) Preventing Those Who Legalize From Collecting Earned Income Tax Credit
 - Reid Amendment (#1331) Offered as a Side-by-Side to Sessions Amendment (#1234)
 - Kyl Amendment (#1460) Offered As a Side-by-Side to Menendez Amendment (#1194)
 - Thomas Amendment (#1182) to Authorize Additional Customs Patrol Officers to Operate on Indian Reservations on the Border
 - Schumer Amendment (#1272) Regarding B-1 Visitor Visas
 - Salazar Amendment (#1384) Making English the Common Language of the United States
 - Inhofe Amendment (#1151) Making English the Official Language of the United States
 - Salazar Amendment (#1384) Making English the Common Language of the United States
 - Hutchison Amendment (#1415) to Prevent Undocumented Workers from Collecting Social Security Benefits
 - Dorgan Amendment (#1316) to Sunset the Y Visa Program

- **The following amendments failed:**
 - Cornyn Amendment (#1184) Expanding Restrictions on Immigration Benefits and Due Process
 - DeMint Amendment (#1197) to Require Z Visa Holders to Maintain Health Insurance
 - Bingaman Amendment (#1267) Removing the 2-1-2-1-2 Timetable from the Y Visa Program
 - Menendez Amendment (#1194) Moving the Cutoff Date for Green Card Applications
 - Clinton Amendment (#1183) to Move Spouses & Children of LPRs to Immediate Relative Category
 - Ensign Amendment (#1374) to Improve the Points-Based Merit System
 - Vitter Amendment (#1339) to Increase Enforcement Triggers
 - Obama Amendment (#1202) to Sunset the Points-Based Merit System

Summary of Senate Proceedings—6/6/07

Majority Leader Reid opened proceedings this morning with more discussion of the cloture vote he plans to call for on Thursday. He left open the possibility that the cloture vote could take place as late as Thursday evening, which, if passed, ordinarily would set a deadline of Saturday for a final vote on the comprehensive immigration reform bill. However, due to the funeral of Senator Thomas (R-WY) scheduled for Saturday, a final vote is unlikely on that day. AILA will continue to provide updates as we learn more information.

Cornyn Amendment (#1184) Expanding Restrictions on Immigration Benefits and Due Process

Senator Cornyn (R-TX) began debate in earnest this morning by discussing an amendment he introduced prior to the recess. His amendment would expand restrictions on immigration benefits and due process, closing what Senator Cornyn termed “loopholes” in the underlying bill that allow legalization of what he called “absconders.” However, absconders - those who have failed to depart after being ordered deported – and individuals who have reentered the country unlawfully after being removed already were barred from legalization in the bill. This amendment would do much more than Senator Cornyn suggested and, if passed, would exclude a large portion of the undocumented population from the legalization program in the underlying bill. Moreover, because of its retroactivity provisions, this amendment would further aggravate the impact of the material support bar and would prevent vulnerable populations from certain forms of immigration relief.

Senator Kennedy took to the floor to offer his strong opposition to Senator Cornyn’s amendment, noting that passing it would keep millions of undocumented individuals “in the shadows” of society, thereby undermining the entire purpose of the legalization program set forth in the bill. Furthermore, it would “depress American wages” by preserving an undocumented population subject to exploitation. With regard to the underlying concern regarding toughening penalties for criminal activities, Senator Kennedy responded with a parallel amendment of his own, and the two amendments were voted on back to back.

Kennedy Amendment (#1333) to Increase Immigration-Related Penalties for Criminal Activities

Senator Kennedy (D-MA) offered a side-by-side amendment to Senator Cornyn’s, increasing immigration-related penalties for criminal activities. Senator Kennedy’s amendment seeks “to be tough on crime, but maintain a level of fairness with regard to immigration law.” In particular, the amendment “expands tough penalties for criminal gang membership, alien smuggling,” and a series of other criminal activities. It also expands the grounds of inadmissibility and removability for a series of criminal activities, including sex offenses, wife and child abuse, and drunk driving resulting in sentences of

one-year or more in prison. Senator Kennedy pointed out, however, that unlike Senator Cornyn's amendment, his amendment, while toughening enforcement measures in the underlying bill, contains no provisions turning relatively minor, non-violent infractions like illegal entry into aggravated felonies.

Senator Vitter (R-LA), in citing what he referred to as the "significant gaping loopholes in the current bill that must be addressed," called the Kennedy amendment "nothing more than a weaker, watered down, Democratic version of the Cornyn amendment." Senator Whitehouse (D-RI), on the other hand, cited the many ambiguities in the Cornyn amendment, and criticized it for depriving individuals of due process. "I don't know why we have to keep getting up to defend these Republican attacks on due process rights like judicial review...the bedrock principles of American law." Senator Schumer (D-NY), in the course of praising the Kennedy amendment, spoke more to the point regarding the Cornyn amendment, characterizing it as "nothing more than an attempt to kill the entire bill."

