



AILA's Take on Discretion in S.744

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Contacts: Greg Chen, gchen@aila.org; Karen Lucas, klucas@aila.org

American businesses, communities, and families are all affected by the shortcomings of our outdated immigration laws. The Senate immigration bill, S.744, which passed out of committee on May 21st, presents the best opportunity in decades to effectuate a lasting solution. As reform moves forward, the American Immigration Lawyers Association (AILA) urges Congress to enact the best possible law that meets our nation's needs.

The Senate immigration bill, S.744, establishes stringent criteria that will bar many individuals from obtaining Registered Provisional Immigrant (RPI) status or a green card. To balance these requirements, S.744 grants limited authority to immigration judges and agency officials to consider the facts in certain cases where a person does not automatically qualify and to exercise discretion if the person can show strong equities in his or her favor.

Judicial Discretion is Central to the Bipartisan Compromise

- ◆ **Judicial discretion is necessary for the success of the legalization plan.** Without discretion, the bill would absolutely bar the legalization of many people that the bill's drafters intend to bring out of the shadows.
- ◆ **Judicial discretion is necessary to make the immigration system function.** Judges and law enforcement officials must be empowered to do their jobs, which require them to make difficult decisions that will have serious consequences for the individuals involved, including long-term separation from family members. Existing law prevents judges and agency officials from exercising discretion in many compelling cases, often resulting in patently unfair deportations. Deportations of primary breadwinners often lead to severe economic consequences for family members, particularly children.
- ◆ **Discretion is a cornerstone of the American judicial system renowned for its commitment to a 'fair day in court'.** Discretion allows a person to state their case but certainly does not guarantee a favorable result. In the past, judges have allowed people to remain only in a small percentage of cases. The Senate bill requires the individual to prove that she merits relief based on her life circumstances. If someone poses a danger to public safety, relief will be denied.

Who Is Helped By S.744?

- ◆ **Discretion is necessary for our military families.** Helida entered the U.S. when she was 16 and is now married to a U.S. citizen who has served three tours of duty in the Middle East. Helida is barred from obtaining lawful status despite her spouse's service to our country because she used a false SSN to work and was therefore charged with making a false claim to U.S. citizenship, which bars any discretion.
- ◆ **Discretion is necessary for long-time U.S. residents and their families.** Janelle has lived in the U.S. since she was 10 years old, has U.S. citizen children, and cares for her ill and aging parents (who have green cards). The judge in her deportation case was barred from granting her a green card because of the exceptionally tight restrictions on judicial discretion in current law.

Voices In Support of Discretion

- ◆ **Robert Johnson**, Former District Attorney of Anoka County, MN, & former president of the National District Attorneys Association
[CQ Roll Call Op-ed](#): Immigration judges should "at least be able to consider all the individual factors, including U.S. military service, rehabilitation and family ties, to determine if it is in the best interests of the United States to let someone remain in the country." (May 16, 2013)
- ◆ **Paul Grussendorf**, Former immigration judge and law professor
[Senate Judiciary Committee testimony](#): "Congress should restore fairness and flexibility to our system by expanding the authority of immigration judges to consider the circumstances of each case. Judges are drawn from the ranks of immigration professionals ... They should be trusted to make the correct calls." (March 20, 2013)