American Immigration Lawyers Association

Senate Votes Down "Orange Card," Rejects Humanitarian Waiver

The Senate continued debate today on S. 2611, the Comprehensive Immigration Reform Act of 2006. As we reported yesterday, a cloture petition was filed last evening, meaning that a cloture vote will be held tomorrow morning. It appears likely that the Senate will vote on final passage of S. 2611 on Thursday.

The first vote of the day occurred on Senator Feinstein's (D-CA) "orange card" amendment. As we previously reported, the amendment (No. 4087) would replace the bill's three-tiered treatment of undocumented aliens with a single system that would provide a path to citizenship for all eligible aliens present in the U.S. on January 1, 2006. Prospective applicants would have to register and submit fingerprints, pass all required background checks, demonstrate presence in the country, work history, an understanding of English, civics and American history, and pay back taxes and a \$2,000 fine. In addition, orange card holders would have to fulfill an annual reporting requirement and pay a \$50 processing fee on each occasion. After completing the sixyear prospective work requirement, orange card holders would be placed at the end of the line to apply for a green card, with their individual place in line corresponding to the length of time they had been in the U.S.

Several Senators who opposed the amendment did so reluctantly, noting that while they agreed with the substance of the Feinstein approach, they believed that passage of the amendment would break the "delicate and fragile coalition" currently supporting the bill and, ultimately, cause the bill to fail. The Senate **rejected** the Feinstein amendment by a vote of 37 to 61.

Next on deck was an amendment offered by Senator Leahy (D-VT) (No. 4117) that would restore protection to refugees who are the unintended victims of broad "anti-terrorism" laws. Senator Leahy argued that thousands of vulnerable refugees are in jeopardy because of recently added language in the INA that bars admission to anyone who has associated with or provided "material support" to any armed group. Although some of these groups have coerced this "support" with violence, the law makes no exceptions for refugees who were threatened. Nor is any exception made for those, including children, who are not aware of the activities of groups to whom they provided only minimal support. The "material support" language, he said, is being interpreted in such a way that victims of terror are being treated as supporters of terrorism. The Leahy amendment would make an exception to the "material support" provisions for refugees who gave involuntary support to an armed group. It would also exclude from the definition of "terrorist organization" groups determined not to pose a threat to national security or U.S. nationals.

A **Motion to Table** the Leahy amendment was **agreed to** by a vote of 79 to 20, thus killing the amendment.

Senator Grassley (R-IA) introduced an amendment (No. 4177) that would, among other things, amend Title III of the compromise bill to replace the current paper I-9 process with a new

electronic verification system that employers would have to use to verify an employee's employment authorization.

Senators **approved** the Grassley amendment by a vote of 58 to 40.

Senators next considered an amendment (No. 4106) offered by Senator Kennedy (D-MA) that would bolster the enforcement of various labor protections, including updating the penalties under the Fair Labor Standards Act (FLSA) and the Occupational Safety and Health Act (OSHA). It would also provide additional protections aimed at allowing workers to organize freely, and require that 25% of fees collected under the bill's guestworker program be dedicated to enforcement of the provisions of the FLSA, OSHA regulations and the labor protection provisions included in the underlying bill. Finally, the amendment seeks to legislate around the Supreme Court's decision in *Hoffman Plastics* by providing that, notwithstanding any other provision of law, aliens who are subject to unlawful employment practices may not be denied backpay or other monetary relief on the basis of the alien's immigration status.

A **Motion to Table** the Kennedy amendment was **agreed to** by a vote of 56 to 41, thereby killing the amendment.

In the final vote of the day, the Senate took up an amendment by Senator Durbin (D-IL) (No. 4142) that would provide the government with discretionary authority to provide a waiver to certain immigrants who are penalized under select "Title II" provisions of the Senate immigration bill. The limited humanitarian waiver would provide the Attorney General or the Secretary of Homeland Security with the discretion to exempt from punishment individuals with compelling equities. The waiver would be at the sole and unreviewable discretion of the government and the immigrant would have to demonstrate extreme hardship to a U.S. citizen or legal permanent resident immediate family member.

Senators **approved** a **Motion to Table** the Durbin amendment on a vote of 63 to 34.

The Senate is expected to begin proceedings at 8:30 a.m. tomorrow morning, with debate followed by a vote on an amendment (No. 4085) offered by Senator McConnell (R-KY) that would require individuals voting in federal elections to present a current, valid photo identification that meets the requirements of the REAL ID Act of 2005. The cloture vote is expected to occur shortly thereafter.

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