The Cornyn and Kennedy amendments were voted on back to back. The Kennedy amendment was voted on first and passed, 66-32. The Cornyn amendment, opposed by AILA, failed by a vote of 46-51.

DeMint Amendment (#1197) to Require Z Visa Holders to Maintain Health Insurance

Senator DeMint (R-SC) introduced an amendment yesterday "to eliminate uncompensated health care" due to non-citizens using health care facilities without having insurance. The amendment would require Z visa holders to maintain a minimum level of health insurance coverage while in Z visa status in order to qualify for adjustment to legal permanent resident status. The average of the high deductible plan serving as this minimum coverage is roughly \$122 per month, according to Senator DeMint. He added that while "it's one thing to ask Americans to compensate for uninsured Americans, it's quite another to ask them to subsidize low wage undocumented immigrants and their employers."

In response, Senator Kennedy questioned the rationale behind the amendment. In particular, he asked why roughly 40 million citizens currently have no health insurance coverage, yet Senator DeMint would only require that the undocumented maintain such coverage. Furthermore, he added, due to the exceedingly high deductibles immigrant families will have to pay on this insurance, such a requirement has the potential to impose a prohibitive financial burden that could prevent large numbers of Z visa holders from adjusting to permanent legal status. AILA opposes this amendment.

This amendment failed, 43-55.

Bingaman Amendment (#1267) Removing the 2-1-2-1-2 Timetable from the Y Visa Program

Senator Bingaman (D-NM) returned to discussion of an amendment he introduced yesterday, one that seeks to remove the requirement that Y visa holders leave the U.S. for a year before they are able to renew their visa. As it stands, the grand bargain requires Y visa holders to conform to a 2-1-2-1-2 timetable: work for 2 years in the U.S., leave for a year and reapply for another two year period, then leave again for a year and reapply once more for the final two year period. Senator Bingaman stated in detail the many problems associated with this provision—costly to implement; large number of overstays probable; impossible to enforce effectively—and how unworkable it really is. Senator Bingaman therefore urged that the Y visa provisions in the underlying bill return to the form it had in last year’s Senate bill (S. 2611), something his amendment would accomplish if passed. AILA supports passage of this amendment.

This amendment failed, 41-57.

Lieberman Amendment (#1191) to Improve Treatment of Asylum Seekers

Senator Lieberman introduced an amendment to provide safeguards against faulty asylum procedures and to improve conditions of detention. This amendment would implement the key recommendations of the congressionally established U.S. Commission on International Religious Freedom. The Commission reported an unacceptable risk that the fears of genuine asylum seekers were not being fully considered. Asylum seekers are often detained for months in maximum security prisons, without being considered for release on bond. The amendment implements quality assurance procedures to ensure that asylee statements are accurately recorded; that alternatives to detention are considered; and that detention standards are improved. The amendment calls for sensible reforms that will safeguard the nation's security, improve the efficiency of our immigration detention system, and ensure that people fleeing persecution are treated in accordance with this nation's most basic values. AILA supports passage of this amendment.

This amendment passed by Unanimous Consent.

Cornyn Amendment (#1250) to Allow Sharing of Info from Legalization Application with Law Enforcement

Senator Cornyn introduced an amendment to allow information contained in a legalization application that has been denied to be disclosed to law enforcement agencies in any civil or criminal investigation. The Cornyn amendment abolishes the confidentiality protections contained in S.1348 and authorizes the DHS and DOS to share such information with any relevant law enforcement agency or court in any criminal or civil investigation when the application is denied.

Senator Kennedy strongly criticized this amendment, calling it nothing more than “report to deport” legislation. Senator Kennedy stated that it is critical to bring the 12 million

undocumented people who are here without legal status out of the shadows, but this amendment accomplishes the opposite, giving those individuals incentive to remain in the shadows. Without confidentiality safeguards, he argued, immigrants will fear exposing themselves, their family members, or their employers to deportation as a result of applying for status. AILA opposes this amendment.

This amendment passed by a vote of 57-39.

Sessions Amendment (#1234) Preventing Those Who Legalize From Collecting Earned Income Tax Credit

Senator Sessions (R-AL) discussed an amendment he introduced prior to the recess to prevent Y (new worker) and Z (undocumented who legalize) visa holders from collecting any benefits relating to the Earned Income Tax Credit (EITC). The earned income tax credit (EITC), which is, according to the Congressional Research Service, the largest anti-poverty entitlement program of the Federal Government.

Senator Kennedy responded by strongly criticizing the Sessions amendment, saying that while murderers and other criminals, many of whom have committed heinous crimes or defrauded the government, still can collect the Earned Income Tax Credit, the Sessions amendment would prevent a person, including impoverished children, from collecting the tax credit simply for being in the country in undocumented status. 90% of families who collect the EITC, Senator Kennedy said, have children, many of whom are U.S. citizens. Barring them from the benefits of the EITC is simply unfair, he said. AILA opposes this amendment.

This amendment passed by a vote of 56-41.

Reid Amendment (#1331) Offered as a Side-by-Side to Sessions Amendment (#1234)

Majority Leader Reid offered a side-by-side amendment to the Sessions amendment in order to clarify the application of the earned income tax credit. The Reid amendment makes clear that nothing in the underlying bill “may be construed to modify any provision of the Internal Revenue Code of 1986 which prohibits illegal aliens from qualifying for the earned income tax credit under section 32 of such Code.”

This amendment passed, 57-40.

Menendez Amendment (#1194) Moving the Cutoff Date for Green Card Applications

Senator Menendez discussed an amendment he introduced prior to the recess, one that would move the cut-off date for legal immigration applicants from the May 1, 2005 date

proposed in the underlying bill, to January 1, 2007, the same cut-off date proposed for legalization of the undocumented. “All this amendment does, Senator Menendez said, “is bring justice and fairness to the underlying bill by treating legal applicants and the undocumented the same.” The amendment “provides the same cut-off date for those who played by the rules and are sponsored to come here by a United States citizen, as those who entered in undocumented status with nobody sponsoring them.”

The amendment also would add 100,000 green cards per year to avoid lengthening the eight-year timeframe for clearing the family backlogs. This backlog clearance must be completed before immigrants in the new legalization program can begin obtaining legal permanent residence.

Prior to a vote on the amendment itself, Senator Kyl – an opponent of the amendment – raised a point of order based on Senate budget rules. In this scenario, a 3/5 majority vote is required to waive the Senate budget rules. The vote to waive the rules, when tallied, was counted at 53-44. As a result, the required number of votes was not reached, and the underlying amendment consequently failed.

Kyl Amendment (#1460) Offered As a Side-by-Side to Menendez Amendment (#1194)

Senator Kyl offered a side-by-side amendment to modify the allocation of visas with respect to the backlog of family-based visa petitions. The Kyl amendment says that if a visa petition was filed by 1/1/07 and there was (as of 1/1/07) a “reasonable expectation” that an immigrant visa would be available by 1/1/27, the intending immigrant can receive a visa.

Senator Menendez rose in opposition to the amendment. According to Senator Menendez, and confirmed by the Visa Bulletin, there is no waiting time approaching the 60 to 80 year plus waiting times in some family categories that Senator Kyl has cited. It remains unclear how waiting times for current pending petitions will be calculated under the Kyl amendment.

This amendment passed by a vote of 51-45.

Thomas Amendment (#1182) to Authorize Additional Customs Patrol Officers to Operate on Indian Reservations on the Border

Majority Leader Reid introduced an amendment from the late Senator Thomas (R-WY), authorizing up to 5 new units of 15 customs patrol officers (Shadow Wolves) to operate on Indian reservations on border.

This amendment passed by voice vote.

Schumer Amendment (#1272) Regarding B-1 Visitor Visas

Senator Schumer introduced an amendment requiring a review of the guidelines and the development of a data tracking system for issuance of B-1 visitor visas and admission of B-1 visa holders.

This amendment passed by voice vote.

Clinton Amendment (#1183) to Move Spouses & Children of LPRs to Immediate Relative Category

Senator Clinton (D-NY) introduced a widely supported amendment aimed at promoting and facilitating family reunification in light of the green card backlogs. This amendment would move spouses and minor children of legal permanent residents into the Immediate Relative green card category, allowing them to have shorter wait times before being able to join family members in the U.S.

A point of order was raised to this amendment as well and a motion to waive the Senate budget rules failed by a 44-53 vote. As a result, the underlying amendment failed.

Ensign Amendment (#1374) to Improve the Points-Based Merit System

Senator Ensign (R-NV) to improve the criteria and weights of the points-based merit evaluation system. The amendment increases the weight placed on education and skills but eliminates the family credits AND the supplemental points for Z visas schedule, including the points for agricultural workers. It keeps homeownership (sole) and medical insurance categories that were previously in the supplemental schedule for Z visas.

This amendment failed, 42-55.

Inhofe Amendment (#1151) Making English the Official Language of the United States

Senator Inhofe (R-OK) discussed an amendment he introduced prior to the recess, making English “the national language of the United States,” and striking any non-statutory entitlement to non-English federal services or materials, including public health and safety announcements. Senator Inhofe was successful in getting this same amendment passed last year during debate on S. 2611, but to his dismay, it was followed by a successful amendment from Senator Salazar (D-CO), who instead proposed making English “the common and unifying language of the United States.” Both amendments, therefore, were included in the final Senate bill last year, and had that bill proceeded further in Congress, these amendments would have been reconciled, or eliminated entirely, during conferencing with the House.

This amendment passed by a vote of 64-33.

Salazar Amendment (#1384) Making English the Common Language of the United States

Senator Salazar reintroduced the amendment he submitted last year in response to the above amendment from Senator Inhofe. The amendment proposes to make English “the common and unifying language of the United States.”

This amendment passed by a vote of 58-39. Because both this amendment and the competing amendment from Senator Inhofe passed, a reconciliation of these two amendments will have to take place during conferencing with the House.

Hutchison Amendment (#1415) to Prevent Undocumented Workers from Collecting Social Security Benefits

Senator Hutchison (R-TX) introduced an amendment attempting to “close a loophole” in the underlying bill and prohibit undocumented workers from obtaining social security benefits based on earnings obtained during any period without work authorization.

This amendment was agreed to by voice vote.

Vitter Amendment (#1339) to Increase Enforcement Triggers

Senator Vitter (R-LA) introduced an amendment to expand the enforcement triggers required in order for certain other provisions (Y and Z visa programs) in the underlying bill to take effect. Specifically, the amendment requires that the US-VISIT exit system be fully implemented before the Y and Z visa programs, and possibly other programs in the bill, take effect.

This amendment failed, 48-49.

Obama Amendment (#1202) to Sunset the Points-Based Merit System

Senator Obama introduced an amendment to sunset the points-based merit system after 5 years. The merit program in S. 1348 would radically reorient the philosophical foundations of our current immigration system, replacing our system’s historical grounding in family- and employment-based relationships with a system based on paper qualifications. This amendment would allow the country to experiment with the merit-based points system for five years and then revert to the family- and employment-sponsored immigration system we have had for decades.

AILA supports this amendment because it recognizes the radical, experimental nature of the points-based system in S. 1348. However, AILA also strongly supports additional efforts to limit the reach of this point system experiment by transforming it into a pilot project rather than a substitute for our current immigration system.

This amendment failed, 42-55.

Dorgan Amendment (#1316) to Sunset the Y Visa Program

Senator Dorgan essentially reintroduced his failed amendment from prior to the recess, one that sunsets the Y visa new worker program after 5 years. This amendment differs from the earlier one (#1181) in that it makes clear that the H-2A program would not be sunsetted by the amendment.

This amendment passed, 49-48.

The following amendments were introduced today but not yet voted on:

Thune Amendment (#1174) to Prevent Immediate Legal Status Being Granted to Undocumented

Senator Thune (R-SD) introduced an amendment to eliminate what he termed the “loophole” in the underlying bill giving the undocumented the ability to attain immediate legal status upon enactment of the bill. The amendment would require that certain border security measures be triggered, or met, before any probationary benefits are granted to those who legalize their status. AILA opposes this amendment.

Webb Amendment (#1313) Eliminating “Touchback” Requirement for Z Visa Holders

Senator Webb introduced an amendment this afternoon that has three main purposes. First, the amendment proposes to establish objective criteria in order to determine which undocumented individuals have sufficient ties to the U.S. in order to be granted Z visa status. Among the criteria proposed are: whether an individual has immediate relatives living in the U.S.; the length of time an individual has lived in the U.S.; whether an individual owns property or a business in the U.S.; work history; and proficiency in English.

The second part of the Webb amendment strikes the “touchback” requirement in the underlying bill, requiring Z visa holders to apply for adjustment of status in their home country, as opposed to applying in the U.S. The third and final component of the Webb amendment requires that individuals be present in the U.S. for four years prior to the date of enactment of the underlying bill, in order to qualify for adjustment from Z visa status. AILA opposes this amendment.

Senator Dole (R-NC) Amendment (#1345) Regarding DWI Convictions

Senator Dole introduced an amendment regarding DWI convictions and the undocumented. AILA has not yet seen the text of this amendment. Further details on the amendment will be provided as soon as they become available.

*In general, AILA believes this “bargain” bill is unacceptable and unworkable **in its current form**. However, while the process is still very much in flux, we are working closely with our allies to improve the bargain as much as possible during Senate floor debate this week. We will keep you posted about amendment information as it becomes available.*